Does the UN Model Still Work? Challenges and Prospects for the Future of Multilateralism

Edited by **Kim Fontaine-Skronski, Valériane Thool,** *and* **Norbert Eschborn**

BRILL

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Contents

Special Contribution

PART 1
Global Governance, New Actors and Challenges to Multilateralism

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Janie Piuze-Duclos is a graduate student in international studies at Université Laval in Québec City. As the Editorial Assistant, she was responsible for the logistics surrounding the editorial process, from contributing to the writing of the publisher's proposal document to communicating with the authors and keeping us all on track with the timeline and deadlines. Her high standard of rigor and professionalism greatly contributed to the quality of the volume, not to mention that she was a pleasure to work with. Janie also contributed to the writing of the introduction, and we would like to extend our heartfelt thanks for her excellent work.

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Kim Fontaine-Skronski
Valériane Thool
Norbert Eschborn

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Figures and Tables

Figures

Table

Abbreviations

ALBA	Bolivarian Alliance for the Peoples of Our America
AU	African Union
BASICS	Brazil, South Africa, India and China in climate change negotiations
BIT	Bilateral Investment Treaty
BRI	Belt and Road Initiative
BRICS	Brazil, Russia, India, China, South Africa
CARICOM	Caribbean Community
CBD	Convention on Biological Diversity
CCICED	China Council for International Cooperation on Environment and Development
CEPI	Coalition for Epidemic Preparedness Innovations
CETA	Comprehensive Economic and Trade Agreement
CETESB	Environmental Company of the State of São Paulo
CIA	Central Intelligence Agency (USA)
CITES	Convention on International Trade in Endangered Species
COP	Conference of the Parties
COVAX	COVID-19 Vaccines Global Access
DANIDA	Danish International Development Agency
DC	Developing countries
DDA	Doha Development Agenda
DESA	United Nations Department of Economic and Social Affairs
ECC	Canada's Minister of Environment and Climate Change
ECHR	European Court of Human Rights
ECOSOC	Economic and Social Council
EEU	Eurasian Economic Union
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FCNS	Friendship, Commerce and Navigation Agreements
FDI	Foreign Direct Investment
FGDS	Focus-Group Discussions
FTA	Free Trade Agreement
G20	Group of 20
G7	Group of 7
G77	Group of 77
GAFA	Google, Amazon, Facebook, Apple
GATT	General Agreement on Tariffs and Trade

GBVF	Gender-based violence and femicide
GCM	Global Compact on Migration
GFMD	Global Forum on Migration and Development
GHG	Greenhouse Gas
GVC	Global Value Chains
GW	Gigawatt
HDI	Human Development Index
HIC	Hybrid Institutional Complexes
HRC	Human Rights Council
IACHR	Inter-American Commission on Human Rights
IACTHR	Inter-American Court of Human Rights
IAEA	International Atomic Energy Agency
ICANN	Internet Corporation for Assigned Names and Numbers
ICAO	International Civil Aviation Organization
ICSID	International Centre for the Settlement of Investment Disputes
IEA	International Energy Agency
IGO	Intergovernmental Organization
IIA	International Investment Agreement
IISD	International Institute for Sustainable Development
ILO	International Labour Organization
IMF	International Monetary Fund
IML	International Migration Law
IMO	International Maritime Organization
INGO	International Nongovernmental Organization
IO	International Organization
IOM	International Organization for Migration
ISDS	Investor – State Dispute Settlement
ITIS	International Trade and Investment System
ITO	International Trade Organization
IUCN	International Union for Conservation of Nature
JEFTA	Japan – EU Free Trade Agreement
LDC	Least developed countries
MCOF	Migration Crisis Operational Framework
MEE	China's Minister of Ecology and Environment
MERCOSUR	*Mercado Común del Sur* (Common Market of the South)
MFN	Most Favoured Nation
MICIC	Migrants in Countries in Crisis Initiative
MIGOF	Migration Governance Framework
MINT	Mexico, Indonesia, Nigeria and Turkey
MIST	Mexico, Indonesia, South Korea and Turkey

MNC	Multinational Corporation
MNF	Multinational Firm
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NDC	National Determined Contribution
NEA	China's National Energy Administration
NGO	Nongovernmental Organization
NIEO	New International Economic Order
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
RCEP	Regional Comprehensive Economic Partnership
RO	Regional Organizations
RTA	Regional Trade Agreement
S&DT	Special and Differential Treatment
SADC	Southern African Development Community
SCO	Shanghai Cooperation Organization
SDG	Sustainable Development Goal
SIDA	Swedish International Development Cooperation Agency
TNC	Transnational Corporation
TTIP	Transatlantic Trade and Investment Partnership
UCLG	United Cities and Local Governments
UNCED	United Nations Conference on Environment and Development
UNCITRAL	United Nations Commission on International Trade Law
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNDRR	United Nations Office for Disaster Risk Reduction
UNEP	United Nations Environment Programme
UNEP FI	United Nations Environment Programme Finance Initiative
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
UNISPAL	United Nations Information System on the Question of Palestine
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

UNSCR	United Nations Security Council Resolution
UNSDG	United Nations Sustainable Development Group
URA	Uruguay Round Agreement
USAID	United States Agency for International Development
USMCA	US – Mexico – Canada Agreement
WB	World Bank
WCR	Wider Caribbean Region
WHO	World Health Organization
WTO	World Trade Organization

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Introduction: Does the UN Model Still Work? Challenges and Prospects for the Future of Multilateralism

Kim Fontaine-Skronski, Valériane Thool and Norbert Eschborn

When the United Nations celebrated its 50th anniversary in 1995, the Cold War had recently come to an end, and it appeared the world was embarking on a new phase of multilateralism with a privileged place for the UN. Around this time, the well-known Swedish UN diplomat Hans Blix remarked that international cooperation and multilateralism were indispensable. Twenty-five years later, the portrait is quite different: as global issues such as climate change, threats to democracy and humanitarian crises are on the rise, the international community's response has become both fragmented and divergent. Emerging powers are rising in different regions of the world, seemingly aiming at counterbalancing the existing global order. The international community is witnessing an unprecedented degradation of biodiversity, due to human activities, excessive urbanization, transportation activities, exploration and extraction or overfishing.

Other new issues are increasingly gaining attention. The expansion of new technologies and artificial intelligence raises questions about their use, about the growing gap between developing and developed countries, and about new threats that are emerging as a result of this expansion, namely ethical ones. Important changes in the geopolitical shifts are leading to a rethinking of alliances and oppositions, but also of defense and security strategies, climate change management, food security and nuclear energy. There is also a rise in regionalization, or the reconfiguration of regional alliances, as we witnessed with the creation of a new security pact between the United States, the United Kingdom and Australia in 2021, known as AUKUS, at the expense of an agreement on nuclear submarines between Australia and France.

Eyes are focused on well-targeted areas, such as the Arctic, the Mediterranean and the China Sea. The Arctic, which is becoming a geostrategic terrain, involves complex issues such as the fact that global warming is occurring three times faster in that region than in other parts of the world, potentially opening up new shipping routes that are currently inaccessible. Not to mention the militarization of the Arctic region, which raises many questions about the ability of the states involved to collaborate and cooperate while maintaining peaceful relations in the region. A true geopolitical theater, the Mediterranean

is a region on which attention has also been focused. Relations between the twenty coastal countries are not always smooth and the conflicts (migratory, religious, territorial) that have degenerated in recent decades have challenged the Mediterranean region. Migration flows have been a major issue in the region, where crossings in makeshift boats have lead to thousands of death each year since 2015. The China Sea is another area where maritime conflicts are fueling tensions between various coastal states, with China increasing its military activities in the region and discarding the principle set out in the UN Convention on the Law of the Sea on freedom of navigation. These examples reflect the multifaceted nature of the issues at stake in certain regions of the world, which call for multilateral responses.

Without a strengthening of multilateralism, the challenges facing the UN system are likely to grow and degenerate. "Multilateralism is under threat at a time when we most need it," stated António Guterres, the current Secretary-General of the United Nations. Clear commitments to multilateralism, such as in the form of the German government's White Paper entitled "A Multilateralism for the People," updated in 2021, remain the exception but will perhaps be the precursor of a larger movement.

At the end of the Second World War, and even more so after the end of the Cold War, multilateral cooperation became increasingly significant in international politics. Nonetheless, since the start of the 21st century, the system has been accused of being fragmented, unrepresentative and ineffective, and this dwindling confidence has had an impact on global governance, democracy, trade and investment, the environment, human rights and many other areas. In this sense, the UN's 75th anniversary in 2020 occurred at a time of great turmoil. Indeed, the United Nations remains a controversial model of multilateralism and, as argued by the authors of this collective work, there is a need for a multilateral system that is inclusive, networked and effective.

Although a wide array of authors have contributed to the field of international studies and adopted interesting perspectives on these omnipresent issues, this volume fills a considerable gap in the current market by combining original research from academics with practical hands-on policy orientations from former diplomats. In addition, considering that most of the authors do not come from within the UN system, their analyses provide an external, more neutral and more politically inclined assessment of the UN in terms of its ability to continue to function today as a serious actor within a global movement in favor of a renewed form of multilateralism. The institutional distance of the authors from the UN ensures a view of the problems and perspectives of the organization after 75 years of existence that is unaffected by interest group influences. In this regard, the combination of authors from purely academic

backgrounds, who reflect on the international discourses on the subject of multilateralism, and political and executive practitioners, who can provide an outside view from multiple perspectives informed by professional experience in senior positions, offers original and practical insights into the challenges and prospects our international system faces today. Finally, this edited volume also distinguishes itself by its great regional and gender diversity: indeed, it includes contributions by authors from North and South America, Europe and Africa, and with more than 50 percent being women, hence the broad, multi-faceted and international perspective of the book.

Composed of original articles from researchers and academics, as well as policy notes from practitioners, this book constitutes an opportunity to assess the state of multilateralism through the UN model, all the while identifying potential ways to address its challenges and shortcomings. The chapters demonstrate the challenges and prospects for multilateralism 75 years after the adoption of the United Nations Charter in five main areas, reflected in the volume's five parts:

> Part 1: Global Governance, New Actors and Challenges to Multilateralism
> Part 2: Threats to Democracy Undermining the Multilateral System
> Part 3: International Multilateral Trade Governance
> Part 4: Environmental Governance and the Climate Challenge
> Part 5: Human Rights and Migration Governance

In Part 1, Marcello Scarone, Vice Admiral (retd.) Lutz Feldt, Elizabeth Bloodgood and Henri-Paul Normandin evaluate the various challenges opposing multilateralism and global governance. In "Is Classic Multilateralism Outdated? The Case of the UN," Scarone assesses the evolution of the UN's practice of multilateralism and the current issues it faces, and he offers his practitioner's perspective on pressing yet sensitive questions such as "whose fault is it?" and "what can be done?" The themes discussed in this chapter include the changing world order and geopolitics, the newly found prominence of nonstate actors and the misguided internal actions and functioning of the various UN system organizations themselves. Feldt, in "Geopolitical Shifts: Issues and Challenges for the Arctic Region," addresses topics such as nuclear waste, resource exploitation, climate change, geopolitical tensions and military build-up. His chapter illustrates how the Arctic will remain a very dangerous, challenging and unpleasant place for maritime, air and land activities in the coming years, and how the international community can address these major obstacles. In "New Multilateralism: The United Nations and Governance in the Era of Nonstate Actors," Bloodgood examines the features of "new"

multilateralism, characterized by the ever-broadening array of active nonstate actors, and their resulting effects upon both the United Nations and global governance. Finally, Normandin, in "Inclusive Multilateralism: Cities Take a Seat at the Table" evaluates the potential of "inclusive multilateralism," which entails the participation of other stakeholders such as civil society, businesses and other levels of government including cities, in reinvigorating classical multilateralism. This chapter illustrates how global issues are often local issues, and vice versa, through several specific and relevant examples such as climate change, the 2030 Sustainable Development Agenda, migration, biodiversity and the COVID-19 pandemic.

Part 2 of this volume features original work by Marianne Kneuer, who examines various threats to democracy that impede the classical multilateral system. In "Democratic Erosion and Multilateralism: When Authoritarian Leaders Challenge the Liberal International Order," Kneuer evaluates the foreign policy implications of the process of democratic erosion at the international level. She does so by examining cases of democratic erosion (such as Venezuela, Russia, Hungary and Poland, as well as the USA under President Donald Trump) and the activities of their incumbents on the regional and international levels, and by tracing in what way and to what degree the erosion agents did change foreign policy approaches by introducing new foreign policy elements. Departing from an actor-centered approach, the argument is that the protagonist of democratic erosion, the erosion agent, might link his or her domestic mission to missions on the regional or international level. In other words, as erosion agents strive to change the rules of the game domestically, they also strive to change the rules of regional politics or even influence the international level.

In Part 3, Michèle Rioux, Maria Teresa Gutiérrez-Haces and Mehdi Abbas analyze the international multilateral trade governance system. In "Multilateralism, Interdependence and Globalization," Rioux addresses the structural changes that have affected the dynamics of multilateralism in order to understand what distinguishes it from the phenomena of international interdependence and globalization. To do so, she distinguishes three historical periods of multilateralism, allowing the reader to follow the dynamics of the articulation of collective action over time. She also identifies challenges of multilateral collective action in the 21st century, while considering the COVID-19 pandemic and its impacts. Gutiérrez-Haces, in "The Gradual and Uneven Consolidation of an International Investment Protection Regime Decoupled from Multilateral Economic Organizations," questions whether we can speak of a rule of law in the multilateral system of trade and investment. Indeed, Gutiérrez-Haces' chapter focuses on a contemporary analysis of the rule of law, which she

advocates is increasingly being used selectively to favor the interests of certain governments and companies over others, and she illustrates this by devoting part of her analysis to Latin America. Finally, in "Reframing the International Trade and Investment Framework to Meet the Challenges of the 21st Century," Abbas explores avenues for renewing the global trade and investment framework and, in doing so, examines the future of multilateralism as a principle for organizing international economic relations. Is the global COVID-19 pandemic crisis a tipping point in the process of globalization? The chapter argues that this crisis opens a window of opportunity to rethink the governance of the international trade and investment system.

Part 4 of the volume examines various issues related to environmental governance and is composed of original articles from Guy Saint-Jacques, Valériane Thool, Patrícia Iglecias, and Walter Arévalo-Ramírez. Saint-Jacques starts off with his chapter "A New Climate Club Is the Best Way to Reduce Global Emissions of Greenhouse Gases," in which he discusses several topics such as the role Canada played in climate change negotiations and why negotiations in the UNFCCC will never produce a binding agreement to further reduce greenhouse gas emissions. He also discusses the challenge that China poses to the world and explains why the G20 could be a better forum to create a Climate Club that would adopt a carbon tax, including on imports. Thool, in "Biodiversity Loss Under the Lens of Multilateralism: An Environmental Governance and International Law Perspective," focuses on one of the main challenges of environmental law and governance: biodiversity loss. This chapter examines several topics such as the governance and legal issues related to the UN's Sustainable Development Goals (SDGs), the multiplication of relevant legal instruments as well as the principal solutions to be used by the international community and the UN in the next decades in terms of biodiversity challenges at a multilateral level. Iglecias, in "Fostering Sustainable Economic Growth, Transformation and Promotion of Responsible Consumption and Production: The Subnational Government's Role in Contributions to Multilateralism," looks at how subnational and local authorities are leading in environmental innovations by examining the case of the State of São Paulo. Her chapter explores themes such as subnational government initiatives, the São Paulo Environmental Agreement and its relation to the Paris Climate Agreement, as well as ways to ensure responsible production and consumption. Finally, in "Challenges for the Coming Years: Learning Regional Lessons on Environmental Protection and Achieving the Participation of Indigenous Peoples in the United Nations System," Arévalo-Ramírez examines how the Inter-American Court of Human Rights has taken important steps toward the protection of the environment,

and why these developments need to be enshrined by the UN as a contribution to its goals in the upcoming years. The author also discusses a fundamental issue that needs to be understood as a challenge for the UN, namely the participation of indigenous peoples in the UN system.

In Part 5, Emnet Berhanu Gebre, Yasmeen Abu-Laban and Christopher Isike discuss issues related to human rights and migration governance. Gebre, in "Migrants' Protection and Assistance in the Face of a Changing World: Taking Stock of the Challenges and Responses," highlights existing normative and institutional gaps in addressing challenges related to migrant protection and assistance, and she evaluates the responses taken, primarily at the policy and programmatic level, to address them. In "What UNRWA Tells Us About Refugees and the United Nations," Abu-Laban aims to center the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in relation to discussions on refugees and refugee governance. She traces how UNRWA's creation in 1949 led to the world's refugees falling under two different UN agencies and mandates, with the consequence that both UNRWA and Palestine refugees are comparatively vulnerable and subject to ideological attacks. Finally, Isike, in "The Value of Re-socializing Boys and Men for Positive Gender Relations to Curb Gender-Based Violence and Femicide in South Africa," discusses the disconnect between policy and practice on gender inequality and gender-based violence in Africa. While there is no shortage of state interventions rooted in human rights aimed at gender equality, women and girls in South Africa continue yearly to suffer from male violence at alarming rates, prompting President Cyril Ramaphosa to declare gender-based violence and femicide a national disaster in 2020. This resulted in the National Gender-Based Violence and Femicide Strategic Plan 2020–2030, which provides a coherent national framework to support South Africa in meeting UN SDG targets 5.1–5.3 and 16.1–16.2. By using secondary and primary data from South Africa, Isike makes a case for re-socializing boys and young men in the country to change their mental image of girls and women.

Aside from Parts 1 to 5, this volume also contains special contributions from Bertrand Badie and Cecilia Cannon. In the introductory special contribution, "Post-Bipolar Challenges to Multilateralism," Badie answers three pressing questions that relate directly to the challenges and prospects for the future of multilateralism: (i) What are the main aspects of the gap that is widening between the present multilateral context and the one that prevailed in 1945?; (ii) How can we explain why these contextual changes have never been really instilled into the UN system?; and (iii) How do these failures generate the challenges that we now face and that currently threaten multilateral institutions?

To do so, Badie explains the main features of the 1945 context and identifies the factors of dislocation that question the order of decolonization, depolarization and globalization, and what he considers to be the UN's present challenges: the growing split between the Secretary-General and the Security Council, the inclusion and management of nonstate actors inside the UN system, and the fragility of the new concept of global security as it was progressively coined by some agencies, particularly the UN Development Programme.

Cannon, in "The UN at 75: A Political Declaration and a Global Conversation," brings together the themes discussed in this volume and describes the unstable context in which the United Nations commemorated its 75th anniversary. The author also provides an overview of the major commitments presented in the UN75 Declaration, as well as the key results of the UN75 Public Engagement Initiative. She concludes by offering some reflections on the current challenges faced by the United Nations, and possible ways forward for better addressing the most pressing global challenges.

In conclusion, this edited volume, inspired by the International Political Science Association's virtual conference on the Challenges and Prospects for the Future of Multilateralism held in October 2020 in partnership with Concordia University and the Konrad Adenauer Foundation, consists in a modern, far-reaching overall contribution to the international debate on multilateralism. In this sense, it is of particular interest to students (both graduate and postgraduate), negotiators and practitioners (from both non-governmental and intergovernmental organizations) as well as decision makers and government representatives. It is equally likely to interest members of the general public whose lives are affected, in some way, by the issues discussed in the book.

Special Contribution

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Post-bipolar Challenges to Multilateralism

Bertrand Badie

Abstract

The UN system was created in 1945 by 51 founding members. We are now in the third millennium and the organization presently includes 193 state members. Such a difference has to be taken into account by political scientists and would probably shed light on many deadlocks or uncertainties the United Nations is presently dealing with. This is all the more crucial as the UN was until the present time hardly capable of reforming itself, even when the strong decolonization wave took place during the 1960s. If the UN is still reflective of the post-Second World War world, we can easily imagine that it is not properly able to take up the challenge of a new global, "inter-social" and multicultural world.

Three points will be explored in this chapter. First, we will define the main features of the 1945 context, based on the risk of a third world war (far apart from the contemporary new conflicts), on a political vision of international relations, excluding social issues and environmental problems, and on a clear domination (even a monopoly) of Northern and developed countries on the agenda. Second, we will focus on the main factors of dislocation that came to question this first order: decolonization, depolarization and globalization, to which the UN system was not properly responsive. Finally, we will assess the present challenge according to three axes: the growing split between the Secretary-General and Security Council, the inclusion and management of nonstate actors inside the UN system, and the fragility of the new concept of global security as it was progressively coined by some agencies, particularly the UNDP.

Multilateralism has always been an uncertain conquest that was most commonly accepted by states as an unnatural and fragile invention. In a Westphalian world, international relations used to be understood as a combination of bilateral agreements that had to respect the sovereignty principle, conceived as the cornerstone of the international order. For this reason, multilateral conventions and organizations were most generally reluctantly consented to under duress, while necessity was conceived in the matter as the mother of invention. These necessities have been abundant since the 19th century: managing new technologies (telegraphs), new services (international post office), new transnational flaws (ship transportation) and new diseases (plague contaminations and other tropical afflictions that resulted in the creation of the International Office of Public Hygiene, founded in 1907), stabilizing the economic order and obviously keeping peace after the two world wars.

This goes to show that every new step toward multilateralism is closely affected by the historical context on which it depends (Goertz 1994). However, Westphalian states never gave free rein to multilateral organizations but rather granted them a strictly limited mission that aimed to relieve some of their own functions. When the context changes, the international institutions become increasingly at odds with their new environment. This permanent risk of discrepancy is probably one of the most problematic features currently at stake in the present UN system, which is still deeply marked by the 1945 context, while the contemporary global world presents quite different traits (Badie 2020a). The reluctance of states to remain committed to the post-sovereign rules of globalization strengthens this discrepancy and leads to an increasing risk of a multilateral deadlock, as well as a growing helplessness of UN institutions when facing new issues. When the Berlin Wall fell, a huge paradox came to light: While many observers expected a revitalized multilateralism, they had to lower their hopes and to consider that, finally, the UN system was fit essentially for bipolarity and cold war (Badie 2012), much more than for a post-bipolar and interdependent world.

Ironically, multilateralism seems to work better in a sovereigntist world, where it quietly plays the role of the "concert of nations" that many European leaders, such as David Lloyd George, explicitly had in mind when they created the League of Nations after the First World War. In a post-sovereign time, multilateralism generates much more distrust among sovereign states that consider it a permanent threat: The common strategy is then to keep it away from the main decisions and to make it a center of expertise rather than a place of an effective decision-making process. In this perspective, three main questions are to be taken into account: What are the main aspects of this gap that is widening between the present context and the one that prevailed in 1945? How can

we explain why these contextual changes have never really been instilled into the UN system? How do these failures generate the challenges that we now face and that currently threaten multilateral institutions?

The 1945 Context Is Outdated

Let us keep in mind that the present UN system is mainly the fruit of a man and a context. Franklin D. Roosevelt was ever a sincere supporter of multilateral politics, but he was deeply obsessed, in the meantime, by the humiliation that Woodrow Wilson had to face when the US Congress rejected his own project of a League of Nations. That is why Roosevelt strove to make the Security Council a solid bastion of power rather than a place for compromise. The Charter itself was accordingly negotiated – and in fact written – during the long sequence of the Second World War, owing to many interactions between allied warring nations (Rusell 1958; Schlesinger 2003). That is why the UN in its essence should be understood as deeply impacted by a traditional culture of war, a strictly political vision of international relations and a Westphalian conception of the world order: All three of these notions are now clearly outdated, while the great powers work to maintain the illusion that this old world is still relevant against all odds.

No one will be surprised that the UN culture of war was deeply marked by the old and traditional Clausewitzian vision. Everyone will agree that in 1945, the main international actors had in mind only the construction of the best way for preventing a third world war. At that time, the traditional concert of great powers met this expectation as best as was possible: At the end of the 1940s, war was still the exclusive result of power competition, an issue clearly in the hands of the "top five" ranked on a scale of military capacity. Presently, the situation has clearly turned around: War is opposing the weakest actors to each other; the great powers may manipulate new wars but do not generate them, while the conflicts slip out of the traditional control of the hegemon(s). New international conflicts are out of sync with the conflict-solving methods that are still proper to the Security Council and more generally to the UN Charter (Kaldor [1998] 2012; Münkler 2004). One of the main features of these new conflicts refers to their social origin and even their social nature: Instead of resulting from state rivalries, they arise from a process of social destructuration (Gilpin 2016). Instead of being an interstate event, they appear as intra-state conflicts. In place of struggling armies, we find nowadays militias, uncontrolled groups, mafias and warlords (Malejacq 2019), that is to say, actors that do not fit with the Security Council method, nor the UN way of dealing.

When it faces "new international conflicts," the Security Council is prompted to convert them into traditional conflicts, making the solutions much more problematic as it results in overlaying two types of war. The Libyan crisis is a clear example of such a risk, when in 2011 the SC decided on a military intervention for keeping peace and containing the use of force by Muammar Kadhafi (UNSCR 1973). The multilateral initiative rapidly turned into an act of power that was very promptly taken over by NATO. The initiative paved the way to an endless war in which old and new wars were merging. Desert Storm, in 1991, was one of the rare successful operations set up by the SC, as the Council faced a traditional interstate conflict in which a state invaded another one and tried to abolish its sovereignty. The UN system works much better when a traditional interstate conflict is at stake, while it performs poorly in handling new conflicts.

The 1945 context is also dominated by a strictly political vision of international relations. Just after the Second World War, the international agenda was clearly dominated by purely political issues: power rivalry, regime competition, pressure of totalitarianism, political mobilization, an arms race that was then activated by the nuclear weapon just used against Japan, not to mention, in addition, the rise of new alliances and of new camps. The new bipolarity and the perspective of two blocs facing each other set the tone of the post-war international arena. In this vision, there was no room for social issues: Development attracted little attention and the main branches of human security did not even exist in the minds of the founding state members. Environment and climate change were then meaningless, while health and food security issues were explicitly left in the hands of specialized agencies. Article 2 of the UN Charter lists seven "principles" of the organization without mentioning any economic or social needs. The UN inaugurated its role by starting from a strictly political definition of peace as non-war; in the future it would find it very difficult to detach itself from that definition.

Finally, let us point out that the UN was at that time almost exclusively composed of northern developed countries, with only four African states including South Africa, which could be then considered close to the European world. For this reason, development was not perceived as a crucial issue, while monoculturalism largely prevailed. Moreover, these traditional geopolitics strengthened the hierarchical orientation of the new multilateral system and bolstered the role of the world order guardianship played by the old northern great powers. This practice no longer functions at the present time: The "Big Brother" paradigm does not reflect the current reality, while small or weak states are becoming more and more independent from the old tutorships or protections. The main conflicts arise in a regional context, in which northern states have lost a great part of their traditional influence: Hierarchy no longer has the

capacity to enforce peace as it did before (Lake 2009). It would seem that the UN system will only be able to regain control of new conflicts if it grants a role from now on to regional powers, local actors and regional organizations in a new, decentralized process of intervention (Van Leeuwen 2009).

The cultural diversification that occurred, especially after 1960, came to weaken and even jeopardize the first multilateral constructions. This was particularly clear with the well-known Universal Declaration of Human Rights, which was even denounced by many Third World leaders as a kind of "unilateral universalism." Of course, the grievance was frequently used as a pretext for legitimizing their authoritarian rule, as well as their lack of commitment to democratic and liberal principles. It has also fueled the "clash of civilizations" rhetoric that has paralyzed many international conferences and forums. It has even contributed to bolstering a new "diplomacy of protest": As the countries of the Global South were kept at the margins of global governance and felt excluded from a real universalism, the temptation was high, for many of these new UN members, to seek refuge in a new kind of foreign policy based on questioning and contesting the economic and political world order. As they were unable to really participate in global governance, they played the role of dissenter. The Non-aligned Movement (Belgrade, 1961) was created in this perspective (Dinkel 2019), followed thereafter by the G77, which still plays an important role in the multilateral debate. From a certain point of view, this protest diplomacy has frozen – and is still freezing – several capacities of multilateralism. However, it has also helped to popularize new concepts and new issues including sustainable development, human security and global security.

Three Major Ruptures

Three major ruptures deeply questioned the relevance and the efficiency of the classic UN Charter: decolonization, depolarization and globalization. Instead of adapting its institutions to these new sequences, the UN system reacted mainly by confirming its previous orientations. We face here a well-known political process that is probably still more evident in international relations than in domestic politics: the conviction that the status quo is less costly than change, particularly when the rules are monitored by states that do not have any interest in changing them in the short term. As Peter Katzenstein has pointed out, states, and particularly great powers, conceive themselves as actors, following what the realist theory encourages them to do, while they have to be considered first as structures, depending on the context and obviously bound to change: Rulers around the world are commonly lulled into the impression that they can control change while they are borne by it (Katzenstein 1990).

Decolonization did not really get the UN institutions moving. Even if the founding members progressively became a minority in the new Assembly, the change was contained by the old northern powers that progressively stayed away from the General Assembly and sought shelter in the Security Council, where they could enforce their own rules in the context of new issues. Very few new institutions were created in this new context, with the exception of the United Nations Development Programme (UNDP) in 1965, and the United Nations Conference on Trade and Development (UNCTAD) one year before. Paradoxically, this deep enlargement paved the way to a new oligarchical trend that became a reality through the rise of a new "minilateralism" that gathered together the old powers, particularly in the G7, which was created at Rambouillet by a French initiative in 1975 (Hajnal 2007; Badie 2012). Significantly, the G7 co-opted Russia after the USSR collapsed and expelled it when the connivance between the old powers came to decay. The G20 was thereafter built up in order to meet the threatening global economic crisis in 2007. Even if it included China and some "moderate" rising powers, it declined not long after, without casting a real shadow over the past hegemons and their ability to control the decision-making process. "Minilateralism" should then be looked at as a symptom of the multilateral dysfunctions and a reflection of the mistrust among the powers about the UN's capacity to deal with the main issues at stake. It has also generated a sense of multilateral incompleteness among all the other countries.

Did *depolarization* lead more promptly to change? The fall of the Berlin Wall was welcomed as the starting point of a new era that would stimulate a more cooperative diplomacy: The success of the Desert Storm operation was perceived as a good sign of the new capacities of the UN. However, the opposing view quickly prevailed: The veto system helped to artificially extend the dead bipolar game, while it contributed to marginalizing regional wars (as was the case with the African conflicts) or reconstructing them according to the old rivalries: Palestine, Syria, Iraq and Libya are clear examples of this second trend. In fact, depolarization showed the way to a door that was never really opened: the access to a newly fragmented world in which the peace makers could not be limited to the old powers and should include local and regional actors, as well as non-state actors that were held in a secondary role during the Cold War. Warlords, tribesmen, religious actors, NGOs, mafias, even violence entrepreneurs progressively became the main players while remaining behind the institutional curtains (Hofman and Schnekener 2011; Ezrow 2017). International organizations are then able to offer the most comprehensive range of actions for punishing or rewarding these actors, and even sharing political responsibilities (Hofman and Schnekener 2011, 614–615). States clearly wish to limit this kind of option.

Nevertheless, globalization is definitely the main factor of a necessary readjustment that has never been really achieved. This new dynamic opened the way to three new principles that the UN partly failed to comply with: inclusion, mobility and interdependence. As mentioned earlier, given the hierarchical orientation of the UN system, inclusion was more formal than real. Admissions of new decolonized states were generally successful, even if they frequently triggered a veto, especially by the USSR: Co-optation remained for a long time an active privilege of the oligarchic P5 (the five permanent members of the Security Council). A close association of the new members to the UN governance, or even more, to the global governance, was by contrast very limited. As early as 1953, when the election of a new Secretary-General took place, the candidacies of both the Indian diplomat Vijaya Lakshmi Pandit, sister of Jawaharlal Nehru, and the former Iranian foreign minister Nasrollah Entezam were rejected without any soul searching. More generally, a tough debate was opened with decolonization: Does a too large number of players still permit the conditions for a real trade-off or not (Gilligan 2004)? The old great powers were prompt to perceive the large postcolonial international arena as the "Grand Central Station" or a "Piccadilly Circus" in place of the old, cozy and familiar concert. They often mobilized this doubt for relaunching their own "minilateralism."

Mobility and fluidity are also tough challenges for traditional multilateralism, as they increase the number of transnational actors and multiply the meeting places and forums, while decentralizing the negotiation opportunities. Global communication is shaping a new international arena that is more and more interconnected, participative, but also fragmented (Constantinou, Richmond and Watson 2008). It is clearly increasingly hard for the UN to maintain the monopoly of international transactions and real control over the conflicts. In the meantime, many international organizations (especially private ones, NGOs, firms as well as mafias or violence entrepreneurs) are increasing their autonomy and capacity to act, while societies become more and more eager to deal with international issues (Mandelbaum 1996; Badie 2020b); the time and the paradigm of the muted Vienna Congress are now over. Globalization helps communication but frustrates oligarchic coordination. It is a kind of revenge taken by the former French Prime Minister, Leon Bourgeois, on Woodrow Wilson, as the French politician argued at the beginning of the 20th century that a new League of Nations might echo a rising global society, while the US president planned to promote international institutions connecting the states to each other in order to contain their rivalry.

But the real stumbling block is to be found in the "interdependence" principle that is clearly at odds with the sovereignty principle, that is, the main cornerstone of the UN Charter in which the "sovereign equality" among member

states is explicitly claimed. The growing interdependence among states can be seen as a positive challenge for UN multilateralism as it bolsters active cooperation among them. However, it obviously contradicts the traditional definition of cooperation that was largely adopted by the UN: "the coordinated behavior of independent and possibly selfish actors that benefits them all" (Dai, Snidal and Sampson 2017). Such a definition significantly worked to contain the traditional risk of war (Fearon 1995) and was mobilized by liberal theorists to conceive the functions of multilateralism in an interstate world, albeit an anarchic and post-hegemonic one (Keohane 1984), thanks to reciprocity, trust and reputation (Dai, Snidal and Sampson 2017).

Globalization has questioned this rather optimistic vision in two ways. First, as a new challenge, globalization generated many tensions, suspicions and frustrations in domestic politics that triggered a strong new nationalist stream that all states should take into account. This new orientation resulted in protectionist and selfish foreign policies and distanced national states from multilateralism, as could be observed with the Trump administration. Even more, this paradox was strengthened by a second factor. In a global world, cooperation cannot be considered, strictly speaking, as an agreement, a voluntary meeting of sovereign actors. It now derives from global needs, global threats or, in brief, from global security. The function prevails on the actor and the organization on its members. That is why the initial consensus is drastically challenged: interstate cooperation is no longer the starting point of UN multilateralism but is the trivial consequence of a new world order. Instead of cooperation, some scholars refer to a "societal denationalization" defined as "the extension of social spaces … beyond the national borders" (Zürn 2001, 57–58). The risk is then clear: a growing split between two faces of the UN system, one still based on traditional state cooperation, and a second based on the definition and the management of new global requirements. The first one remains inspired by the well-known "zero sum game," while the new one is in the line of an innovative "win – win" game which sovereign states are still reluctant to play.

Contained Innovations

The international arena's center of gravity is then moving toward new actors and new issues (Müller 2005). This important change is a tough challenge for the UN system, which it promptly took up in an incremental way. Instead of promoting deep reforms that would have made the United Nations more effective, the multilateral system strove to adapt itself to the new context. In order

to achieve this, the lowest common denominator has been found for gathering traditional powers, firmly attached to the Security Council ("UN 1"), a Secretary-General and its administration aspiring to autonomy ("UN 2") and a fragmented global civil society that tries to invest in the multilateral system ("UN 3"). From this perspective, rhetoric, "soft planning," new connections with social actors and new long-term programs look more acceptable to member states than do structural reforms. One of the major axes of this option was to reach out to global civil society in spite of little willingness among the sovereign states. In fact, the new project that Boutros Boutros-Ghali and, more actively, Kofi Annan had in mind was then to seal an alliance between the UN 2 (Secretary-General) and the UN 3 (global civil society activists and agencies) in order to contain state sovereigntism and the chilling effect of state power.

The UN's openness to civil society actors was the most visible result of this new orientation. From this perspective, the concept of global social responsibility has been progressively shaped in order to integrate the major corporations in a more inclusive UN system (Segerlund 2010). The Global Compact Initiative was launched in 2000 in a spirit of defining new international commitments binding powerful non-state actors, while the number of NGOs accredited to the UN impressively increased over the Annan term and beyond (40,000 in 2021). Multilateralism should, henceforth, be considered "social" as much as political (Martens 2005). Whatever their presence and visibility in the UN lobbies, however, the contact of these non-state actors with the ruling UN institutions remained limited and were even confined to a "working group" comprised of about 30 NGOs that occasionally met with Council ambassadors. Even if they are seriously present on the ground, these new international actors still do not represent those who are fighting and cannot be real partners to a fruitful negotiation. In reality, non-state actors did not really succeed in raising themselves to the status of full-fledged international decision makers. They are essentially accepted as lobbyists and activists inside international conferences or forums where they play a role of rather efficient spurs facing reluctant or unadventurous states. In a more and more inter-social world, it seems risky to keep non-state actors away from the most important deliberations. It is then urgent to redefine more precisely who is encompassed inside this notion, beyond firms and NGOs: Should violence entrepreneurs still be excluded from any negotiations on war and peace, given what new conflicts mean nowadays and who is actually pulling the strings?

This openness to new actors has also been extended to the issues that are at stake on the multilateral agenda. Here too, Kofi Annan played a major role on the occasion of the Millennium celebration. In his famous speech delivered at the Millennium Conference, he pointed out the crucial importance of human

security. He was then using and highlighting a concept formerly elaborated by Amartya Sen and Mahbub ul Haq, which was the core topic of the UNDP report on human security published in 1994 (UNDP 1994; Tadjbakhsh and Chenoy 2007). This new orientation was crucial: For the first time, security was explicitly and officially disconnected from military and strictly national issues. Annan paved from then on a second track in the UN process, resulting in the announcement of the eight Millennium Development Goals for 2015 (on poverty, education, gender, child mortality, maternal health, pandemics, environment and development). The project was expanded by Ban Ki-moon, in 2015, to the seventeen Sustainable Development Goals leading to the 2030 agenda. The concrete results are, for the time being, most probably poor and not really impressive; their means of implementation were accurately criticized as hazy. The fact remains, however, that a new conceptual system was definitely elaborated in an up-to-date manner.

The difficulty arises when this second track is kept separate from an uncompromising first track more and more explicitly embodied by the UN Security Council. This new orientation certainly contributed to transforming multilateral diplomacy, which split into two systems, one strictly conservative and the other bearing a new agenda, new goals and a new vision of security (Kamau, Chasek and O'Connor 2018). The institution of the Secretary-General could have drawn closer to the global civil society and had this alliance endorsed by the General Assembly, which approved the 2030 Agenda in a formal resolution (September 25, 2015). It also could have set up a high-level political forum for monitoring the SDGs under the auspices of the UN ECOSOC. However, this change failed to reach the Security Council, where the mandatory decisions about peace and war are compiled, and where old powers continue to rule according to an outdated conception of world security: more than ever, the UN 1 is separated from the UN 2 and the UN 3.

The Security Council's resilience is cultural in part, bound to a faithful commitment to the old schemes of the bipolar era and even of the historic Vienna Congress. Nevertheless, it is also strategic, as it appears to be a way to keep a minimal consensus or connivance among the main players (Badie 2012). It should also be considered as a shield by which old powers try to contain the increasing number of initiatives coming from the Secretary-General, the autonomous role of whom is increasingly held as suspect. A "social multilateralism," as it was described by Kofi Annan, is currently perceived as a threat by the P5 and, more generally, by all the states, who see it as a way of surrounding or limiting their own sovereignty. This active conservatism is explicit and even conspicuous when we observe the distance that the Council keeps from all global security issues. This major problem arose at first with the

health security question, when the AIDS pandemic was hardly discussed in the Council in July 2000. Although UNSCR 1308 claimed in its preamble that AIDS was everywhere threatening the peace and stability of the world, it only focused on the risks incurred in that respect by Department of Peacekeeping Operations (DPKO) troops. In the new context created by the 9/11 attacks, the Security Council came to neglect this issue once again and to abandon it to a specialized agency, the UNAIDS, which had taken shape some years earlier, in 1995. However, the Ebola epidemics in turn fostered two resolutions. The first one (UNSCR 2177) reiterated the point made about the AIDS disease by presenting it as "a threat to peace and security" but, in the meantime, the resolution significantly transferred the main responsibility to the local state (namely Liberia) and regional organizations.

If it took until the year 2000 for a positive step to be taken towards health security, the Council considered food security only in 2018, when it passed UNSCR 2417 (July 24, 2018). Even though starvation causes presently the death of about 9 million people per year, the Security Council ignored the issue for 73 years! This was clearly a step in the right direction, even though the issue was exclusively considered in the context of warfare, as is clearly indicated by the title given to the new resolution: "Protection of civilians in armed conflict." Famine is denounced not as such, but as a "method of warfare," while starvation is then only analyzed as a "conflict-induced food insecurity." One of the points was to claim "the need to break the vicious cycle between armed conflict and food insecurity." The authors of the text stressed the causal link between war and starvation and pointed out some of its aspects: "displacement from land, livestock grazing areas and fishing grounds, or destruction of food stocks and agricultural assets." The text also mentions many indirect links, "such as disruptions to food systems and markets, leading to increased food prices, decreased household purchasing power, or decreased access to supplies that are necessary for food preparation, including water and fuel." For this reason, states as well as all other fighters are required not to impede the delivery of humanitarian aid. What is more, the Council requests "the Secretary-General to continue to provide information on the humanitarian situation and response, including on the risk of famine and food insecurity in countries with armed conflict, as part of his regular reporting on country-specific situations."

Considering the risk of conflict-induced famines in this way is understandable but it has two profound implications: It introduces a *summa divisio* that results in far-reaching consequences regarding global security. First, it gives credence to those who discriminate between two kinds of food insecurity and who prioritize one of them as more urgent or more directly connected to the Security Council role. Second, it actively reconstructs the concept of security,

considering that it gets its full meaning only if it is filtered by a war sequence. Apart from that, global food insecurity is implicitly pushed into the background and considered more as a simple shortage. Throughout the debate, the Russian delegation precisely argued that the resolution regrettably left out the economic dimensions of the issue (UN Meetings Coverage and Press Release 2018).

With respect to environmental issues, the same difficulties and the same blockages are gaining ground. Although several international conferences took place from the 1970s on (at Stockholm (1972), Rio de Janeiro (1992) and Kyoto (1995)) and were widely publicized by many media and public opinion campaigns, the Security Council progressively appeared in the meantime as the last bastion which tried to contain this new trend. A public debate was organized within the framework of the Council in 2007 and 2011, without any concrete results and without leading to a resolution (Ezeonu 2000). Furthermore, a new debate held in January 2019 met with frank opposition from the Russian delegate, Vassily Nebenzya, who claimed that considering climate change in the Security Council would be "excessive" and "counter-productive." The words took on their full meaning when applied to a diplomatic exchange, and on that occasion the Russian ambassador delivered a clear message: The Council exceeds its own competence and undermines the relevant definition that should be presently given to security, while world peace would be jeopardized if we conceived of it beyond the traditional sphere of power. As global security is largely independent of power instruments, it does not fit the tradition of the Security Council and would then result in a new and dangerous instability.

The final blow was probably delivered in March 2020, when the COVID-19 crisis arose. The Chinese were timorous and even hostile toward the US delegation (Esteves and van Staden 2020). This typical case of "connivance diplomacy" brought together the P5 members and prevented the Council from adopting a robust resolution. Finally, long deliberations (four months!) resulted in a very feeble and partial resolution (UNSCR 2532, July 1, 2020) adopted under the German presidency and practically limited to conflict management (Docherty and Gifkins 2020). It "recognized efforts and measures proposed by the Secretary General concerning the response to the potential impact of the COVID-19 pandemic to conflict affected countries, in particular his appeal for an immediate global ceasefire" (UNSCR 2532).

Most significantly, the COVID-19 crisis was considered exclusively through its war dimension, even if the resolution "recogniz(ed) the resolution 74/270 adopted by the UN General Assembly" (UNSCR 2532). This resolution had reaffirmed, some weeks earlier, its "commitment to international cooperation and

multilateralism and its strong support for the central role of the UN system in the global response to the coronavirus disease 2019 (COVID-19) pandemic" (April 2, 2020).

The General Assembly was obviously being cautious in adopting this resolution, which did not come close to meeting expectations in light of the new threats, but a clear division of labor was established or even confirmed, confining the Security Council to monitoring or containing war activities while leaving human security issues to the General Assembly and, overall, to specialized agencies. Furthermore, in view of their peacemaking roles, Russia and the United States were "more concerned about the ramifications of a global ceasefire on their respective operations in Iraq, Afghanistan, and Syria" than they were about fighting COVID-19 (Charbonneau 2020). Given the very serious nature of a sanitary crisis that totally dominated the international agenda and the limited resources available to the UN agencies, the UN system appeared to be one of the main victims of the global health crisis. In fact, it proved unable to take the turn toward the new global security, perhaps even the turn toward globalization.

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Global Governance, New Actors and Challenges to Multilateralism

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Is Classic Multilateralism Outdated?
The Case of the UN

Marcello Scarone

Abstract

In 2020, the United Nations turned 75 years old amid an unprecedented pandemic of worldwide proportions, combined with explicit and hidden tensions in all regions of the globe and a growing sense of inequality and imbalances between different peoples and countries of the world. All of the above should have provided the perfect setting and justification for the work of our only truly global and multitask organization to be highlighted as useful and more important than ever.

Yet while few people, and even fewer experts, doubt the values, objectives and *raison d'être* of the UN, paradoxically, the last few years (2020 included) have seen the relevance, action and visibility of this global body (and indeed of many other multilateral organizations) severely diminished as it has been placed on the sidelines of global affairs. Some people (maybe not many, but some nonetheless) even question the very need or justification for the UN to continue to exist. While it doesn't take much to realize that the world in the 2020s is much different than in 1945, the year of its creation, and when debate and opinions are divided on whether the UN has been able to adapt and change with the times, it would seem that the UN, and multilateralism in general, are being criticized and even challenged by a number of issues and actors that go well beyond the simple criticism of a bureaucratic organization that has not kept up with the times.

This chapter attempts to argue that the challenges to multilateralism are, ironically, also multilateral, and that everyone and everybody has something to say about it. The threats can be grouped into three major categories of challenges: the changing world order and geopolitics; the newly found prominence of nonstate actors; and the misguided internal actions and functioning of the various UN system organizations themselves (beyond just classic bureaucratic issues, and encompassing policy development, human resources management and administrative flaws). Finally, an attempt is made to suggest possible ways to deal with some of these challenges.

Keywords

classical and new multilateralism – changing world order – nonstate actors – UN system – UN organizations – UNESCO – development agencies – NGOs – civil society – neoliberalism – efficiency – visibility

Introduction

In 2020, the United Nations turned 75 years old amid an unprecedented pandemic of epic proportions, combined with explicit and hidden tensions in all regions of the globe and a growing sense of economic and social inequality and imbalances between different peoples and countries of the world. All of the above should have provided the perfect setting and justification for the work of our only truly global and multitask organization to be highlighted as useful and more important than ever.

Yet while few people – and even fewer experts – doubt the values, objectives and *raison d'être* of the UN, paradoxically, the last few years (2020–2021 included) have seen the relevance, action and visibility of this global body (and indeed of many other multilateral organizations) severely diminished, and it has been placed on the sidelines of global affairs. Some people even question the very need or justification for the UN to continue to exist. While it doesn't take much to realize that the world in the 2020s is a much different place than it was in 1945, the year of its creation, and when debate and opinions are divided on whether the UN has been able to adapt and change, it would seem that the UN system, and multilateralism in general, are being criticized and, especially, challenged by a number of issues and actors that go well beyond the simple criticism of a poor bureaucratic organization that has not kept up with the times.

This chapter attempts to argue that the challenges to multilateralism are, ironically, also multilateral, and that everyone and everybody has something to say about it. In fact, we could say that the classic style of multilateralism is outdated, but it would be more accurate to say that it has been sidelined. Finally, an attempt is made to suggest possible ways to deal with some of these challenges.

To make it clear to the reader, classical multilateralism here refers to the current postwar system of international agencies and organizations that were created and are governed by internationally recognized states. The UN and its family of agencies are the most well-known of these institutions, but many others exist at the global and regional level, such as NATO, the EU, African

Union, Organization of American States (OAS), Council of Europe, OSCE and so forth. However, for simplicity and accuracy, this chapter will focus on the UN and the UN system.

In the Beginning

From the beginning, the goals of the UN system have been to achieve peace and security around the world, but also to foster social and economic development for everyone, as well as to promote and uphold human rights, equality, non-discrimination and international law. Although the peace and security aspects are the most visible and mediatized parts of its work (Security Council, Blue Helmets, etc.), it is the development/humanitarian and human rights/equality/non-discrimination aspects that have always been, and remain by a very large margin, those that represent the largest amount of its budget, staff and activities.

These goals and ideals are expressed in the preamble of the UN Charter and, to this day, still guide the objectives, work and actions of the organization and its family of agencies. Hardly anyone can argue against these noble orientations and, indeed, any criticism that has been directed at the UN since its beginnings has always been of a political, administrative or operational nature and never about the values and ideals it represents. The proof of the UN's universal acceptance is that from the humble beginnings of just 51 founding member states, membership to the organization has steadily increased through waves of independence, decolonization and changes in national status to reach 193 today, which includes the quasi-totality of internationally recognized countries. Membership of the UN system organizations (UNESCO, WHO, International Labour Organization, Food and Agricultural Organization, International Civil Aviation Organization, International Atomic Energy Agency, United Nations Industrial Development Organization, etc.) is at very similar levels, with some notable exceptions in some cases.

Furthermore, in 2019 (latest figures at the time of writing), over 35,000 staff were employed at the United Nations itself, a number that jumps to 114,000 when all the agencies of the UN system are included (CEB 2020). This clearly shows the worldwide reach and importance of this multilateral system of institutions and, therefore, the major role and relevance it should have for our world.

However, despite the above-mentioned universal acceptance at the political, social, academic and individual levels of the importance and role of the UN, it would be foolish for any keen observer of international relations not

to realize that the UN standing in 2021 is very different from what it was in the 1940s–1990s period. In fact, it can be argued that a major turning point occurred around the turn of the millennium, and that, in particular, the last ten years or so have been especially difficult for the UN, for its agencies and for multilateralism in general. It could also be argued that other (non-UN) institutions (such as the EU, OAS and NATO, to name a few) are also suffering from a loss of identity and relevance, but we will only concentrate on the UN and its family here.

As mentioned earlier, the world has changed greatly in the 75 years of existence of the UN. Some would argue it was a change for the better, others for the worse, but few if any would say that the world is essentially the same as it was before. And, of course, the "easy" explanation would be to say that the UN has not "kept up with the times," thus its decay in relevance. But, although some of it is true, this would be too simplistic and would ignore various other factors, internal and external to the UN, that have contributed to the current situation.

What Is Going On?

Being an international organization based on the political relations and cooperation among its member states through their governments, it is clear that geopolitical and political changes around the world have a direct impact on the UN's operations. And there have been many of those.

Many people have argued that the creation and existence of the UN were based on the geopolitical balance between "East" and "West." Furthermore, some claim that the mutual deterrence and balance that was provided by the rivalry between the capitalist/liberal Western countries and the socialist bloc, with much (though not all) of the developing world on the sidelines because of colonization or exclusion, provided for the perfect conditions to reach a certain level of consensus and compromise that was the basis for the success of the UN in its early years. And, needless to say, many consider the changes in global geopolitical conditions as a factor in the UN's search for a new identity and way of doing things.

But it can be argued that this is not necessarily true. If we look at the first big change in geopolitical aspects, which occurred in the 1960s–1970s with the independence and decolonization of many parts of the developing world and the subsequent addition of almost 100 new members to the UN, we see that this did not have a major effect on the operations and role of the UN, which had been up until that point mostly successful. In fact, the UN was a pivotal force in achieving this process of decolonization/independence.

The second big geopolitical change came in 1989–1991, with the end of the socialist regimes in the Eastern European region and the demise of the Soviet Union and the socialist bloc. The ensuing hegemonic dominance of the Western, liberal style of political, social and economic organization meant that the consensus/balance of ideas and ideologies was no longer a necessity. Thus, it could be argued that the need for a discussion forum and a place for consensual and multi-view solutions to the world's main problems and developments had lost its *raison d'être*. However, while the political orientations of some countries (not least of which, one of the two original superpowers) did change, other member states, as well as experts, partners, stakeholders and others associated with the UN, still pursued the practice of maintaining a plurality of political and societal visions. In short, it might be accurate to say that the geopolitical changes in the world, though by no means minimal, cannot be considered as the main reason for the UN's diminished role.

I would argue that, more than geopolitics, it is the nature of politics itself and its role in society that has changed, regardless of ideologies or orientations. Since the resurgence of neoliberal dominance in the 1980s and 1990s and its combination with the technological advances in communication and information linked to the digital revolution's triumph in the new millennium, many view "old-style" politics, where "professional" politicians and experts dominate various subjects of international and national importance, as a negative thing. In this system, critics say, the governmental and often corrupt political elites run the affairs of state in a traditional and elitist way, often aided by economic, scientific and social experts who are "part of the system." But this is precisely what much of the UN's actions and operations were always based on: the combination of political and societal expertise to develop, implement and evaluate global actions in favor of peace, development and human rights. Since the turn of the millennium, social and political currents of "rebellion" (not to be confused with classical revolutions), often based on internet and transnational social media networks, operating in a globalized and not a nationally limited setting, have created in our societies (especially in developed and emerging countries) a sentiment of "out with the old" and "in with a society that belongs to its citizens," its civil society groups, its local and citizen-based initiatives, and where direct nongovernmental approaches are much preferred to traditional ways of doing government-led politics. Traditional political parties, politicians, institutions and customs, whether associated with the left, center or right wings, have all suffered, and populism, militantism, grassroots and non-conformist currents are increasingly becoming more popular as a way of organizing the way individuals and society wish to achieve their goals. Once again, the idea in this chapter is not to pass judgment on whether "old-style

ideological/governmental" or "new-style identity/grassroots" politics is better than the other, but rather to show how a new way of thinking in political/societal organization can have a great influence on an organization such as the UN (or any other multilateral organization) that is built and based on a classical system of absolute state sovereignty.

The Example of UNESCO

To bring all this into perspective, we can provide an example from my professional experience as a civil servant of UNESCO. Whereas previously UNESCO's role of helping to promote freedom of expression and of the press around the world meant that its work was largely (if not exclusively) done together with its main stakeholders (the governments of the member states), nowadays this has had to change in order for UNESCO to remain relevant. In the past, when a country wished to improve or democratize its media legislation, it would seek expert advice and technical assistance from UNESCO, which would then dispatch its experts to work together with the respective government officials and, ideally, also with institutionally recognized associations to draft the necessary changes to the laws that would then be likely adopted by the legislative bodies. Today, the same type of request will probably come not from a government but from a group of citizens or civil society organizations, likely at odds with its government over the issue, and which would seek for UNESCO to give it "legitimacy" in its demands. UNESCO is thus placed in a difficult position between the moral/ethical support that these citizens should receive and the fact that, as an international organization, it is based on governmental decision-making. Nothing will actually change as long as the government itself does not adopt the recommendations made by UNESCO, which is often the case if the government itself did not approach it in the first place. The main consequence is that the previously important role of UNESCO for international guidance in the promotion of freedom of expression and/or other human rights objectives is now either totally derailed or, at best, limited to the symbolic role of moral supporter of some causes, without much actual influence.

This situation could then be generalized to almost every aspect of UNESCO's and, indeed, the entire UN family's actions in this type of international cooperation. And then, a vicious circle develops in which less influence of the UN family translates into less funding or involvement by its member states, which leads to fewer resources for the organization. Additionally, to mitigate this situation, there is a necessary adaptation of objectives and actions of the UN to the few areas of work for which some funding can be obtained. This leads to

"à la carte" delivery of its mandate (often at the discretion of the richer or more powerful member states or contributors), further decreasing the credibility of its original mandate of assistance and cooperation on a wide array of issues and societal priorities regardless of the nature, size, power or development level of its member states. Eventually, even civil society itself starts to lose faith in the ability (not the values) of the UN to be an effective mechanism, preferring to turn toward philanthropic, private or humanitarian foundations and assistance instead.

Who Wants Its Place?

From the previous section it can be deduced that, for a variety of reasons, the UN and its system of agencies are not able to fulfill their role, as had been the case in the past. Yet the needs, necessities and goals for which the UN was created are still as real and present today as ever. Consequently, various other actors have been quick to step in and – willingly or unwillingly – take over much of the UN's role in the last 25 to 30 years. This is the case in all areas of its work: peace and security, economic/social development, human rights and humanitarian assistance.

In recent years, many of the issues that were the exclusive domain of action of the United Nations and its system agencies have been dealt with in other forums, such as the G7/G20, NATO, and so forth. Some have attributed this to the disenchantment with or failure of the UN to be efficient and concrete in dealing with the world's problems. Others, however, adopt a more cynical view and claim that Western/rich countries (those that dominate these forums) can resolve the issues among themselves, in a mostly coordinated way, without having to deal with the "global equality" that operating within a "one country – one vote" universal organization implies. The result, whatever the explanation, is the same: The UN's function as the place for discussion and dispute settlement is diminished. Furthermore, as action in the last twenty years to deal with the increasing terrorism threat or with rogue actors shows, bilateral initiatives (or even unilateral action) outside the UN system are clearly increasing, once again reducing the UN's role to one of a mere spectator or, at best, paying superficial lip service to multilateralism in order to "legitimize" decisions already taken by main actors at play.

In other spheres of traditional UN activity, such as economic and social development, humanitarian assistance and so forth, it is regional bodies such as the European Union, as well as global economic entities such as the World

Bank or the IMF, that are carrying out technical cooperation and humanitarian aid activities by their own experts and cooperation mechanisms. While, of course, any assistance to developing countries is always welcome, these initiatives by bodies or agencies that used to be limited to providing funding/loans/subsidies, but that now actually carry out the technical work that used to be the responsibility of the UN agencies, are also another clear example of the UN losing its prominence and being in a way sidelined from its original role. As if that wasn't enough, many countries' national development agencies (SIDA, DANIDA, USAID, to name just a few) are increasingly using their own funds and experts to directly assist countries in need of technical/development programs that bypass the UN altogether, instead of providing this support to UN funds and programs for them to carry out the work, as was the case in the past.

Other levels of political actors in the sphere of international relations that previously did not exist have also emerged. For example, municipal/local actors have stepped in to deal with some issues related to human rights, cultural diversity, social inclusion, migration and so forth by forming networks of cities/municipalities around the world, often outside the UN framework, and dealing with these proximity issues under the pretext that the UN is too far removed from the realities of the individual citizen and blocked too much at the national policy level. While this justification is far from false, what is, once again, striking is the inability or unwillingness of the UN bodies to seize the opportunity to play the leading role in these networks, rather than just be a (mostly) junior party to their concrete activities.

Finally, much has been said historically about the special interdependence of the UN with NGOs and civil society to concretely deliver programs on the ground. NGOs have historically played the role of alerting, raising awareness and bringing issues to the forefront so that the UN could then deal with them and, in turn, the UN often relied on NGOs to deliver and implement many of its activities in the field. While these partnerships continue to exist, many civil society actors (especially the major ones) no longer rely on the UN for their political, moral, institutional and other support. At best, many still approach the UN, but only in terms of receiving some financial support for their already decided activities, which is becoming less possible, considering the UN's financial difficulties. The result is that, increasingly, philanthropic institutions (sometimes to extreme levels, such as the case of the Gates Foundation, which has completely overtaken the WHO in terms of efficiency and concrete delivery of medical/health aid programs) or civil society and social media, which are now more active than the UN in pushing forward all issues related to the UN's mandates, have sometimes taken over the traditional role of the UN, which has

again been reduced to that of spectator instead of lead actor. I have even seen on several occasions top-level managers at some UN agencies rejoicing when some NGO or foundation has given the UN agency the "privilege" of being associated with its initiatives, whereas the norm should have been the other way around!

Whose Fault Is It?

In light of all this, it is legitimate to ask ourselves how we have arrived at such a situation. There are, of course, many explanations, such as changing geopolitics, societal evolutions, technological developments and so forth. However, the point that I wish to make is that the main fault lies with the UN itself, which has not been able to defend its relevance, identity and territory in the context of our changing world.

This is largely due to several internal factors. Yes, the UN's chronic problems of financial and administrative mismanagement have played a big role. In the 1970s and 1980s, it was well known that substantial corruption did take place inside the various UN system agencies, and when it was not corruption, it was administrative incompetence. Often it was both. But administrative problems occur in all types of large organizations, national or international, private or public, and the correlation and causation between this and the decay of an institution is not always established. Some even flourish despite mismanagement. And in the case of the UN, what is curious is that many of the problems of administration and management that were signaled were actually corrected, and a noticeable improvement has been seen since the 2000s, which, ironically, is the period in which the UN and its agencies have seen their biggest drop in relevance/importance.

This author wishes to argue that it is another internal aspect of the UN that is mostly responsible for its problems and lack/loss of relevance. Many people, even avid followers of the UN, can be forgiven for not noticing it, since this is something that is not clearly visible to anyone who is not involved in the daily internal operations of any UN system organization, either as a staff member or as a permanent representative of a member state. What seems to have been almost completely lost is its global identity, its operational mechanisms and its societal *raison d'être*, which should be truly representative of a combination of geographical, ideological, technical and intellectual approaches from various cultures and which, in the past, guaranteed its impartiality, diversity and, therefore, its respect and acceptance by all (or most). This has been destroyed

and replaced over the last 20–25 years by mostly Western-led "liberal" visions as the "guiding" way of doing things. Much of this has been attributed (and correctly so) to the fact that it is Western countries as a whole that contribute the most significant part of the budget. But others will argue that this has always been the case and, thus, no changes should have been seen. The difference lies in the fact that until the 1980s, contributions were seen (even by the biggest funders) as a normal expectation and requirement in achieving multilateralism and no special treatment was expected in return. With the triumph of neoliberal thought since the 1990s, a new attitude of entitlement is present: many countries expect that if they pay more, they should have more say in planning and activities. Because it is impossible to change the charters/constitutions of various UN organizations to reflect this new attitude (and thus to become similar to the system of the World Bank or IMF, where votes are dependent on contributions), the approach that has been taken at the UN (to the point of challenging and not complying with internal human resources and administrative rules of the various agencies) is that most recruitment to managerial and directing posts now come from Western countries, in sharp contrast to the traditional geographical distribution of staff that had characterized the UN from its beginnings. The result of this is clear to see. Western managers naturally have more Western biases and, since many (though not all) of them actually also come from private enterprise, it also shapes the managerial attitudes toward what an efficient operation of the UN should be. The introduction of efficiency-improving mechanisms, it goes without saying, is always a welcome development, but not when efficiency becomes the stated explicit and implicit goal and the new *raison d'être* of the UN agencies, at the expense of the traditional social, developmental, equality and humanitarian objectives of their programs and actions. As such, since the early 2000s, a blitz of management efficiency techniques copied from private business companies, such as results based management (RBM), change management training, SMART accounting, output efficiency reporting and many others, have come to occupy up to 80 percent of the time that had previously been used to plan, develop, implement and evaluate social, economic and humanitarian actions and programs. The result is that, with only 20 percent of the UN's time and effort dedicated to this, as compared with 80 percent dedicated to "efficiency" implementation, it is no wonder that the product quality output of the UN has suffered greatly, reducing it to superficiality and thus irrelevance, ending up with its previously coordinated/implemented programs replaced by other actors.

Furthermore, as part of this "new" United Nations, another issue that has become predominant within the UN is that of trying to reach maximum

visibility at all costs. No one will argue that being visible is not a good thing and, of course, the more the world is aware of the UN, the more relevance it will have. However, the type of visibility that is produced (and at what expense) seems to be a problem. In the era of 24-hour news channels, of the internet and of social media, the public information mandates of all UN agencies have radically shifted their focus from quality-based visibility to quantity-based. As a result, hundreds of positions have been created (replacing non-renewed program-related posts) to hire marketing, publicity, social media and information technology experts. These new recruits have done an excellent job in putting these agencies and their directors/managers on every possible social media network, on many current affairs programs and so forth, which in principle is good, but given the nature of the target audiences (general public, short attention span), much of the message presented is overly superficial and general, rather than technical and intellectual. For example, a Director-General's message may indeed appear on the organization's own social media accounts (though hardly picked up by any other accounts or news outlets), such as "… the organization expressed great concern at this latest outbreak of conflict …" or "… worried about the increasing inequalities …", but it is almost never complemented with any technical details or in-depth explanation of the organization's programs/actions, as was the case in the past. In fact, previously, many technical assistance programs and activities would often go completely unnoticed/unreported in the media, except by the stakeholders involved (government authorities, UN staff, ambassadors), and despite this, the success and reputation of the UN initiatives were much higher than they are today. In brief, the debate between large and extensive media coverage of superficial messages versus low or no coverage of much more technical and in-depth information is one that is very much in place at the UN, with more superficial visibility definitely coming out on top recently.

The irony of the whole thing is that, despite these important initiatives in favor of "visibility at all costs," the concrete visibility of the UN and its agencies is at an all-time low! When is the last time anyone saw the current UN Secretary-General (sg) appear on any news program? Not to mention any other UN officials. And the rare times we do see António Guterres (or anyone else) in the news, it is only to hear him say he is "deeply concerned about …" This is in sharp contrast to the past in terms of both the quantity of appearances and the quality/nature of the message sent by UN officials (sg or others). Some studies have been done (outside the UN) that have explained this absence from the news by the fact that most media outlets feel that nowadays the UN "has nothing to say …"

What Can Be Done?

In conclusion, is classical multilateralism challenged? Definitely! The above paragraphs attempted to demonstrate this. Is it outdated? Definitely not! On the contrary, there can and should be a move to bring the UN back to its former glory. It will, of course, depend on context (politics and geopolitics, civil society, new actors, etc.) but also greatly on the UN (and other organizations) searching for, finding and seizing its original identity, modus operandi and personality.

In a nutshell, the easiest way to put it is that the UN, its system agencies and most (if not all) other multilateral organizations need to get "back to the basics," back to the past (seen with a positive connotation). And, of course, the first question that pops up is: Which past? It would be unrealistic to return to a UN of the 1940s–1970s; the world has changed too much for that to be possible (or desirable). But perhaps a UN of the 1980s or 1990s, acting simultaneously as a factor and as a consequence of a world of that period, which was characterized by combining "classical" and "new" politics, human and technical intelligence, local and global issues, tradition and modernity. Is this possible in today's world? It's hard to say. There is still definitely a place and a need for the UN and multilateralism in general in our world, now more than ever, a need for a UN that aims to achieve peace and security and, even more importantly, to achieve development, human rights, dignity and equality for all. The UN is, and has always been, a mirror of our world and of our society. Hence, a return to the style of the recent past would imply, by logical deduction, that our world would as well have "gone back" to a type of society that would allow the UN to do so.

But that is, of course, another debate altogether.

Note on the Text

This chapter is not meant to be an academic or methodological research effort but is rather an individual account and analysis of how I consider the current place and role of the UN and its system agencies. It also aims to comment on how, for a variety of reasons, the standard functioning of multilateralism may be seen as outdated by some, but not by others. This chapter is based on personal experience and observation after twenty years as a civil servant of the UN system, discussions and views shared with colleagues and partners and, even after having formally left the UN, a continuing observation of trends,

actions and other elements within these organizations. The views expressed here are therefore only the personal views of the author and by no means do they pretend to be the absolute truth, or exclusive of other opinions. The reader is free to agree or disagree with them and is even encouraged to reflect on and to challenge them.

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Geopolitical Shifts: Issues and Challenges for the Arctic Region

Lutz Feldt

Abstract

The Arctic Ocean has become a geopolitical core area and the interests of many nations are driven by the consequences and opportunities of climate change. These fast-developing consequences have changed all perspectives. Despite accelerated warming, the Arctic will remain a very dangerous, challenging and unpleasant place for maritime, air and land activities. There will be a perfect storm every year.

The strategic importance of the Arctic has increased. Five countries are littoral states to the Arctic Ocean: Canada, Denmark/Greenland, Norway, Russia and the United States. A total of eight countries, including Finland, Iceland and Sweden, form the Arctic Council, the forum dealing with all Arctic issues with the exception of security and defense. The Council is based on multilateralism. Impressive achievements include four agreements for good governance in the Arctic.

The important perspectives are climate change, resource exploitation, military build-up and exercises, and the Arctic as a habitat. Military power projection is already a serious issue and needs more awareness. The Arctic can no longer be considered in isolation from what is emerging in other regions, and the tensions between Russia and China on the one hand, and the West on the other, have already had an impact on what is happening in the Arctic region: Resource exploitation and transiting the Northern Sea Route are the highest priority for Russia and China; the issue of nuclear waste in the Arctic Ocean and ashore is threatening and a global concern; sovereign rights of Canada and Russia inside territorial waters are disputed; and Greenland and Svalbard deserve greater attention. The process of major changes will continue in the Arctic region, and a key aspect is the understanding of, on the one hand, how to protect the Arctic Region and, on the other hand, how to use the resources that are accessible due to climate change and new technology.

Keywords

Arctic Ocean – Arctic Council – climate change – IMO – MOSAiC expedition – nuclear waste – Polar Code – UNCLOS – Northeast Passage

Introduction

One question that has frequently been asked in relation to the Arctic, irrespective of climate change, has been whether conflict or cooperation (Del Pozo et al. 2013) will develop there. Many analysts and reporters have attempted to give an answer, often stating that cooperation is definitely an option and helps resolve conflicts, if it is applied correctly. Thus far, this attitude has also been reflected in the substance of the Arctic strategies (Schulze 2017) of the eight states that belong to the Arctic Council (Arctic Council Secretariat 2017). The Council traditionally sees itself as the authoritative body for resolving Arctic matters. In context of the overall subject of this chapter, the Council operates within a multilateral framework. Canada, with its long coastline with numerous islands, occupies a special position as the state responsible for the Northwest Passage. Russia, which also has a long coastline, is in a similar, but not comparable, situation (The Arctic Institute 2020; 2021).

Under the 1996 Declaration on the Establishment of the Arctic Council in Ottawa, all security and defense policy matters are excluded from its jurisdiction: at that point in time, following the demise of the Soviet Union, this was a reasonable decision (Arctic Council 1996). In addition to the Council, there are numerous special organizations that deal with partial aspects of the Arctic Ocean on behalf of the Council or outside that body. Those states that have long demonstrated a sustained interest in this region through their scientific research activities and the construction of research stations in the Arctic are playing an increasingly important role in their status as observers. As of 2021, there were thirteen such states and six Permanent Members, which represent various interest groups, mainly indigenous peoples. Due to Russia's veto, the European Union is not a full member of the observer group (Arctic Council n.d.a; Paul 2021). The involvement of the observers in the subordinate bodies of the Council is important, but one may question the extent to which states such as China and India will be satisfied with this observer role in the near future. The Council, as such, and the role of the observers in relation to the Council, will be an important factor. This chapter will deal with some future tasks.

The Arctic as an Ocean: Geography and Weather

During a briefing at the Greenland Arctic Command in Nuuk (Trump, Kadenic and Linkov 2018), Danish and Greenlandic experts highlighted the following key concepts as crucial for commercial, scientific and military activities in the Arctic.

Merchant ships, state-operated ships, coastguard and navy ships must have special technical designs for the Arctic Ocean. The existing Polar Code (International Maritime Organization 2017) sets forth the requirements for ships and airplanes, and it establishes minimum requirements for training: endurance and sustainability are important aspects. Most routine traffic in the Arctic Ocean is concentrated on Russian shipping near its coast, supported by numerous ports. Experienced and well-trained crews are a prerequisite for all activities on both sea routes, namely the Northeast and Northwest Passages. Multitasking is obligatory for all crews, and logistics must be provided by persons with experience in the Arctic. Decisions based on purely administrative or theoretical analyses are subject to doubt: what is decisive are practical factors and the resulting experience.

These findings of the Royal Danish Coast Guard are based on many years of experience in the Arctic Ocean, mainly – but not exclusively – in the area between Denmark and Greenland, and also correspond to the experiences of the other Arctic states.

What seems to be a common base for all activities in the Arctic is a constant uncertainty about the weather, the thickness of the ice and the safety of navigation. There will be a "perfect storm" every year, regardless of whether climate change is speeding up or slowing down. This applies to all Arctic regions and is the only criterion that basically unites them. In this respect, weather reporting and safe navigation are matters that should be jointly improved.

The Arctic: A Description of Its Dimensions

The Arctic can be briefly introduced as an ocean bordered by five states: Russia, Canada, the United States, Norway and Denmark (via Greenland), with three states having portions of their territories within the Arctic Circle: Sweden, Finland and Iceland (German Arctic Office 2019). The aforementioned role of the thirteen states that exert specific influence as observers will be evaluated separately. Through their observer status, they are part of the multinational resolution of outstanding questions regarding the Arctic. Their interest, which

was originally scientific, must increasingly be viewed as strategic, touching all aspects: habitat, raw materials, traffic and power positions. China's unilateral declaration that it is a "near-Arctic state" is related to its claim to global power and does not change the legal situation.

At this point, this chapter will describe how the Arctic Ocean and the states surrounding it are defined. There are three recognized and common definitions. However, it should be noted that "[t]here is no precise, internationally coordinated and legally accepted definition of the Arctic" (German Arctic Office, 2020).

The most frequently used geographic definition of the Arctic is the area north of the Arctic Circle (66° 32′N), which corresponds to about 8 percent of the surface of the Earth. However, this definition is frequently changed to take geopolitical boundaries and other characteristics (Dunbar et al. 2019) into account. Another current approach is to designate the tree line as the boundary of the Arctic. This method of defining the Arctic is a dynamic one, which follows climate change over the medium term. Tree growth provides a new basis for a pragmatic, environment-based understanding of the Arctic. The melting of the sea ice changes the geography of the region and thereby all activities on sea and land. Climate change is altering the geography of the Arctic Ocean.

All these lines encircle an essentially common maritime region as the surrounding Arctic and subarctic land is directly influenced by the Arctic Ocean in terms of its climate and development. Another distinguishing feature is that the Arctic Ocean is the shallowest of the five large oceans with an average depth of about 1,000 meters, which makes almost the entire seabed accessible for exploration. It reaches its greatest depth of 5,600 meters west of Svalbard. The Arctic Ocean connects with the Atlantic Ocean in the west. In the east, it connects with the Pacific Ocean (Paul 2020) via the Bering Strait.

The continental shelves here are the widest in the world. Both factors, water depth and continental shelf, are important background knowledge, especially to better understand the Russian position. The Arctic coast of Russia offers the greatest number of ports – both for domestic supply and for international maritime transit traffic. However, some of these ports are river ports and need extensive new infrastructure if they wish to develop. It is a disadvantage that there are few deep-water ports on the North American continent. The provision of ports or logistical bases for safe use of the Northwest Passage is the responsibility of Canada. Both sea routes go through straits or sections that are difficult to navigate. Securing them is another future task that must be resolved, both nationally and multilaterally. Natural or artificial passages that are difficult to navigate require special safety precautions.

The Geography of the Arctic: Boundaries and Beyond

The Arctic Ocean can be viewed from four different perspectives to understand its nature: (i) the Arctic Ocean as a resource, (ii) the Arctic Ocean as a habitat, (iii) the Arctic Ocean as a transportation medium and (iv) the Arctic Ocean as a domain for displaying power, primarily maritime power (Goldrick and Hattendorf 1993). The nature of maritime power is complex, but the following proposition can facilitate understanding: maritime power is associated with merchant ships and ports as well as maritime commercial and industrial potential. If warships, support bases and naval support are added, this means that a state possesses maritime power. Geography helps to better understand strategy and its effects. Can geography change? In this chapter, as we look back ten years, the answer is: "yes, it can." The Arctic Ocean is covered with ice, and this ice was regarded as a land-like feature for centuries. The current situation of climate change is altering the view that the Arctic Ocean is land-like, and thus our understanding and assessment of it. It is now evident that the Arctic is an ocean, in contrast to Antarctica. The ice, together with the long period of limited technology, were obstacles to shipping, exploration and exploitation of resources. Rapidly changing weather conditions, poor navigation aids and more than half a year of darkness managed to give the Arctic a special status that was beyond common perception. Irrespective of climate change and the increase in navigability associated with it, the weather is still an important risk factor and will remain so.

Arctic Priorities

Science has been involved in the Arctic the longest in comparison to economic and political issues. It has helped built research stations and conduct expeditions with great success. All Arctic expeditions executed by seafarers like Willem Barents (1550–1597), or academics like Michael Lomonossow (1711–1765) in the 16th and 18th century laid the ground for the beginning of a well organised science on the Arctic. As research offers the option of "scientific diplomacy", data exchange based on mutual trust has been a success. Whenever this is the case, a fair exchange of data and knowledge is possible. An increasingly important aspect of research is the influence of the Arctic climate on global climate evolution. However, there are uncertainties regarding the exchange of data and information with China, which joins in the fair exchange on a selective basis. However, whether other, more controversial Arctic matters can be positively influenced by good scientific cooperation is a question that remains open (Korte 2018).

The economic aspects and availability of resources such as gas, oil and minerals play an important role, often the most important. Conveyance and transport by land, but primarily by sea, is Russia's highest priority. The extraction of gas and oil, in ever greater cooperation with China, has developed dynamically, and this will not change. Despite all its commitments to protecting the climate in the Arctic, this concern clearly takes a back seat to resource extraction and military security considerations in Russia. The main task is to find a balance between ecological and economic interests and to limit the political and military aspects (Klimenko 2019).

The Military and Political Aspects

From a military standpoint, the Arctic Ocean was a strategic area during the Cold War, with a focus on nuclear deterrence. The basis for this was surveillance and the exchange of reliable information between the two sides. The method of deterrence was nuclear-powered submarines equipped with ballistic missiles. Both antagonists, the USA and the Soviet Union, had nuclear-powered submarines, which operated under the ice sheet. This military interest decreased until 2014, and with it the number of submarines. Now, it is once more on the rise (Breitenbauch, Kristensen and Groesmeyer 2019). Due to the effects of climate change, the Arctic Ocean is becoming a maritime area, although in a different form, which no longer only serves the purposes of strategic deterrence and scientific research.

This is of great importance to all eight members of the Arctic Council and the observers. For China, however, scientific commitment seems to be a type of door opener to the Arctic as a whole. The role of China will be discussed later. In 2021, the speed of the melting of polar ice caps was unexpectedly rapid, and the answer to the question of access to and within the Arctic Ocean varies according to the scientific model used. But the melting is a fact, and it involves not only the Arctic Ocean but also the permafrost in Siberia, which is already altering the geography on land. Russia – with the longest usable Arctic coast – dominates Arctic geography, together with Canada. However, Russia, with its ports, its long existing and newly created maritime infrastructure (such drilling rigs and military bases) as well as its river estuaries in the Arctic Ocean, has great advantages over Canada (Ellyat 2019). As an Arctic state, Russia has legitimate sovereign interests in the region, including safe navigation, search and rescue and environmental protection. Its build-up of military capabilities to protect its sovereignty is justified and understandable. In the US Coastguard's assessment of these increased military capabilities, there is a very clear "however" that embodies the concerns of the USA. These concerns are explained

in detail in studies and sub-strategies on the extent of the risks and threats posed by Russian armament. The US Coastguard is the institution that represents the interests of the USA in practice, that is, on the seas and in ports. In Canada, this representation is also guaranteed by the coastguard, an organization divided into three regions: the Western Region, the Atlantic Region and the Central and Arctic Region responsible for the Arctic (United States Coast Guard 2019; Government of Canada 2014). After a long period of low interest in Arctic matters, the USA has changed its ambitions and is paying increasing attention to the Arctic Ocean. The extent to which this includes the US Navy is still unclear.

The Geopolitics of the Arctic

It would seem appropriate at this point to investigate the geopolitical aspects of the Arctic. Five theses on the evolving situation in the Arctic will be discussed.

1. The development of the Arctic, the ocean and the territory of its bordering states will continue to be determined by climate change, and all other aspects will be subordinated to this change. There is agreement on this, as far as official statements are concerned. However, there are differences, with an advantage for the military aspect, when it comes to the implementation of these findings. While this discrepancy applies primarily to Russia, the strategies involving all branches of the US armed forces show a clear prioritization of the military component of Arctic policy (Office of the Under Secretary of Defense for Policy 2019).

2. The eight states of the Arctic Council have achieved a high level of agreement in the field of scientific research. This is an important benefit. Previous agreements, which go beyond that negotiated in the Arctic Council, are proof of multinational cooperation in fields of common interest. Since 2011, there has been a committee for security and defense policy matters (Tingstad 2020). However, meetings no longer include Russia in light of the attack on Georgia, the occupation of Crimea and parts of Ukraine, and Russia's war in Syria (Laruelle 2020).

3. During the Cold War, the Arctic was of special importance due to strategic matters of nuclear deterrence. Today, issues of energy security are also included in this aspect, which is again important to the states of the Council. Gas and oil are the best-known raw materials, but they are not the only ones being extracted. Energy security and transport definitely play an important role in the Arctic Council.

4. Due to the intensified melting of the ice in the Arctic Ocean, sea routes are of increasing importance for transit and especially for shipping

bound for certain ports. The Northeast Passage from Norway to the Pacific Ocean is currently navigable for longer periods of time in the summer. This northern sea route runs through Russian territorial waters (Northern Sea Route Information Office 2020). The Northwest Passage, which runs through the territorial waters of the USA but mainly through Canadian territorial waters, currently does not play a comparable role for climate as well as logistic reasons – ports and maritime infrastructure are lacking. The direct polar route will not become an option as a shipping route for a long time. Shipping will be of increasing importance for trade, energy extraction and transport as well as for state-operated ships, particularly warships.

5. The question of the extent to which conflicts in other regions of the globe will affect the situation in the Arctic cannot be answered. China's declaration that it is a "near-Arctic state" (State Council Information Office of the People's Republic of China 2018) and its close cooperation with Russia in energy production and transport as well as in security policy matters opens up a field of action that must be assessed, including in connection with other observers in the Arctic Council. All factors play an important role here, especially security policy. The positions of India, Japan, South Korea and Singapore will play as important a role, as will those of the other observers. Whether the EU will play a role here is an open question.

Based on these five theses, a fundamentally different view emerges from the one at the time of the Cold War. Russia and China are impelled by internal pressure and the desire to be recognized as global actors. Both states have complementary interests in the Arctic. For Russia, it is to economically exploit the northern part of the country. For China, it is to take advantage of the exploitation and transport of resources and develop new channels of communication and military cooperation. China's Maritime Silk Road includes the Northeast Passage.

Russia will utilize its chairmanship of the Arctic Council, which begins in May 2021, to enhance its influence. It will utilize scientific programs as door openers and promote cooperation with foreign scientific institutions. This scientific diplomacy has been successful so far for both Russia and China (Binder 2016). With cooperation between Russia and China on the one hand, and competition for global influence between the USA and China on the other, the Arctic Ocean can become a second testing ground – after the South China Sea – for dealing with risks and threats. It can be assumed that both Russia and China will continue to be two-faced with respect to international law and other binding multinational agreements. From a geopolitical perspective, a growing number of questions need to be answered – or at least need to be dealt with. The actions of the Arctic Council, which is the most influential authority for

the development of Arctic matters, are based on multinationalism and consensus. It will be necessary for the Council to regulate the role and the influence of states with observer status. The weighting of the eight Arctic states has shifted. The Arctic presents fundamental differences: Greenland, strategically represented by the Kingdom of Denmark (CIA 2021a), is positioned differently from Svalbard, part of the Kingdom of Norway (CIA 2021b). And the Yamal Peninsula, as an Arctic economic center of the Russian Federation, is again subject to different conditions (Gosnell et al. 2020). There remains another question that requires an answer: What are the Arctic interests of the USA and of Canada? Both countries have an Arctic coast, and both have shown a rather reserved interest in the Arctic in the past few years – in comparison with other neighboring states (Prime Minister of Canada, Justin Trudeau 2016). The question asked in the introduction regarding the maintenance and value of multilateral solutions – that is, the importance of resolving potential conflicts through cooperation – remains a central question.

Closely related to this are aspects that are evaluated differently by members of the Arctic Council. Which issues will determine the future? How will the increase in attention be evaluated: geopolitically, geo-economically or geo-ecologically? The Arctic will remain geopolitically relevant, but whether geopolitical disputes from other parts of the world will have a stronger impact than the Arctic itself remains an open question. This provides space and time for multilateral solutions.

Noteworthy examples and proof that multilateral solutions can be successful are the following agreements. It should be noted that the Arctic Council is not part of a larger organization and that everything discussed in its forums is non-binding until the signatory countries make it binding through national decisions. This has happened four times in the past. The Council has negotiated important agreements that were accepted by the signatories and are today legally binding (Arctic Council n.d.b):

– The Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic, signed in 2011
– The Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic, signed in 2013
– The Agreement on Enhancing International Arctic Scientific Cooperation, signed in 2017
– The Agreement to Prevent Unregulated Fishing in the High Seas of the Central Arctic Ocean, signed in 2019.

At the same time, the importance of the military aspect of all matters affecting the Arctic has grown. Geo-economically, the interests are not so far apart, but

their national importance and influence on national action differ widely. It is obvious that the Arctic Ocean – or even the Arctic – can no longer be regarded as marginal from a global perspective. It is also not an area that can be considered separately by ignoring the global political situation. The question of whether the Arctic Ocean is suitable for a naval showdown can be answered with "yes" from a strategic perspective, but with "no" from an operational and tactical perspective.

The Arctic as a Disposal Site for Nuclear Waste

"From 1946 to 1993, 13 countries used the oceans for disposing of nuclear/radioactive waste. The materials disposed of included liquids and solids enclosed in various containers" (International Maritime Organization, n.d.b). They also included reactors from decommissioned submarines, to cite only a few examples. Since 1993, the disposal of nuclear waste in oceans has been prohibited by international treaties (International Maritime Organization n.d.; Wikipedia 2020).

This is a general overview of the global dimensions of the disposal of nuclear waste in the world's oceans. The Arctic and the North Pacific are not solely a Russian problem. In the Arctic Ocean, however, there are areas of the passage in the North Atlantic and the North Pacific that were used for waste disposal. The concerns of Russia and its neighboring states regarding the risks and threats emanating from this nuclear waste are well known. The particularly endangered areas of the ocean and the surrounding land reach from the Barents Sea and the Kara Sea on the western side, into the Bering Sea and the Sea of Okhotsk up to Vladivostok on the eastern side. According to a catalogue published by the Russian government in 2012, there are 17,000 containers of radioactive waste, nineteen shipwrecks with radioactive waste on board, fourteen nuclear reactors (five of which are still filled with radioactive water) and 735 other containers with radioactive waste from heavy machine parts (Office of Technology Assessment 1995).

This is not the place to list further known details, but it can be concluded that few people are aware exept for experts and scientists. The danger to the people living and working in the areas, as well as to the fisheries and the environment, is either unknown or barely understood. The Russian government is generally aware of the danger and the need for urgent action, but the necessary financial resources are inadequate by far. This offers the Arctic Council the opportunity to take a multinational approach, both in the Council itself and in the observer states.

The Regulation of Shipping in the Arctic

Russia and Canada have national responsibility regarding the use of shipping lanes. This relates to their sovereign rights and obligations in their respective coastal waters, that is, twelve nautical miles off their coasts. As is the case in straits and channels everywhere in comparable situations, these matters are governed at the international level by the United Nations Convention on the Law of the Sea (UNCLOS). Thereunder, both states, Canada and Russia, have rights but also obligations, which take their sovereignty into account. Canada has taken this responsibility into consideration in a framework guideline and has stressed the protection of the maritime environment and indigenous peoples as a high priority. Russia has set different priorities in this regard and has given precedence to the economic perspective in all areas. According to the current status, both states include national rules on peaceful passage, which are not in conformity with UNCLOS (UN General Assembly 1982).

This dispute raises the danger of misunderstandings and risks for global shipping, such as for passing warships or other state-operated ships, such as coastguard ships or research ships. As mentioned earlier, the issue only relates to the use of the two sea routes for transit purposes. Article 45 of UNCLOS regarding so-called innocent passage is relevant here. This will remain a controversial topic. There is a risk that other passages, which have long been considered settled issues, will be re-examined. The agreed-upon provisions for comparable passages serve the common interest in peaceful navigation and the preservation or restoration of "good governance at sea "including in the Arctic Ocean. "Freedom of navigation" is a commonly used expression for what is to be ensured here (LawTeacher 2013).

Final Remarks

1. Various reasons for the dynamic development of the Arctic have been recognized. Climate change is the most cogent reason, followed by technological development in all four areas: environment, raw materials, transport and show of power. Weighing and balancing out these aspects is the task of the Council and its members, including the observers.

2. The USA and Canada will assume a leading position in close coordination with each other. This should not be limited to military matters, and all Council members should be included on an equal footing.

3. The role of members of the Arctic Council that were not mentioned in more detail here should be multilateral rather than bilateral. The difficult task of developing a comprehensive perspective, including military risks

and threats, should be handled by a body set up for this purpose. Ignoring these developments is dangerous.

4. Russia has noticeably strengthened its cooperation with China (which is a non-Arctic state) both in the Arctic and in other oceans. This economic and military cooperation is a reason for concern if these countries continue to disregard international rules or interpret them in their national interest. It will then become a risk and a threat.

Dedication

Interest in the Arctic Ocean and the Arctic Region as a whole has increased in recent years (Ellehus 2020). Indeed, the MOSAiC "expedition of the century" (MOSAiC 2021) has refocused public attention on scientific work in the Arctic from various perspectives. The goal of this multinational expedition is to perform scientific research on global climate change and thus evaluate the importance of the Arctic in this process. Within this project, twenty nations, all members of the Arctic Council except for Iceland, sent scientists to gather data and take climate research to a completely new level. They are taking a holistic scientific approach, the results of which will take years to evaluate. The scientists and the support teams on the German research ship Polarstern, dispatched by the Alfred Wegener Institute, deserve our thanks and recognition for their multinational research work.

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New Multilateralism: The United Nations and Governance in the Era of Nonstate Actors

Elizabeth A. Bloodgood

Abstract

Nonstate actors, particularly international nongovernmental organizations (NGOS), helped found the United Nations and have been working with and through the UN ever since. The increasing variety and activities of nonstate actors, including innovative hybrids, has produced a new multilateralism in global governance to which the United Nations must adapt. This chapter examines three features of this new multilateralism and the resulting effects upon both the United Nations and global governance. New multilateralism is characterized by participation from groups from the very local to the global, as well as the diversification of power from the North to the South. Emerging BRICS powers (Brazil, Russia, India, China, South Africa) demand that their issues and interests be part of multilateral negotiations, as the world seeks to grapple with increasingly severe and numerous transnational problems including terrorism, climate change, economic crises, food security, migration and weapons proliferation. In addition, new multilateralism includes calls for change by the UN (and other multilateral organizations) in response to failures of implementation, accountability and legitimacy. In response to the accountability and legitimacy failures of large bureaucracies, nonstate actors are increasingly taking more innovative forms, including digital advocacy organizations and public-private partnerships. In the future, scholars expect to see more regionalism, a larger role for orchestration by the UN, more delegation to specialized actors and increasing diversity as well as dynamic density of international exchanges. The great promise of new multilateralism is the democratization of international policymaking and the increasingly innovative institutions and policy solutions. The recent shock of the global COVID-19 pandemic poses the risk of setting new multilateralism back in many areas, which is worth considering proactively, including shifts in issue focus and funding flows and necessary localization and digitalization.

Keywords

new multilateralism – nonstate actors – NGOS – BRICS – IMF – World Bank –
intergovernmental organizations – multinational corporations – Sustainable
Development Goals – regime complexes – transnational public-private partnerships –
multistakeholder initiatives – transnational and private regulatory organizations –
WHO – COVID-19 – COVAX – global governance – city governance

Nonstate actors, particularly major international NGOS, were important in the
founding of the United Nations (Charnovitz 1996) and have been working with
and through the UN and its agencies since its inception (Davies 2013; Weiss,
Gordenker and Watson 1996). The ever-broadening array of active nonstate
actors, including innovative hybrids between NGOS and businesses, has pro-
duced a new multilateralism in global governance to which the United Nations
must adapt. This chapter examines three features of this new multilateralism
and the resulting effects upon both the United Nations and global govern-
ance. New multilateralism (Hampson and Heinbecker 2011; Kahler 2018) is
first characterized by the fact that groups from very local to global can par-
ticipate (Pallas and Bloodgood 2022) and thus nonstate actors are now active
in every issue and area of global governance. Second, new multilateralism
also recognizes the shifts in power from North to South, with emerging BRICS
states (Brazil, Russia, India, China, South Africa) demanding that their issues
and interests be part of multilateral negotiations as the world seeks to grapple
with increasingly severe and numerous transnational problems, including ter-
rorism, climate change, economic crises, food security, migration and weap-
ons proliferation (Hampson and Heinbecker 2011; Henry and Sundstrom 2021).
Institutional proliferation (Rowan 2021) as a result of nonstate actors' growth
and worsening global problems is a challenge to the UN as the godfather
institution – the most established and largest bureaucracy with the biggest insti-
tutional footprint and reach, especially when affiliated agencies are included.

As a third key feature, new multilateralism also includes calls for change
by the UN (and other multilateral organizations) in response to failures of
implementation, accountability and legitimacy (Hampson and Heinbecker
2011; Kahler 2018). Partially in response to the accountability and legitimacy
failures of large bureaucracies, nonstate actors are increasingly taking nontra-
ditional forms with less institutional infrastructure and more innovative forms
of operation, including digital advocacy organizations and public-private part-
nerships (Hall, Schmitz and Dedmon 2019; Abbott, Green and Keohane 2016;
Dingwerth 2008; Andonova 2010). As a result, in the future scholars expect to

see more regionalism, a larger role for orchestration by the UN (Abbott et al. 2014) and more delegation by states and intergovernmental organizations such as the UN to groups formed to perform specialized tasks (Eilstrup-Sangiovanni and Hofmann 2020; Abbott and Faude 2021; Lake 2021). The great promise of new multilateralism is the democratization of international policymaking and the increasingly innovative institutions and policy solutions. The recent shock of the global COVID-19 pandemic poses the risk of setting new multilateralism back in many areas, however, given the shifts in issue focus and funding flows as well as necessary localization and digitalization.

New Multilateralism

The 21st century has been characterized by the end of the former multilateral system, largely premised on US hegemony within the West, which supported traditional intergovernmental organizations such as the United Nations, the IMF and the World Bank. The emergence of new regional powers, including Brazil, India, China and South Africa, as well as new complex interdependence has created the conditions, as well as the necessity, for new forms of international politics and new institutions for governance.

World politics is now characterized by increasing numbers and density of international exchanges across a wide range of issue areas, pulling states, populations, institutions and international flows (of goods, money and people) increasingly tighter in an interwoven fashion. The new interdependence approach argues that three key features of the current world order largely determine the way in which this world order is governed: overlapping rule systems from formal as well as informal international organizations, combined with new private governance schemes, in which a new constellation of political opportunity structures, at the national and global levels, shape the distribution of power and preferences as enacted in global governance according to the ability of state and nonstate actors to take advantage of these opportunities (Farrell and Newman 2016; Kahler 2016; Kahler and Lake 2003; Dellmuth and Bloodgood 2019; Vabulas and Snidal 2020; Hale, Held and Young 2013). While the extent of the change in world politics and global governance has been overstated by some and has not negated the importance and significance of states (Kahler 2016; Lake 2021; Eilstrup-Sangiovanni and Hofmann 2020), the power and potential of nonstate actors has increased dramatically. The ability of states to tackle global problems has decreased while the national effects of global phenomena have increased. State actors have reduced control over the problems themselves, as climate change, global pandemics, immigration,

financial market instability, human rights violations and ethnic conflicts are transnational and global in cause and scale. State actors have also lost exclusive control over the national and international policy levers needed to address these global challenges (and their national implications) (Hale, Held and Young 2013). Nonstate actors, including corporations and NGOs, have increasingly more influence over public behavior and a better sense of foreign governments' policy positions than state agencies do. Government representatives can communicate to nonstate actors information that might not be credible when conveyed to other state parties in a negotiation. And often, nonstate actors, including NGOs and corporations, are deemed more trustworthy by the public than government actors (Chapman, Hornsey and Gillespie 2021). Nonstate actors are thus increasingly significant actors in diplomatic negotiations on international issues and in the implementation and monitoring of international agreements (Grincheva and Kelley 2019; Lake 2021; Raustiala 1997; Davies 2013).

The nature of this new interdependence requires new multilateral diplomacy to design institutions to address global problems, including climate change, sustainable development, peacebuilding, migration, and the negative externalities of international trade and finance. The increase in the number and diversity of international institutions, including the UN and its agencies but also informal groupings such as the G7 and G20 (Vabulas and Snidal 2020), as well as the resulting overlap of rules, enables actors to choose where they wish governance of an issue to lie (Farrell and Newman 2016). At the same time, the increasing overlap of issues originating from intensifying globalization has increased interconnections between complicated problems. For example, climate change has produced economic crises given the rise in insurance costs and the growing costs of economic reconstruction, as well as migration patterns that produce conflict with the influx of refugees into fragile political and environmental ecosystems. The lack of an obvious institutional forum or responsible agent gives nonstate actors new power in framing issues and advocating that they fall within a particular governance structure as opposed to alternatives. Strategic nonstate actors can thus select forums with more political opportunity structures for themselves, particularly institutions in which they have greater powers to set agendas or implement outcomes (Dellmuth and Bloodgood 2019; Joachim 2007).

It is not just the nature of global issues today, but also the distribution of power within global politics, that is driving the emergence of the new multilateralism. Emerging issues within traditional international organizations such as the United Nations, including concerns about accountability within large bureaucracies and legitimacy in decision-making given political control by

largely Western powers, are accelerating calls for change in multilateral diplomacy. In an effort to regain decision-making power, a range of new regional initiatives have emerged that challenge 'global' international organizations such as the UN, IMF and World Bank. Even in less democratic regions, multilateral organizations led by regional powers are active and increasingly open to nonstate actor participation, including the African Union, the Asian Development Bank, and the Asian Infrastructure Investment Bank (Tallberg et al. 2013). The rise of informal groupings of countries, including the BRICS, MIST (Mexico, Indonesia, South Korea and Turkey) and MINT (Mexico, Indonesia, Nigeria and Turkey) countries in multilateralism (Appe 2018; Henry and Sundstrom 2021; Vabulas and Snidal 2020), is suggestive of a shift in multilateral governance away from large, formal international organizations such as the UN to alternative political arrangements in which Southern countries have more control over their design and decision-making (Pallas and Bloodgood 2022). Alternative global governance arrangements include informal organizations (Vabulas and Snidal 2020), regime complexes (Abbott, Green and Keohane 2016), hybrid institutional contexts (Abbott and Faude 2021) and publicprivate partnerships, also known as multistakeholder initiatives or transnational regulatory initiatives (Andonova 2010; Dingwerth 2008; Büthe and Mattli 2011; Lake 2021). The proliferation of institutional forms increases diversity and complexity in global governance and adds layers of richness to new multilateralism. New institutional designs, particularly hybrid forms, provide new political opportunity structures for nonstate actors to select to target for access and influence. Abbott and Faude (2021) and Grigorescu (2020) provide examples from global health and education, while Lake (2021) and Andonova (2010) showcase new examples in environmental politics and Büthe and Mattli (2011) focus on cases from international finance and banking.

Nonstate Actors and the UN in New Multilateralism

Nonstate actors, particularly major international NGOs (INGOS), were integrally important in the founding of the UN and have been working with and through the UN and its agencies (largely via ECOSOC and consultative status) since its inception (Charnovitz 1996; Davies 2013). While UN consultative status is contingent upon state approval, selected INGOS have had access to the UN throughout its history. In some issues, such as refugee assistance, disaster assistance, complex humanitarian emergencies and endangered species, for example, the UN has delegated significant power to implement UN policy and programs (Weiss, Gordenker and Watson 1996; Banks, Hulme and Edwards

2015; Natsios 1995). INGOs also play important agenda-setting and advocacy roles to put new and emerging issues on the UN agenda, including the abolition of slavery, rape as war crime, the rights of women and children, nuclear test bans/abolition, landmine ban and environmental protections, to name just a few (Rutherford 2000; Carpenter 2007; Raustiala 1997; Joachim 2007).

Which nonstate actors are most involved with the United Nations, and how and why, is argued to depend on the nature of the issue (economic versus social), the nature of the nonstate actor (public versus private) and the stage of the policy cycle. Scholars expect private nonstate actors (i.e., multinational corporations, professional and business associations seeking specific interests for their constituents) to have more access to international organizations than public ones (i.e., voluntary organizations such as NGOs seeking diffuse benefits beyond their memberships) (Hanegraaff and Berkhout 2019). This is attributed to the fact that private actors are more prone to support the position of states within international organizations' negotiations (e.g., climate or trade) and because they are more consistently and directly motivated to realize their interests (as collective action is harder for public goals than for private ones) (Hanegraaff 2019; Beyers 2002; Olson 2003). Scholars also expect that access and influence will be greatest for transnational nonstate actors (including public and private actors) at the agenda-setting stage and again at the implementation and monitoring stage (Tallberg 2013; Steffek 2013; Weiss, Gordenker and Watson 1996), rather than at the policymaking stage. Some scholars expect issues to arise with implementation by INGOs, as they have a difficult time making hard decisions in order to increase efficiency or efficacy while still maintaining their principled commitments and legitimacy given the broad publics they seek to help (Steffek and Hahn 2010; Cooley and Ron 2002; Avant 2004).

As the United Nations and its associated agencies formalized and took control of much of global governance (Charnovitz 1996), nonstate actors were pushed to more ancillary roles as service bureaus for monitoring and implementation, public relations to build support coalitions, fundraising, and serving as a form of civil society to reduce democratic deficits for a long period of time. For example, TRAFFIC was created by the World Wildlife Fund and the International Union for Conservation of Nature in 1976 to work with the Convention on International Trade in Endangered Species (CITES) Secretariat to advise, provide information and support enforcement of CITES.[1] NGOs are also vital to the UNHCR and its efforts for refugee protection and assistance. As the UNHRC says, "we rely heavily on NGOs to implement a wide range of

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1   See https://www.traffic.org/about-us/working-with-cites/.

projects, including aid distribution, protection, logistics, shelter, health, water, sanitation, nutrition and education projects."[2]

Nonstate actors have come to new prominence as alternative sources of global governance with rising concerns in the 1990s that the UN was ossifying, becoming inflexible and unable to adapt to deal with increasingly complex and interconnected transnational issues, and confronting new challenges to its authority and legitimacy from more directions (Kahler 2018; Johnson 2016). The issues for the UN have included challenges to leadership within the bureaucracy internally, uncertainty around the commitment of the United States to the UN, and a bias in focus on the interests of the permanent five (P5) members of the Security Council (and questions as to whether this number should change). These challenges have increased UN delegation to nonstate actors for legitimacy purposes (Kuyper and Bäckstrand 2016), which is particularly important if more democratic legitimacy (or increased inclusion) is required (Bernstein 2011), although this may be more perception than reality (Steffek and Hahn 2010).

The theories on why intergovernmental organizations (IGOs) such as the UN step back and give more authority to NGOs in the new multilateralism focus on two forms of IGO-NGO relations: orchestration and delegation. Both are indirect forms of governance, in which the authority to complete a certain set of tasks is given by an IGO to a third party. Delegation depends on stricter contracting and enforcement, via principle-agent relationships, while orchestration relies on shared goals and interests and thus looser and more informal relations of control (Abbott et al. 2014). Grigorescu and Başer (2019) argue that the balance of activities and responsibilities between IGOs and INGOs is driven by the activist predilections of government members of IGOs. Those IGOs that are composed of members that tend to be more activist, that is, who prefer greater government involvement at home, also tend to encourage more activity through and within IGOs. As selective government involvement is less likely to produce successful solutions to global problems in an era of high interconnectivity, the need for alternative solutions explains institutional innovation as a characteristic of the new multilateralism. Institutional innovations that shift the relationship between IGOs and NGOs are also consistent with Tallberg et al.'s (2018) finding of increasing access for nonstate actors across all IGOs over time. As IGOs are less able to address global issues on their own, even when political will is high, nonstate actors have been given greater access. Scholars have found that access increases for specific transnational actors based on their ability to provide valuable resources to IGOs, including

2   See https://www.unhcr.org/non-governmental-organizations.html.

information (Tallberg et al. 2018; Dellmuth and Tallberg 2017), staff time and money, credibility (Abbott et al. 2014) and legitimacy (Tallberg and Uhlin 2012; Bäckstrand and Kuyper 2017). Abbott et al. (2014) argue that more democratic actors (both IGOs and states) may have an affinity for orchestration versus delegation and softer mechanisms of ensuring nonstate actors voluntarily collaborate with IGOs such as "material and ideational support" (722).

Future research needs to examine how much control states have over decisions about power relations between IGOs and nonstate actors. New nonstate regulators, particularly those active in issue areas that evolve faster than states' capacity to change or control activities, such as global finance and social media platforms, challenge states' monopoly over the question of "who governs the globe" (Avant, Finnemore and Sell 2010), especially with the rise of nonstate networks (Kahler 2009; DeMars 2005). For example, internet governance is characterized by a regime complex including IGOs, such as the International Telecommunications Union, and NGOs, such as ICANN, as well as public-private partnerships such as the Internet Governance Forum. New institutional forms of collaboration between NGOs and IGOs are likely to attract NGOs' interest and thus increase orchestration possibilities for IGOs. World politics has seen a dramatic increase in the number of active transnational NGOs (Davies 2013) even as we saw the end of the era of IGO growth (Shanks, Jacobson and Kaplan 1996). Increased political opportunities within IGOs have attracted new nonstate actor interest and involvement in new multilateralism (Dellmuth and Bloodgood 2019).

New Nonstate Actors

Nonstate actors are now active in every issue, sector and corner of the world. While certain aspects of this are challenged and contested as inappropriate (e.g., terrorist organizations and private military corporations) and illegitimate (to the extent that nonstate actors help to preserve international inequalities), generally, the scope and breadth of nonstate actor involvement in international relations has become an accepted norm (Reimann 2006; Simmons 2009; Raustiala 1997; Charnovitz 1996; Davies 2013).

Traditional nonstate actors, namely INGOs and multinational corporations (MNCs), have had significant influence within the issues of peace and security, economics, environment and human rights over the past century (Feld 1972; Skjelsbaek 1971; Arts, Noortmann and Reinalda 2001; Florini et al. 2000). While often the relationship between NGOs and MNCs has been presented as conflictual, increasingly these nonstate actors may work together toward

common goals. For example, NGOs and MNCs in South Africa and Brazil worked together on the access to medicines campaign to provide HIV medications globally at reasonable prices by challenging the intellectual property monopoly rights held by firms (and defended by government) in the USA on human rights grounds (Sell and Prakash 2004). More recently, CEPI and Gavi have brought together manufacturers, research institutes, universities and civil society organizations to cooperate in the creation and implementation of the COVAX program to provide access to COVID-19 vaccinations globally.[3]

Increasingly, with globalization and advances in information and communications technology, even very local groups can and do participate in international policymaking, norms diffusion and international agreement implementation. Transnationalism has increased and changed such that many areas of global politics are trans-scalar and the participating nonstate actors are increasingly diverse (Pallas and Bloodgood 2022; Scholte 2007; Tarrow and McAdam 2005). For example, Kenyan chiefs have played a crucial role in whether international obligations in the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child regarding the end of female genital mutilation have been upheld (Cloward 2016).

NGOs are increasingly active on previously sensitive issues even in authoritarian contexts, including environmental protection and climate change in China and Russia (Henry and Sundstrom 2021; Teets 2018), election monitoring in the former Soviet Republics (Bush 2015) and human rights education (Heiss 2017). For example, at least until the 2019 Bolsonaro administration, Greenpeace Brazil worked with local fishing organizations in Brazil to sue Petrobras to force them to clean up their oil spill in the Guanabara Bay (Rodrigues 2004). Increasingly large INGOs have had greater access and influence operating as national NGOs (e.g., Greenpeace Brazil, Greenpeace Russia) in these countries rather than as branches of major INGOs (Rodrigues 2015; Henry and Sundstrom 2021).

The face of NGOs, and to some extent MNCs, has come to look very different from 75 years ago, quite literally when it comes to their digital presence and profiles. The last decade has seen the rise of digital activist organizations, including Avaaz, GetUp and Moveon.org (Hall, 2017; Hall, Schmitz and Dedmon 2019). These organizations are distinguished from more traditional INGOs by their lack of physical presence and very small staff with enormous memberships that are given great latitude in the selection of the campaigns these organizations undertake. Millions of members, and dollars, can

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3   See https://www.who.int/initiatives/act-accelerator/covax.

be mobilized over a matter of days to present online petitions and physical demonstrations of popular support on policy issues ranging from immigration to climate change to conservation and economic sanctions. These organizations are structurally light and nimble and thus easily able to adapt to changes in global politics and opportunity structures. On the downside, they have difficulty with long-term strategizing and staying power, as they are dependent on members' preferences for action ("people-powered politics").[4] Multinational corporations and, increasingly, social enterprises have also seized the power of social media and the internet for advertising and influence on people's preferences, changing their primary means of communication, visibility and even advocacy (Margetts et al. 2016). These changes in how MNCs and NGOs operate and engage with their publics or consumers mean that UN campaigns to use reputational mechanisms to change government and corporate behavior, such as pledges to the Sustainable Development Goals (SDGs) or the UN Global Compact, are more effective mechanisms for NGO and MNC involvement.

An ant analogy describes quite well the actions and influence of nonstate actors in global governance in an era of new multilateralism. There are large quantities of these organizations operating at national and international levels, the vast majority never receiving any notice as individual organizations. When they band together, however, they are impossible to ignore and can build incredibly strong structures. They are filling in the gaps in multilateralism by building bridges between the levels or scales of governance as issues (and thus policy responses) are increasingly national and global simultaneously. Nongovernmental and nonprofit, NGOs are taking on an array of identities from grassroots associations working on the SDGs to specialized expert groups such as the International Crisis Group or the World Resources Institute and large corporate structures including Greenpeace and the International Olympics Committee. They fill in market and political failures left by governments and international organizations dependent on states' political will. Currently, there are 24,000 organizations registered within the iCOS database of civil society organizations managed by the NGO Branch,[5] and more than 22,000 organizations, including NGOs and MNCs, are listed as partners or participants in SDGs campaigns.[6] The large number of nonstate actors participating in global governance via UN partnerships and associations provide a means of addressing political failures in strictly IGO governance, in particular representation of otherwise marginalized voices and issues, and help address

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4   See https://secure.avaaz.org/page/en/about/.

5   See https://esango.un.org/civilsociety/.

6   See https://sustainabledevelopment.un.org/partnerships/.

democratic deficits in large, formal IGOs. This inclusion of nonstate actors may not be a magic solution, however, if only the usual suspects – large, traditional, bureaucratic, Northern and well-resourced – are the only nonstate actors that are actually seen and heard by IGOs (Banks, Hulme and Edwards 2015; Kissling and Steffek 2008).

New, less formal and more flexible institutional structures in global governance help nonstate organizations work together and collaborate with the United Nations while shaping even powerful states' behavior. Raustiala and Victor (2004), in their work on the concept of regime complexes, argue that the overlapping, nonhierarchical and dense nature of complexes produces regulatory inconsistencies that need to be worked out on the ground in implementation, and the most successful solutions are then adopted back into the higher-level rules of the regime complex. This process of practical implementation opens up new opportunities for nonstate actors to influence global governance from the ground up. As Alter and Meunier (2009) argue, international regime complexity changes global governance in ways that empower new actors and create new openings for nonstate actors in overlapping chessboards (institutional structures), with outcomes that are less easily predicted and controlled by powerful states and organizations. Abbott and Faude (2021) argue that "hybrid institutional complexes" (HICs) have become the most common form of institutional arrangement in global governance, superseding both large, formal intergovernmental organizations and more informal regime complexes. These HICs are defined as "heterogeneous interstate, infra-state, public-private and private transnational institutions, formal and informal" (Abbott and Faude 2021, 2), with 575 individual organizations compared with 216 formal and informal IGOs (Westerwinter 2021; Abbott and Faude 2021).

Future Promise

The rise of nontraditional international institutional arrangements that are networked to, or collaborating with, the UN creates enormous opportunities for the future, both in terms of solving complicated global problems and advancing peace and prosperity. These new organizations, including transnational public-private partnerships, multistakeholder initiatives and transnational regulatory organizations, provide greater variety, flexibility and adaptability without requiring the creation of large formal organizations (and associated great power approval and expensive bureaucracies). These hybrid institutional complexes are targeted to specific goals with limited invested interest in organizational perpetuity and the bureaucratic pathologies that the

prioritization of survival over efficacy can bring (Cooley and Ron 2002; Avant 2004). This is true for INGOs as much as for IGOs such as the UN (Mitchell, Schmitz and Vijfeijken 2020).

Transnational public-private partnerships, multistakeholder initiatives and private standards organizations, such as the Forest Stewardship Council, the Global Reporting Initiative and COVAX, fill in gaps and shortcomings of UN governance. By working with select groups of highly motivated and heavily invested actors, they can develop stronger standards while also including more diverse stakeholders (beyond the state bias of IGOs) and include effective enforcement mechanisms that draw on reputational, political and economic costs.

The UN, however, still has important roles in this new multilateralism including coordination and traffic control, which are more important than ever given increasing institutional density and complexity and potential conflicts over control. The UN is the primary orchestrator for public-private partnerships working with its agencies. In the above examples, the WHO co-leads COVAX while the UN Environment Programme manages the Global Reporting Initiative. Institutional proliferation brings risks, including dangers of redundancy, inefficiency and power struggles as well as paralysis from too much choice and noise from too many institutional options (Rowan 2021). Successful orchestration is most likely from the United Nations as the IGO with the longest history of successful coordination of multiple agencies, governments and nonstate actors on a broad range of overlapping issues and tasks.

Pandemic Peril?

Over the last 75 years, the United Nations, and the global international system that surrounds it, have witnessed a number of global shocks, from financial crises to world wars, nuclear crises, migration emergencies and natural disasters. The most recent global shock, the COVID-19 pandemic, has had significant effects on state and nonstate actors and might thus alter the new multilateralism that characterizes global governance for the near future. In particular, the global pandemic has had four impacts on new multilateralism: shifting issue focus, changing funding flows, forcing localization and expanding digitalization with important implications for scale shifts in governance to the local level.

First, global attention has shifted to issues of health, including flows of people for travel or migration, as well as disease as a pressing security issue. Social welfare systems became important secondary issues, as millions of people

unable to work required significant economic supports in a no-contact fashion. Environmental issues, including conservation and climate change, also rose in prominence as a multiplier effect in creating conditions for COVID-19 to spread and raising concerns about future pandemics, as habitat loss and human habitation patterns brought animals and humans into closer contact, creating the conditions for more viruses to jump species. In particular, migration and social justice concerns that the sudden economic benefits as well as health resources were being disproportionately directed at certain groups within and between countries also rose on national and global agendas.

Second, the global pandemic caused sharp and sudden changes in patterns of philanthropy to NGOs around the world. The COVID-19 pandemic hit nonprofit organizations hard across the world as a result of sudden changes in individual giving behavior, government rules and popular needs. The effects of the pandemic on nonprofit organizations were diverse, however, with some organizations finding new sources of funding (e.g., government payroll supports, crowdsourcing) and new service demands (e.g., emergency food deliveries, access to COVID-19 testing and vaccination), while many were forced to severely curtail or stop operations (e.g., homeless shelters, cross-border relief agencies, immigration organizations). Candid found that even in the USA, with one of the wealthiest national nonprofit sectors, most nonprofits had less than six months of cash on hand and were thus fragile in the face of sudden, severe operation disruptions (Harold 2020). While large philanthropic gifts poured forth from rich CEOs and companies at the start of the pandemic (e.g., Jack Dorsey, Twitter; Jeff Bezos, Amazon; Google; Alibaba Group; Tata Trusts; Visa; Cisco Systems), these gifts were targeted at COVID-19-related issues (food security, domestic violence, access to healthcare) in a few countries (the United States and China represented 79 percent of the dollar value of the pledges) (Dayal 2020; Grabois 2020).

Third, public health measures to prevent the spread of COVID-19 required dramatic localization of nonstate actors and their activities, as well as publics around the world. Strict lockdowns around the world, for example in Australia, China, Vietnam and France, restricted movement as well as eliminated in-person activities. Throughout the pandemic, a large number of surveys of nonprofit and civil society organizations were conducted by diverse organizations around the world (Candid tracked more than 51 surveys by 48 different organizations) showing increasing concern among nonprofits for their financial future, ability to survive the pandemic, restrictions on activities from the need to work remotely with limited digital tools, and loss of operating revenues (Dayal 2020). Across these global surveys, increased access to digital tools and training consistently topped the list of needs and identified which

nonprofits were able to continue to function successfully. Those organizations with digital capacities, including internet access, a digital strategy and the ability to work from home, had greater potential to survive the pandemic.

Finally, the global pandemic may have accelerated scale shift within global governance by increasing the importance of city governance. With publics in lockdown, and the implementation of public health interventions and social welfare provision largely at the very local level, municipal governance became more important than ever. Municipal governments have increased their engagement with the UN in issues such as climate change and health (Acuto 2013; 2020; Gordon and Johnson 2017). This shift in the scale of global governance, if it persists, is critically important both for the UN and for nonstate actors since cities are where many NGOs 'live' and thus govern what they do.

In the near future, increased collaboration between governments and nonstate actors across national borders to address the global pandemic via resource sharing, including vaccines and technology, is possible on the grounds that "we're all in this together." Epidemiologists have made it very clear that until the spread of COVID-19 is stopped everywhere, no country is safe from possible mutations and variants. Alternatively, there are risks of increased nationalism as governments seek to protect their people and economy first. For example, the Canadian government was sharply criticized for pre-purchasing more vaccine doses than could ever be used by the population to compensate for the lack of domestic production capacity. It is unclear how things will develop as the WHO COVAX program is accelerating, but vaccination commitments by members of the G7 at the summit in 2021 were seen as too little too late.[7]

Conclusion

This chapter argues that the international political system in which the UN operates has changed to one of new multilateralism characterized by increased interdependence among actors and issues as well as the rise of the importance of nonstate actors at multiple scales of activity. Over the course of its lifespan, the UN itself has played a key role in these developments. It has played vital roles in orchestrating tasks to encourage more diverse institutional arrangements, including regime complexes, public-private partnerships, multistakeholder initiatives and transnational and private regulatory organizations. The

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7   See https://www.who.int/news/item/13-06-2021-g7-announces-pledges-of-870-million-covid-19-vaccine-doses-of-which-at-least-half-to-be-delivered-by-the-end-of-2021.

UN's failures to act and adapt in the face of increasingly interconnected global problems have also generated new nonstate actors with the interest and ability to operate at the global level. Over the past 75 years, this combination of institutional innovation and proliferation (IGO and nonstate) with the emergence of new interconnected issues has created distinctively different sets of global governance challenges and possibilities facing the UN. While state actors maintain their influence and importance, they are operating in a more crowded and complicated landscape. This new multilateralism brings benefits, in the form of innovation, flexibility, increased inclusion and participation as well as targeted policy interventions, increased implementation and new mechanisms for enforcement. New multilateralism also brings challenges, including potential gridlock, loss of accountability and responsibility, and competition because of the large number of new actors. To add to the challenges the UN faces in the next decades, the global COVID-19 pandemic (and the risk of future pandemics) may have created additional complications in this new system before nonstate actors really had a chance to show their capabilities.

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Inclusive Multilateralism: Cities Take a Seat at the Table

Henri-Paul Normandin

Abstract

Multilateralism is challenged, in part due to great power rivalry. There is no substitute for states' willingness to engage productively in multilateral affairs, but while there is no silver bullet to reinvigorate multilateralism, "inclusive multilateralism" holds some potential.

Inclusive multilateralism entails the participation, in different ways, of other stakeholders: civil society, business and other levels of government including cities. The Declaration adopted by the UN General Assembly to celebrate the UN's 75th anniversary indeed calls for a more inclusive multilateralism; and in this context, the Secretary-General specifically identified cities.

Why are cities increasingly active in multilateral arenas? Because global issues are often local issues, and vice versa. Examples include climate change, the Sustainable Development Goals, migration, biodiversity and COVID-19. In all these areas, and many more, cities are, in effect, actors. And what they do – or don't do – matters globally. So, cities often manage, in various ways, to "get a seat at the global table" and, in addition to acting on those issues, they influence the agenda. Such involvement, by cities and other stakeholders, will likely contribute to the evolution of multilateralism in the years ahead.

Keywords

inclusive multilateralism – civil society – cities' agency – Sustainable Development Goals – climate change – migration – biodiversity – Conference of the Parties

Introduction

Multilateralism is being challenged. From the United Nations to the G20, multilateral institutions and groupings are struggling to address today's global challenges, as states often fail to cooperate effectively for the common good in a context of great power rivalry.

There is no substitute for states' willingness to engage productively in multilateral affairs. Absent a silver bullet to reinvigorate multilateralism, "inclusive multilateralism" holds some potential.

Inclusive multilateralism essentially entails the participation in multilateral institutions and processes of actors other than nation-states: civil society, the private sector and other levels of government, including cities.

The declaration adopted by the UN General Assembly (2020) to celebrate the UN's 75th anniversary indeed calls for a more inclusive multilateralism. And in his remarks at the landmark event for the celebrations, the Secretary-General of the United Nations specifically referred to cities.

Why are cities increasingly active in multilateral forums? Because global issues are often local issues, and vice versa. Let us take a number of specific examples, starting with climate change.

Climate Change

On the one hand, states are called upon to assume responsibilities at the national and international level to take action in matters of climate – responsibilities that, experience has shown, they struggle to absorb fully. In any case, national governments know they are not omnipotent and that the involvement of all segments of society is necessary to achieve climate objectives. As for cities, they have a stake as their residents are negatively affected by climate change. They also, through their emissions, contribute to the global problem.

Hence, it becomes obvious that there cannot be success on the climate front without the mobilization and involvement of cities, among others. That is why cities not only act locally on climate, but also go global. A landmark event was the Climate Summit for Local Leaders at COP 21, in Paris in 2015. While it remained within the purview of states to negotiate the official outcome of the conference and emission targets, mayors were active both in committing their cities to ambitious action and in interacting with national leaders to do the same (United Cities and Local Governments 2015).

We see here a defining characteristic of urban diplomacy: Cities are actors on their own, both individually and collectively,[1] and they also influence the multilateral system.

Cities are gaining increasing recognition in this dual role. It is very telling that cities had a seat at the United Nations Climate Action Summit, on September 23, 2018. The Mayor of Montréal, Valérie Plante, made an intervention on behalf of cities, which is not a common occurrence at this type of very high-level event usually reserved for heads of state and government. She declared:

> Cities are already committed and working actively to combat climate change. The Secretary General has set ambitious objectives for states to reduce GHG emissions. I can tell you that cities are ready to respond and even go further.[2]

Sustainable Development Goals

Let us take another example: the 2030 Sustainable Development Agenda and its 17 Sustainable Development Goals (SDGs), adopted by the United Nations in 2015. Due in part to the involvement of cities in the lead-up discussions through the Global Taskforce of Local and Regional Governments (2015), one of the goals, SDG 11, is specifically devoted to cities.[3] Furthermore, city involvement is critical to the implementation of several SDGs. Cities act on several development issues addressed by the SDGs, from water and infrastructure to poverty reduction and equity.

Hence, a movement to "localize" SDGs has taken flight, as cities go on to endorse and commit to implement the SDGs. What's more, in terms of interaction with and within the multilateral system, cities take part in regular reviews of the implementation of the SDGs, including through the annual ECOSOC High Level Dialogue. Cities such as New York, Buenos Aires, Helsinki, Cape Town and Guangzhou have gone a step further by submitting "Voluntary Local Reviews" of their implementation of the SDGs.

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1   In this case through international networks such as C40 (http://c40.org) and ICLEI (https://iclei.org).

2   Excerpt from her remarks (unpublished).

3   SDG 11 reads: "Make cities and human settlements inclusive, safe, resilient and sustainable" (UN Department of Economic and Social Affairs 2016). In 2016, the same Global Taskforce contributed to shaping a New Urban Agenda at the UN Conference on Housing and Sustainable Development (Habitat III) in Quito (UN General Assembly 2016).

Migration

Migration is, of course, a global phenomenon. And where do migrants often transit or settle? In cities. While national governments manage national borders and migration rules, city governments inherit many responsibilities with respect to migration – from housing to social services, economic integration, inclusion, security and so on.

When the United Nations decided in September 2016 to develop a Global Compact for Safe, Orderly and Regular Migration, as well as a Global Compact on Refugees, cities embraced the opportunity and carved out a role for themselves in the elaboration of the two instruments. Building on work accomplished in previous years, cities developed a diplomatic campaign – including the submission of a position paper by Metropolis (2017) outlining their role, commitments and recommendations with respect to the compacts. This was followed by the Marrakech Mayors Declaration (5th Mayoral Forum on Human Mobility, Migration and Development 2018), and then by interaction with states as well as senior UN officials from the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR).

In the end, the compacts reflected some of the views put forward by cities. Noteworthy are the follow-up mechanisms of the two compacts, which include, in various ways, the participation of cities, and consolidates their continued involvement. Among others, a Mayors Mechanism was established in 2018 to formally link local authorities to the state-led Global Forum on Migration and Development (GFMD), alongside civil society and the private sector. The mechanism creates opportunities for cities to influence the GFMD discussions and provides them with opportunities for peer-to-peer learning and exchange to bolster innovative solutions. The Mayors Mechanism is jointly steered by United Cities and Local Governments, the Mayors Migration Council and the IOM.

In this context, cities continue to innovate locally. New York and Montréal, for instance, have provided a form of ID card to migrants, regardless of their status, to facilitate access to some essential municipal services. São Paulo has set up a Municipal Council of Immigrants. Los Angeles and Barcelona have taken action to protect migrants against human trafficking. Several cities have launched initiatives to facilitate labor-market integration.

Cities will certainly not replace national governments as the main actors of migration policymaking. However, they are more than local implementers of national policies. They are actors in their own right, sometimes in tandem with national governments as part of whole-of-government approaches, and other times at odds with national policies. In both cases, they increasingly have a voice and a seat at national and international decision-making tables.

Biodiversity

One last example is that of biodiversity – an existential issue for humanity and for the planet. Many cities acknowledge the immense local and global impact of urban activity on ecosystems, as well as the importance of acting locally to preserve biodiversity. Further, coordinated by ICLEI,[4] cities have positioned themselves globally to contribute to the negotiations and implementation of international undertakings.

Here again, their role is increasingly being recognized, and Mayor Plante of Montréal presented their views at the United Nations Summit on Biodiversity, on September 30, 2020. She made clear that "cities, local and regional governments are ready to partner in an ambitious global agenda on biodiversity."[5]

The next milestone is COP 15, where participants are set to adopt a Post-2020 Global Biodiversity Framework. Cities and local and regional authorities have already outlined their positions, including through the Edinburgh Declaration (Scottish Government 2020), and take part in the negotiations. They also anticipate holding a Global Biodiversity Summit of Local and Subnational Governments as part of the event, as they did on previous occasions, to entrench their views and role in the Global Framework.

A New Momentum

As we can see from the above, cities are impacted by global issues. And conversely, what cities do – or don't do – at the local level matters not only for their residents, but also globally. The COVID-19 pandemic is an obvious case in point.

Hence, cities have increased their involvement in global affairs and in multilateralism, a phenomenon that is not new but which has definitely taken on a new momentum in the last decade.

This action is not limited to the United Nations. Mayors, for instance, put their views forward to the leaders of the G7 on the occasion of the Charlevoix Summit in 2018 through an open letter (United Cities and Local Governments 2018). Cities have also institutionalized, through the creation of the Urban 20 (2020), a formal mechanism of engagement with the G20.

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4   Formerly the International Council for Local Environmental Initiatives, now known simply as ICLEI – Local Governments for Sustainability.

5   Excerpt from her remarks (unpublished).

This is not to say that the multilateral system has fundamentally changed. States and their national governments certainly retain their prominent position and membership in multilateral institutions. Cities will have to continue to be proactive to consolidate their seats at various tables and to influence the agenda. But the gradual development of "inclusive multilateralism," alongside the recognition that "multi-level governance" is necessary to tackle the world's main challenges, is a development that holds potential. Pascal Lamy has coined the term "Polylateralism", to express this evolution (Groupes d'études géopolitiques 2020).

As a last example to illustrate this point, let us come back to the issue of biodiversity. In the lead-up to the United Nations Summit on Biodiversity in 2020, it became obvious that there was not enough support among member states to generate an official outcome document. In this regard, a coalition of leading civil society organizations, working with a number of states and other stakeholders including cities, decided to move ahead with a voluntary Leaders' Pledge for Nature (2020). In the end, 88 heads of state or government endorsed the pledge, which also received the official support of numerous other stakeholders – including cities. Such a voluntary pledge is not the same as a binding instrument, but it is certainly useful as a multilateral undertaking: it can mobilize action and influence the agenda.

As the traditional multilateral system and nation-states often stop short of delivering on expectations and living up to the challenges they face, new approaches through the involvement of other stakeholders, such as cities, are likely to reinvigorate multilateralism. Open and inclusive multilateralism is likely to pave the way for more effective outcomes as the world struggles to address today's global problems.

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Threats to Democracy Undermining the Multilateral System

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Democratic Erosion and Multilateralism: When Authoritarian Leaders Challenge the Liberal International Order

Marianne Kneuer

Abstract

In recent years, scholars' attention to changes of government toward non-democratic variants has increased. The studies to date crystallize around a consensus that the modes of democratic regression in the post-Cold War period differ from the previous ones and that the prevailing archetype for this period is democratic erosion marked by two characteristics: first, a gradual and incremental process distinct from abrupt breakdowns such as *coups d'état*, executive coups or revolutions; and second, the process is implemented by legally elected incumbents by legal means or upholding the façade of legal means. In fact, quantitative measurement corroborates that 70 percent of the cases of autocratization after 1994 occurred on account of democratic erosion.

So far, scholars have set out to describe and explain this process of gradual democratic erosion on a domestic level. This chapter will take a different perspective and ask: What foreign policy implications does the fact that countries are in a process of democratic erosion have on the international level? Departing from an actor-centered approach, the argument is that the protagonist of democratic erosion, the erosion agent, might link her or his domestic mission to missions on the regional or international level. That means that in the same way that erosion agents strive to change the rules of the game domestically, they strive to change the rules of regional politics or even might try to influence the international level.

This chapter looks at cases of democratic erosion and the activities of their incumbents on the regional and international level and traces in what way and to what degree the erosion agents did change foreign policy approaches and introduce new foreign policy elements. The sample for this study embraces the following countries: Venezuela, Russia, Hungary and Poland, as well as the United States under President Trump.

Keywords

regionalism – liberalism – illiberalism – international order – democratic erosion – autocratization – sequencing – legalism – legitimizing – Westphalian sovereignty – international institutionalism – cooperation – threats to multilateralism

Introduction

Democracy has been increasingly under pressure in the last decades. After the euphoria over democratization in the 1990s, combined with the expectation of more development and peace as expressed in the strategic UN document "Agenda for Democratization" (1996) by UN Secretary-General Boutros Boutros-Ghali, and the evidence of the plateauing of democratization in the mid-2000s, the last two decades started to raise concerns of an observable trend away from democracy. While, on the one hand, there was relative stability among existing liberal democracies, the disturbing aspect referred to the intermediate sub-regimes – encompassing those that were neither fully consolidated democracies nor fully consolidated autocracies – namely: deficient and flawed democracies (Merkel et al. 2003), electoral authoritarianism (Schedler 2006), competitive authoritarianism (Levitsky and Way 2010) or hybrid regimes (Diamond 2002; Morlino 2009). These intermediate sub-regime types showed a high degree of dynamics, albeit in negative terms as instable and fragile, and seemed to be more prone to becoming authoritarian regimes (Cassani and Tomini 2019, 141).

Moreover, the picture of post-Cold War development reveals three major patterns (Kneuer and Demmelhuber 2020, 4–5): first, the *resilience of autocracies* in two main regional clusters, East and Southeast Asia (China, North Korea, Vietnam, Laos, Cambodia) and the Middle East (Gulf monarchies, Iran); second, the *unsuccessful consolidation* of democratizing countries that got stuck in a hybrid state (numerous countries of the former Soviet Union) with open-ended results (either reversal or progress); and third, *democratic erosion* of liberal or electoral democracies as reflected, for example, in a regional cluster in Latin America as well as in Central and Eastern Europe.

Research to date crystallizes around a consensus that the modes of democratic regression in the post-Cold War period differ from the previous ones, and that the prevailing archetype for this period is marked by two characteristics: first, a gradual and incremental process distinct from abrupt breakdowns such as *coups d'état*, executive coups or revolutions; and second, the process is implemented by legally elected incumbents by legal means or by upholding

the façade of legal means (Bermeo 2016; Haggard and Kaufman 2021; Kneuer 2021; Levitsky and Ziblatt 2018; Lust and Waldner 2015; Lührmann and Lindberg 2019). In fact, quantitative measurement corroborates that 70 percent of the cases of autocratization after 1994 occurred on account of democratic erosion (Lührmann and Lindberg 2019, 1104). Thus, democratic erosion has become the main route toward autocratization in the post-Cold War period. More than that, this specific route affects predominantly democracies (Cassani and Tomini 2019, 47; Lührmann and Lindberg 2019, 1103), and not only deficient ones but also liberal democracies where democratic erosion starts at a high level of democratic quality, such as Brazil, Venezuela, Hungary, Poland, Czech Republic, India and even the United States during the Trump administration (V-Dem Institute 2021).

The latest accounts confirm the ongoing trend of cases of autocratization worldwide outnumbering cases of democratization (see V-Dem Institute 2021; Freedom House 2021). Hence, autocratization has become a relevant phenomenon not only for scholars, but also for policy-makers and practitioners, with a focus on democratic erosion being the main route toward autocratization.

I define democratic erosion as an "active and intended process of democratic deconstruction implemented in an incremental way" (Kneuer 2021, 8). In this vein, democratic erosion is conceived as an actor-driven process in which the legally elected incumbent purposefully initiates the dismantling of democratic institutions, processes, and norms and principles with the aim of changing the "rules of the game." According to the argument of liberalism, such internal processes of change would also be reflected internationally. In other words, the preferences of the erosion agent, and the strategy guiding it to restructure the system, would be reflected in foreign policy behavior. Furthermore, it could be assumed that the change in the balance of power – in the sense of an excessively expanded executive and a limited influence of the legislative and other stakeholders – would increase the incumbent's leeway for possibly formulating new foreign policy goals or even changing course. Finally, another assumption relates to the externalization of the erosion agent's behaviors or patterns of behavior that result from the transformed power constellation in favor of the executive. In this respect, the question is: To what extent do ideological or ideational strategies such as illiberal thinking, authoritarian governance styles or national-populist narratives affect the behavior in international politics? In all, what implications does democratic erosion, as a specific path to autocratization, have for a country's international behavior and its foreign policy?

While there is a nascent literature on democratic erosion, mainly from comparative politics and regime studies (providing large-N descriptive accounts or in-depth case studies), this new phenomenon has barely been explored in

terms of its international dimension. In contrast to the international dimension of democratization, which has been broadly studied, research on the international dimension of autocratization lags behind, and when it comes to the specific path of democratic erosion, the literature falls short in conceptual as well as empirical work. One reason might be that research on the international implications of democratic erosion is located at the intersection between comparative politics and international relations.

In order to disentangle research perspectives on this topic, one focus addresses international influences that make democratic erosion possible by reinforcing authoritarian preferences of political elites or by impacting on other domestic factors that might cause democratic erosion, such as weakening institutions and polarization of elites and masses (see Bermeo 2016; Meyerrose 2020). Thus, within this perspective, democratic erosion acts as a dependent variable. Another perspective, which establishes democratic erosion as an independent variable, explores how erosion agents change the country's foreign policy according to their domestic autocratization strategy and to what extent the domestic change in the "rules of the game" is externalized and leads to a modified compass on the international level, in particular on how central foreign policy principles are readjusted. Finally, an essential knowledge from democratization studies is that there exists a dynamic interaction between domestic and external dimensions, be it in terms of structural links, zeitgeist or interplay between actors.

The following considerations concentrate on the second perspective. In the next section, the concept of democratic erosion is presented. Then, the still-few theoretical threads and empirical findings that might be helpful for building a conceptual framework regarding democratic erosion and the international dimension are discussed. The main part explores the foreign policy behavior on the global, regional and neighbourhood level on the basis of illustrative spotlights. The tentative finding points to the pursuit of diversification as a common trait of the foreign policy of eroding democracies with regard to political and economic liberalism. What particularly concerns multilateralism and global governance, however, is that while governments in eroding democracies also in this regard diversify (e.g. advocating for counter-hegemonic region-building), they are more prone to also choose the exit option (withdrawing from international institutions). The chapter terminates by discussing the implications of the fact that eroding democracies challenge rule-based multilateralism and might perforate the permissive post-Cold War consensus on international cooperation and by suggesting avenues for future work.[1]

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1   This chapter has been written before the Russian war against Ukraine.

Democratic Erosion and the Domestic Dimension

Since the flattening of the Third Wave of Democratization in the mid-2000s, concerns about democratic recessions have increased, underpinned by indices such as Freedom House, which states a consecutive decline in global freedom since 2006. However, much disagreement exists on how best to interpret this trend. Some speak of the decline and crisis of democracy (Freedom House 2017; 2018; 2019), while others question the assumption of a democratic rollback (Levitsky and Way 2010) or warn about alarmist tones and state that the current widespread pessimism presents an overly dramatic storyline (Carothers 2009; Skaaning and Jiménez 2017. While the hypothesis of a reverse wave is contentious (see also Skaaning 2020; Tomini 2021), the democratic regression of countries such as Russia, Venezuela, Turkey, Brazil and India present weighty cases due to their size and their geostrategic role. In addition, developments in Hungary and Poland have been startling, since it was in the group of post-socialist countries of Central and Eastern Europe that democratic consolidation was considered most successful and, also, because Hungary and Poland had been seen as two showcase countries for such consolidation. That a democratic regression could happen at all within the framework of the EU was as unexpected as the EU was unprepared for it.

For a long time, attention has focused more on the macro-structural perspective, that is, the extent to which a reverse wave is imminent or has already occurred. Less attention, however, has been paid to the course of democratic regression. In fact, the conceptual tools to capture this specific path, its logic and mechanisms, are lacking. Only in the 2010s were first approaches produced. Erdmann and Kneuer distinguish two routes of democratic decline and transition from democratic rule: "slow death," taking up Guillermo O'Donnell's (1995) term and referring to democratic erosion as incremental decay, and "rapid death," as a sudden breakdown of a regime relapsing into authoritarian rule (Erdmann and Kneuer 2011, 12). The work of Lust and Waldner (2015) and Bermeo (2016) established the notion of "democratic backsliding," followed by a proliferation of different concepts such as "democratic deconsolidation" (Foa and Mounk 2016), "de-democratization" (Bogaards 2018) and "death or end of democracy" (Levitsky and Ziblatt 2018; Runciman 2018).

While democratic backsliding is widely used, there are good arguments to prefer democratic erosion. Backsliding has been criticized because it insinuates a rather accidental, involuntary and unconscious reversal (Bogaards 2018 1482; Lührmann and Lindberg 2019, 1099). Moreover, backsliding implies a reversal to a previous state or historical precedent. This kind of backward linearity, however, can seldom be found (Kneuer 2021, 4). Looking at post-socialist

cases including Russia, they actually did not "slide back" into their previous socialist system, but rather into a different type of rule. Hence, the concept of democratic "erosion" is used here.

As I have argued elsewhere (Kneuer 2021), the metaphor of erosion implies that with the force of an agent, an existing structure is hollowed out and consequently deteriorates. Thus, the erosion agent actively weakens an existing democracy (a regime that fulfills the conditions of democracy for a certain time), which consequently experiences an incremental dismantling of its democratic structure. What the notion of erosion is able to express in a more pertinent way than backsliding is the driving factor for the process (an erosion agent), the object of the erosion (democracy) and the direction and nature of the process (gradual hollowing out). The term even indicates the outcome of the process: a shell as a remnant of the erosion process keeping up a façade of the former structure. This shell can be filled up with different kinds of new content (the "something else").

This understanding of democratic erosion attributes a critical role to agency and to opportunity as the erosion agent needs to get access to power, to have a sufficient scope of power and to remain in power. Thus, the specific propensity of democratic erosion has been described as a process that is initiated by a legally elected leader (Bermeo 2016; Lust and Waldner 2015; Haggard and Kaufman 2021; Kneuer 2021; Levitsky and Ziblatt 2018). What prototypical cases such as Venezuela under Hugo Chávez, Russia under Vladimir Putin, Turkey under Recep Tayyip Erdoğan, Hungary under Viktor Orbán and India under Narendra Modi display is that political leaders seek electoral victory, and thus popular legitimation, in order to then pursue their strategy of transforming the democracy according to their envisaged alternative model of rule. This approach involves two dangerous balancing acts. On the one hand, the eroding agents try to maintain the façade of legitimacy (as long as possible), which means domestically that they still need the support of the population and depend on re-election. On the other hand, they need a method for changing the democratic rules of the game without domestic political resistance becoming too great and thus disrupting the plan for democratic erosion. Open and strong resistance is what erosion agents must fear most because they must then drop their mask and resort to repressive measures. This, in turn, is something they would want to prevent for as long as possible.

To achieve this dual goal of democratic deconstruction without loss of domestic political support, erosion agents resort primarily to three mechanisms: a *sequenced approach*; *legalism*; and a *legitimizing narrative* that undergirds the transformation into an alternative model with an appealing ideology that is able to mobilize at least a large part of the citizens.

Sequencing

A critical logic of action deployed by the erosion agent is that they proceed in sequences when dismantling the democratic structures, processes and principles. I assume that erosion agents implement these changes neither in a contingent or arbitrary way nor in one strike (Kneuer 2021, 9–10). Looking at long-term cases such as Venezuela or Hungary, we can observe an evolutionary sequencing pattern starting with electoral victory (access to power), reconfiguration of the balance of power and the neutralizing of control instances, securing persistence in power as well as limiting political freedoms and civil rights. This kind of sequencing is a perfidious trait as it makes democratic erosion almost imperceptible (Levitsky and Ziblatt 2018, 6) because it lacks a visible starting point, which other routes of rapid death imply (coup, declaration of martial law, etc.). Often, it is only possible to know a posteriori that an incumbent is aiming at transforming the democratic country due to the incremental and sequential evolution of erosion. It is equally difficult to identify an endpoint to democratic erosion (Lust and Waldner 2015; Haggard and Kaufman 2021). Therefore, it makes sense to differentiate the outcomes of democratic erosion processes: democratic erosion can stop before a regime becomes autocratic or it passes the line. Once this happens, it does not make sense to speak of *democratic* erosion anymore, but rather of autocratic consolidation.

Legalism

Erosion agents play a "game of deception" (Lührmann and Lindberg 2019, 1108) as they strive to give a legal appearance to their transformation. For this reason, they attach great importance not only to coming into power legally, but also to remaining in power for as long as possible through more or less legal elections while, at the same time, safeguarding this with more or less legal laws that help to cement their claim to power. This can be, for example, the abolition of term limits in presidential regimes or the amendment of electoral laws. Most importantly, at some point, erosion agents need to reconfigure the balance of power and the institutional setting. The preferred method is "executive aggrandizement" (Bermeo 2016), constitutional rewriting and changing laws, which gradually weaken liberal democracy and accountability. In order to do so, they employ what Corrales (2015) refers to as "autocratic legalism," a concept based on the example of Venezuela, which identifies two features: first, the autocratic character is often not overt but buried among an array of clauses that empower citizens or other groups; and second, the constitution and laws that reconfigure the rules of the game have been enacted in a constitutional manner following the constitutionally sanctioned processes. Scheppele holds that legalism's requirements are simply formal insofar as the laws meet a positivist standard

for enactment as a technical matter, following the rules laid down and regardless of the content or the value commitment of the law (Scheppele 2018, 556, 562). In this way, the autocrats capitalize on the normative force of formal constitutional procedures in order to justify their actions.

Legitimizing Narrative

The erosion agent needs to mobilize the public and to persuade important parts of the political, economic, social and military elite in order to gain support from both the citizens and the relevant groups (Kneuer 2021). Often, these regimes "embody, pursue and propagate an attractive idea or mission ... that can count on international resonance" (Weyland 2017). This mobilization and persuasion transports the message of an innovative project (refounding the nation, a revolutionary project) and intensely promulgates the transformative mission by communicative means. For this purpose, the new autocrats use a wide array of predominantly discursive strategies to legitimize their project of transformation. Therefore, legitimation strategies continue to play a role when it then comes to the realization of the envisaged revolution or mission.

Summing up, democratic erosion encompasses the following propensities: it is (a) actor-driven by an erosion agent who intentionally strives to change the democratic rules of the game by expanding the executive competences, undermining horizontal and vertical accountability and also curtailing liberal rights; for this they use (b) a legal and legalistic approach and (c) an incremental and sequenced logic of action that (d) makes it difficult to identify the ongoing erosion process and – at any stage of the process – difficult to estimate its further development and its endpoint.

Democratic Erosion and the International Dimension

Based on the argument of liberalism, such a domestic process of transformation would also be reflected internationally. Hence, a first and basic assumption is that the preferences of the erosion agent and the guiding strategy for changing the rules of the game would be reflected in its foreign policy objectives and foreign policy behavior. Thus, the modified balance of power – in the sense of an excessively aggrandized executive, the centralization of decision-making in the head of government and its party as well as the limited influence of the legislative and other stakeholders in a majoritarian setting – would expand the incumbent's leeway for possibly formulating new foreign policy goals alongside the domestic project that the erosion agent is pursuing. Another assumption relates to the externalization of the erosion agent's behaviors or

patterns of behavior that result from the transformed power constellation. In this respect, the question is to what extent ideological or ideational strategies such as illiberal thinking, authoritarian governance styles or national-populist narratives affect foreign policy objectives and behavior. The more domestic projects of erosion are linked to ideological motives and narratives – as in the case of Chávez's Socialism of the 21st Century or Orbán's illiberal democracy – the more it can be expected that ideological principles also play a role in the transformation of the international system.

In order to examine the implications that democratic erosion as a specific path of autocratizing countries has for their international behavior and their foreign policy, this chapter suggests looking at each level of the international system, by breaking down the foreign policy behavior on the global, regional and bilateral levels.

Eroding Democracies: Challengers of the Liberal Order?

There is intense debate on the liberal international order and the increasing pressure on it.[2] An important finding in this debate is that the challenge to this order comes less from external forces than from within. Ikenberry speaks of threats to liberal internationalism that come from within the West itself (Ikenberry 2018). Eilstrup-Sangiovanni and Hofmann (2019) argue that the global order is transforming and that this is a change *within* the order and not a change *of* the order. And the interesting analysis of speeches in the UN General Assembly by Kentikelenis and Voeten (2020) supports this, concluding that the contestation during the Cold War between outsiders and insiders shifted into an inner contestation after 1990. Likewise, Lake, Martin and Risse (2021, 238) point to various challenges coming from within core states of the liberal international order that display nationalism, populism and authoritarianism. When these properties are present as a (partial) mixture, then it is a particularly problematic mélange.

It is not far-fetched to assume that the group of internal challengers precisely includes those countries that are in democratic erosion. This in turn leads to the question of how those countries' foreign policy behavior affects the global order. As Ikenberry (2018) argues, an exit or deliberate absence from the liberal international order is not a realistic option for most states. How, then, do governments in democratic erosion perceive their role in the global order and how do they influence it without exiting?

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2 See, inter alia, the Special Issue of International Organization 75, Special Issue 2 (Spring 2021), "Challenges to the Liberal International Order."

For a systematic perspective, the distinction by Lake, Martin and Risse (2021) dividing the liberal international order into three levels – economic level, political level and the level of international institutions – offers a useful framework. While economic liberalism implies mainly open markets and the free movement of goods and capital, political liberalism entails a liberal democratic political and economic system, but also the protection of human rights, of the rule of law and of freedom. Finally, liberal international institutions refer to multilateralism and collective security.

It stands to reason that the *political liberalism* aspect is the biggest problem for governments in democratic erosion. If, driven by an agent of erosion in power, a country begins to change the rules of the democratic game domestically, then it is logical that these rules would not be accepted at the global level either. However, the still dominant "liberal script" of the international community makes it difficult to openly declare oneself an autocrat. Not only are autocracies norm challengers, they are also incumbents in eroding democracies and, therefore, they need to engage in "image management" (Dukalskis 2021) to influence their perception abroad and protect their country against criticism. Therefore, and as long as exiting is not an option, the agent of erosion will most probably look for a strategy to save face while, at the same time, counterposing a different political model and thus challenging the hegemony of "Western" liberal democracy.

This strategy is used by many erosion agents and is reflected in the flagging of an alternative democracy model such as "participatory and protagonist democracy" (Chávez), "vertical" or "strong" democracy (Putin) and "illiberal democracy" (Orbán). The core idea of these declared different democratic models rests on being superior to the Western liberal model. Thus, Chávez clearly rejected the representative principle as "artifice from which our people have been dominated" (Chávez Frías 2014, 76) and as a charade that must be broken. Equally, he disdained the division of power as "disastrous legacy" (Chávez Frías 2009) while he claimed that the Venezuelan "participatory and protagonist" democracy would overcome the deficits of the Western model and be more inclusive and just. In a similar manner, Putin followed his ideologist Vladislav Surkov, especially between 2000 and 2008, and the idea of, first, "managed democracy" followed by "sovereign democracy" (Mandel 2006; Snyder 2018, 45–47), entailing a combination of liberal democratic principles, such as the rule of law and respect for freedoms and rights, and the principles of Russian uniqueness and patriotism. Sovereign democracy, in reality, reflects two doctrines: the primacy of sovereignty over democracy and the sovereign Russian democratic institutional development, which does not correspond to Western standards (Petrov 2005, 182). Whereas Chávez and Putin still referred

to democracy with attributes and thus argued with self-confidence for a claim to their own understanding of democracy, Orbán exposes his program openly as "illiberal" democracy (Orbán 2014).

This idiosyncratic approach often goes together with a more nationalist narrative, which can even be linked to a (re)foundational program. Thus, Chávez implemented the (re)foundation of Venezuela as the Fifth Bolivarian Republic; Orbán rewrote the Hungarian Constitution, deleting the term "republic" and placing the country in the tradition of King Stephan I while, at the same time, enshrining the "need for spiritual and intellectual renewal"; and the Kaczynski brothers, Jarosław and Lech, were already advocating for a (re)foundation of a new Fourth Republic in Poland in the 2000s.

These examples indicate that erosion agents, who drive an alternative model of rule domestically, mainly translate this into two aspects of their international behavior: on the one hand, they comply with the pro-democratic mindset of being keen to present the image of clean elections and functioning democratic institutions and to getting international recognition of their regime's values; on the other hand, erosion agents advocate or even antagonize liberal democracy in an assertive way, by calling it "Western" and making it an anti-hegemonic move that can be used domestically as a narrative of independence (Venezuela) or of sovereigntism (Russia). Thus, erosion agents seem to stick to democracy, the rule of law and human rights, but at the same time they claim to diversify the "Western" model, as it does not reflect the specificity of their history and culture. Therefore, this strategy can be labeled as "diversification."

On the *economic level*, tensions can arise if eroding democracies cling to or move back to the Westphalian order (Lake, Martin and Risse 2021). But equally here, as exit is not a realistic option, erosion agents would rather seek to diversify. One ingredient of the economic liberal order is US hegemony, which was questioned by Chávez in a quite confrontational way by demonizing the USA as imperialist. Strangely enough, this did not lead to a significant decrease in trade. At the same time, erosion agents can choose to develop closer relationships with nontraditional partners, thus deviating from the US-dominated model of the western hemisphere. This can also, and specifically, include states that are perceived as "pariahs" and that have not been natural partners in previous economic and trade relations. Thus, Venezuela intensified relations with Iran, although these countries share few commonalities or traditional bonds; they are only united by their antagonism toward the USA. In the case of Hungary, the Orbán government does not follow the foreign policy stance of the EU toward Russia and China. Orbán undertook a rapprochement with Russia, which materialized, for example, in the agreement with Rosatom to

build two Russian nuclear reactors in Hungary and in huge loans from Russian banks for that purpose. With his friendly relations with Russia and his permanent criticism of EU sanctions against Russia, Orbán clearly deviates from the general EU stance. More than that, he also steps out of line when it comes to EU – China relations. Thus, in May 2021, he vetoed a declaration of the Council of the EU condemning the new security laws in Hong Kong; the background here was beneficial Chinese investments in Hungary. In all, also on the economic level, we can observe diversification in the foreign policy rather than a radical change of course or exit.

With regard to *international institutions*, the issue is: What position do governments of eroding democracies take toward rule-based multilateralism as an important part of the global liberal order? Three tensions may arise. First, rule-based multilateralism implies the coordination of policies in order to find collective responses to policy problems. Recently, the permissive consensus on such coordinated policy solutions has decreased, especially in regard to issues that are increasingly perceived in a polarized way, such as migration or climate protection. The "transnational" cleavage within societies and political elites between a more cosmopolitan and transnational orientation on the one hand, and the protection of national values and the defense of national sovereignty on the other hand (Hooghe and Marks 2018; Kriesi et al. 2006), affects the attitude of autocratizing governments that domestically embrace a more nationalistic approach. This translates into skepticism toward policy coordination that would contradict these values such as an open-border policy for migrants. Actually, here we can even observe exit options taken when countries do withdraw from international regimes or do not join international agreements: examples are the USA under Donald Trump and Turkey under Erdoğan leaving the Kyoto Protocol; the USA and Brazil leaving the WHO during the COVID-19 pandemic; and the USA under Trump leaving the UN Human Rights Council. It is no coincidence that the countries that did not sign the UN Global Compact for Migration in 2018 also belong to the group of democracies in erosion: the USA, Brazil, Hungary, Poland and the Czech Republic.

This connects to a second tension, namely reluctance in relation to the pooling or delegation of authority (Lake, Martin and Risse 2021, 229; Hooghe and Marks 2018). Those erosion agents that domestically disseminate the narrative of national sovereignty (Basile and Mazzoleni 2019; de Spiegeleire et al. 2017) tend to advocate getting back control rather than delegating authority to supra- or international institutions. Political elites relying on a sovereigntist mindset would not reject multilateral cooperation completely. They would, however, strive to reduce the influence of supra- and international organizations and institutions. The most extreme expression of this sovereigntism was Brexit.

While the Polish and Hungarian governments are not interested in leaving the EU – taking into consideration cost-benefit calculations – they are, at the same time, not willing to accept the rules enshrined in the treaties and fundamental for the functioning of the EU. If sovereigntist and populist thinking marry, the result is a concept that focuses on the nation-state as the primary actor in international politics, strengthening national decision-making bodies, decentralizing the EU and reasserting national control over trade, the economy and other policies (de Spiegeleire et al. 2017, 75–76). This includes security policy; thus, when Turkey purchased the S-400 air-defense system, this manifested a defiance of the NATO alliance. An even stronger step, however, was that Trump openly questioned NATO per se and threatened to withdraw the USA from this alliance.

A third tension between the liberal international order and democratic erosion agents is related to the commitment to global governance. There is significant skepticism toward the idea of global governance, similar to that toward multilateralism. This is reflected in the development of a very different approach, namely multipolarity, that opposes both the unipolarity of the USA and the principle of global governance. Chávez and Putin are both decisive advocates of multipolarity. Thus, Chávez's foreign policy doctrine was based on a multipolar world, in which Venezuela would play an important regional role vis-à-vis the USA (Government of Venezuela, 2001). This approach can be interpreted as an attempt to enlarge the margin of international cooperation, acting through power diffusion and promoting new international blocs and renewed relations (Corrales and Romero 2013; Romero and Mijares 2016). Similarly, Russia strongly envisions the transformation of the global order. Thus, its Foreign Policy Strategy states as a fait accompli:

> The world is currently going through fundamental changes related to the emergence of a multipolar international system…. Globalization has led to the formation of new centers of economic and political power. Global power and development potential is becoming decentralized, and is shifting towards the Asia-Pacific Region, eroding the global economic and political dominance of the traditional western powers. Cultural and civilizational diversity of the world and the existence of multiple development models have been clearer than ever to establish a renewed regional hegemony. (Ministry of Foreign Affairs of the Russian Federation 2016).

India, likewise, and very much in line with Russia, not only supports the aim of a multipolar world, but Modi's understanding is that multipolarity has already become the new pattern. Beyond this declarative level, the search for

transforming the global order and undermining international institutionalism results in activities of region-building, which will be discussed in more detail in the next section. Regarding the stance of erosion agents toward international institutions, we can observe, again, a certain strategy of diversification, whereas the exit option, that is, leaving an international organization or regime, has already been chosen in several cases.

Summing up, on the political and the economic level, countries with governments engaged in democratic erosion tend to diversify rather than to exit from the liberal international order, whereas they clearly show counter-hegemonic approaches that do influence their foreign policy behavior. Exit is still not the regular option, but it has been chosen in some cases.

Counter-hegemonic Regionalism: Challenging Political Liberalism and International Institutionalism?

Looking at the regional level, regime-boosting regionalism has become a method increasingly used by authoritarian-minded political leaders. Studies on Russia and China and the Shanghai Cooperation Organisation (SCO) (Ambrosio 2008; Libman and Obydenkova 2018; Obydenkova and Libman 2019; Russo and Stoddard 2018), but also on Latin America (Riggirozzi and Tussie 2012) and second- or third-tier countries such as Venezuela and ALBA (Bolivarian Alliance for the Peoples of Our America) (Muhr 2011) and Zimbabwe and SADC (Southern African Development Community) (Debre 2021), demonstrate that protagonists – or authoritarian gravity centers – exploit regional organizations (ROs) as an instrument to influence their geographical proximity (Kneuer et al. 2019). What can be observed is that countries such as Russia either strengthen and shape existing regional organizations (such as the SCO) or they find new ones, as Russia did in the case of the Eurasian Economic Union (EEU) in 2015 or Venezuela when creating ALBA in 2004, thereby gathering like-minded allies.

The motives for this authoritarian regionalism are manifold. On the one hand, ROs provide the opportunity to diversify partners and markets for export or trade. On the other hand, material motives are complemented by ideational reasons. Such ROs, and even more so if they are self-created in a region-building effort, can be used as part of a legitimizing narrative by the government insofar as they can mirror the domestic ideological project and raise domestic legitimacy (Libman and Obydenkova 2018). Thus, formulating new policy goals, such as regional cooperation, or anti-Western discourse that finds popular support at home, can generate internal legitimation. Additionally, Chávez deliberately nurtured a regional regime identity by suggesting a superiority vis-à-vis "Western" alternatives (Kneuer et al. 2019). More than that, if ROs project a counter-hegemonic goal as in the cases of the SCO, the EEU or ALBA,

the aim is to undermine the hemispheric international institutionalism and foster the creation of a new institutional architecture (Riggirozzi and Tussie 2012; Hirst 2012; Romero and Mijares 2016).

It is no coincidence that such region-building projects were initiated by erosion agents, who strive to transform their regimes toward authoritarianism. Their regional ambitions target the political and economic levels of the liberal global order, but also the institutional one. The "newly found room for maneuver of regional agency" (Kneuer et al. 2019, 454) serves as a veil for distributing counter-practices and counter-norms of democracy, but it also appeases international democracy promoters that put pressure on those countries, which, in turn, constrain internal and external challengers (Debre 2021, 397).

Looking at Turkey under Erdoğan, we can observe a change in the regional policy goals embedded in the ideological vision of the political elite. The idea of diversification consequently decreased the Western orientation and led to a greater role in the Middle East, extending ties to the Balkans, the Caucasus and Central Asia and advocating a Neo-Ottomanism. In all, Turkey changed from a role model to a "problem maker" in the region (Hammargren 2018; Meral and Paris 2010).

Overall, the common denominator of erosion agents' regional foreign policy appears to be the claim of an assertive autonomy alongside their domestic political project. These counter- or post-hegemonic efforts of region-building are prone to challenge the international institutional order.

Erosion Agents and Their Neighbors: Influencing the Geographical Proximity

Democratization studies have proven the salience of the regional context for regime change (Gleditsch 2002; Gleditsch and Ward 2006; Mainwaring and Pérez-Liñán 2005; Pevehouse 2005; Weijnert 2014). As Gleditsch and Ward (2006, 930) point out, "[n]ot only are regimes generally similar within regions, but there is also a strong tendency for transitions to impart a regional convergence." Thus, spatial proximity and established networks between countries are robust predictors of democratic growth (Weijnert 2014, 246). Such processes of convergence can also be observed in regard to authoritarian spatial clusters (for the Middle East, see Zumbrägel 2020; Vanderhill 2020; for Latin America, see Kneuer 2020). Indeed, foreign policy seems to gain relevance as an additional instrument of autocratic power consolidation. The fact that autocracies may be geographically surrounded by "gray zone" regimes (neither fully consolidated democracies nor fully consolidated autocracies or hybrid regimes) may motivate autocracies to prevent liberalization and progression toward democracy (von Soest 2015; Whitehead 2014) and even to export their

own autocratic governance model in the form of autocracy promotion (for China, see Bader 2015). But what about eroding democracies? Are their governments interested in influencing their environment, and how would this translate into foreign policy goals and behavior? This certainly depends on the regional regime context itself. It would be rather difficult for a government of a liberal democracy, in the process of erosion, to influence a regional context of liberal democracies, whereas the prospects will be different if a deficient democracy or a hybrid regime is surrounded by "gray zone regimes" that are more susceptible or even vulnerable to external influences.

The example of Venezuela under Chávez shows that an attractive ideological "package" and incentives via petro-diplomacy are essential factors for disseminating elements that belong to the tool kit of democratic erosion: constitutional rewriting, lifting of presidential term limits, curbing horizontal accountability and media control (Coppedge 2017; Corrales 2011; Kneuer 2020; 2021; Romero 2011). The strategy that Chávez followed with regard to Bolivia and Ecuador was to (a) empower aspiring like-minded leaders not yet in office (Evo Morales and Rafael Correa), and (b) at the moment they are elected, to export his "alternative" model of political rule by actively promoting those elements that would equally lead to a regime transformation away from democracy (Kneuer 2021). Interestingly, the Venezuelan case also demonstrates the dissemination of economic models (the nationalization of resources) and security models (the civil-military alliance). Likewise, Russia has been interested in influencing elections by providing external assistance, which increases the chances of "winning" elections in authoritarian settings – what Tolstrup (2015) calls "black knight election bolstering" – by exporting techniques of countervailing pressure from foreign democracy promoters or limiting media and internet freedom.

If we want to transfer the hypothesis of regime convergence in regional contexts to the foreign policy of eroding democracies, there are still several challenges. First, the "as-of-yet not fully explored" autocracy promotion research is not directly transferable, because the outcome (autocratization or not) may still be open for eroding democracies. Second, autocracy promotion is not a one-way street, but an interactive relationship in which the goals and strategic preferences of the "target state" also count. Third, there might be competing powers. In Eastern Europe, Russia and the EU are regime competitors regarding Belarus, Ukraine, Moldova and the Caucasus.

Another set of tensions can arise from changed foreign policy behavior of eroding democracies and the reactions of their liberal democratic neighbors. In fact, such interfaces – erosion agents with new foreign policy goals here and liberal democracies there – can indeed tip the balance of long-standing

bilateral relations and put strain on traditional friendships (see the USA under Trump and Canada) or even create conflicts. Thus, Orbán's Hungary not only provokes Slovakia with its nationalist tones, but also challenges the EU as a whole and its value basis, leading to confrontations with EU organs and EU law. In Latin America, the dichotomy between Colombia's pro-USA stance in its free-trade treaties and Chávez's anti-USA position led to a deep conflict between the two neighbors, including quasi-military activity (e.g., when Colombia accused Venezuela of providing a safe haven for the Colombian FARC guerilla group).

Overall, it is not far-fetched to assume that a situation where erosion agents are surrounded by liberal democracies creates tensions, especially if long-standing foreign policy positions are modified, good neighborly relations are challenged and a conflictual development is hazarded. Therefore, regarding the bilateral level of foreign policy behavior, it is critical to distinguish the different possible settings, that is, whether the environment is dominated by liberal democracies being eroded or whether the environment is rather shaped by deficient democracies or hybrid regimes that might be targets of deliberate influence by the eroding democracy.

Conclusion

The foreign policy behavior of democracies in erosion is a very recent and thus widely under-researched issue. Its characteristics – especially the legal disguise of the incumbent's changing of the "rules of the game," the incrementality of democratic erosion and the legitimizing narrative – pose a challenge to the domestic audience, but also to the international sphere and to multilateralism in general. This chapter suggests a basic framework on how to approach a systematic analysis, that is, to look at the global, regional and bilateral levels. At the global level, three dimensions appear to be relevant where governments of eroding democracies challenge the liberal international order: political liberalism, economic liberalism and multilateral institutions.

The explorative study of these three levels showed that with regard to political and economic liberalism, the pursuit of diversification seems to be a common trait of the foreign policy of eroding democracies. What particularly concerns multilateralism and global governance, however, is that while governments in eroding democracies also diversify (advocating for counter-hegemonic region-building), they are more prone to also choose the exit option (withdrawing from international institutions). Hence, eroding democracies challenge rule-based multilateralism and might perforate the

permissive post-Cold War consensus on international cooperation. This can produce increasing difficulties, especially when coping with global tasks such as climate change and migration. Moreover, the COVID-19 pandemic does not seem to have frozen or reversed these effects so far. One aspect that needs further examination is the conditions under which erosion agents tend to diversify, and when and why they choose the exit option.

This chapter focused on the protagonist political leaders in countries where democratic erosion evolves, a typically actor-driven process where the incumbent plays a critical role. In order to gain a better understanding of the internal dynamics of foreign policy formulation, other actors and the audience need to be included in the analysis: the opposition, military, civil society and others. This is especially important as erosion agents strongly depend on popular support and, therefore, rely on legitimation strategies that they consider conducive to generating this domestic acceptance and allegiance. As other studies show, there is an interplay between domestic and external legitimation (Kneuer 2017; Dukalskis 2021). Therefore, future work may explore more closely how erosion agents exploit foreign policy activity for domestic legitimation and whether this actually works or is contested by relevant domestic actors.

Looking at the foreign policy of erosion agents has further revealed a fundamental tension, or even contradiction, between the domestic logic of action – centralization of power in the hands of the executive – and the foreign policy approach, which seeks decentralization of international power. This contradiction, which Romero and Mijares (2016) found for Venezuela, is worth examining. In this respect, political leaders are confronted with the problem of concentrating power in their countries, reducing instances of control and negating participation on the one hand, while, at the same time, boasting domestically about opposing a hegemonic world order and seeking support for it.

Finally, an additional hypothesis that needs to be further studied is the war proneness of eroding democracies. One could assume that the fact that a government is seeking to implement a new model of rule would also make foreign policymaking more fluid and less reliable. Findings from comparative politics have pointed to the fact that intermediate regimes – democracies in consolidation, deficient democracies or hybrid regimes – tend to be more fragile and vulnerable. Studies of international relations come to a very similar conclusion with regard to the war proneness of democratizing and autocratizing countries. Thus, the rich literature, which tested the democratic peace theory, provides us with findings about the behavior of countries changing their regime. Studies show that autocratizing countries are more likely to fight wars than are stable autocracies (Mansfield and Snyder 1995, 35) and that intermediate regimes are most prone to civil wars (Hegre et al. 2001). Moreover, Gleditsch and Ward (1998, 58) find that reversals toward greater levels of autocracy not

only increase the probability of war involvement but are even riskier than progress toward democracy. The authors detect an important factor that influences this process, namely how linear the process is. The smoother the change, the lower the risk of war. Thus, there is a need for testing whether eroding democracies entail an increased risk of conflict or war.

To translate these findings into the foreign policy behavior of governments in processes of democratic erosion: Governments involved in processes of democratic erosion would not be expected, due to the linear and incremental evolution of such processes, to take drastic decisions unless they are domestically confronted with contestations to which they would react with diversionary and rally-around-the-flag actions. This leads to the open question whether the foreign policy behavior of erosion agents is more strategic or more erratic.

Both of the last open questions are highly relevant for policy-makers and practitioners, as well as for policy recommendations, and point to the most problematic property of the incrementality of democratic erosion: At what point can external actors actually recognize that they are dealing with a democracy in erosion?

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International Multilateral Trade Governance

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Multilateralism, Interdependence and Globalization

Michèle Rioux

Abstract

This chapter contextualizes multilateralism historically and in today's world. It discusses the importance of redefining the concepts of market economy, competition and hidden protectionism. If the WTO should act as an umbrella institution, it is unclear that it can evolve to succeed in this endeavor.

The first part of the chapter will distinguish three historical periods and a new one that is characterized by many new issues. The second part will discuss the role of the WTO and the most important issues that might lead to its marginalization as a core multilateral organization of the world economic system.

Introduction

There are many obstacles to multilateralism that might even pave the way to its marginalization, notable unilateral actions, a crisis of its underlying value system and populism (Rioux 2021). Yet those obstacles are also signs of a possible evolution of multilateralism that might offer new trajectories for institutions and world politics. Multilateralism has evolved over time, and not only in a soft and linear way, as two world wars shaped its different forms.

This chapter discusses three concepts in international studies: multilateralism, interdependence and globalization. It addresses the structural changes that have affected the dynamics of multilateralism in order to understand

what distinguishes it from, and what links can be drawn with, the phenomena of international interdependence and globalization. This chapter distinguishes the different forms of multilateralism from a historical perspective, from the beginning of the 19th century up to the present. It is structured to follow the three distinct periods in which multilateralism declined and to evaluate the dynamics of the articulation of collective action by following important moments in the attempt to reach beyond national systems.

The first phase of multilateralism saw the emergence of international cooperation to ensure political peace between sovereign and independent nations. The second period is that of the great evolution of multilateralism, catalyzed by the dynamics of international interdependence between 1945 and 1975, which were profoundly impacted by the painful disintegration of international political and economic systems between 1929 and 1945. The third phase is characterized by multilateralism in the era of globalization, which forces us to go beyond the liberal internationalism institutionalized in the international organizations (IOs) of the 20th century. Its explicit manifestation is found in the United Nations system and its specialized agencies. In conclusion, this chapter will identify the challenges of multilateral collective action in the 21st century, while considering the COVID-19 pandemic and its impacts.

Multilateralism 1.0: Nationalisms and the Imperative of Security and Independence of Nations

Initially, while the development of nation-states led to rivalries between imperialist powers that ended in two world wars, the international order was built around the principle of sovereignty, derived from the concept of collective security (Gerbet, Ghebali and Mouton 1973). From the 19th century until the Second World War, multilateral collective action essentially took three forms:

– International diplomacy aimed at establishing and enforcing the principle of sovereignty in order to ensure national security (Concert of Europe and League of Nations).
– International law to manage disputes (The Hague Conference of 1899, which led to the adoption of the Convention for the Pacific Settlement of International Disputes, as well as that of 1907, where delegates unanimously accepted the principle of compulsory arbitration).
– International technical cooperation with the creation of several administrative unions and permanent international commissions, which linked the technical and administrative systems of nations, while allowing them to remain formally independent from one another.

At the beginning of the 20th century, a consensus emerged around the proposal of the President of the United States, Woodrow Wilson, to create a "general association of nations ... for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike."[1] The principles of national sovereignty and independence were institutionalized in an increasingly multilateral legal framework. The concept of collective security became a central pillar of this framework and had far-reaching consequences: States recognized that their sovereignty and integrity were based on collective action against any threat to world peace.

Despite its limitations, multilateralism extended beyond the technical and political realms (Moreau Defarges 2004). Emphasis was placed on the avoidance of military conflicts, but one cannot neglect to mention other areas of multilateral collective action, such as the field of labor (with the creation of the International Labour Organization (ILO)), communications (postal services, telecommunications), as well as standardization, intellectual property and patents in relation to the accelerating process of industrialization. The ILO survived not only the economic crisis of the 1930s but also the Second World War, and it celebrated its centenary in 2019. As for the League of Nations, created in 1919 by the Treaty of Versailles, it experienced a difficult period from the outset due to the difficulties of consensus decision-making, the isolation of Germany and the notable absence of some countries, including the USA, which had played a central role in its creation. Many countries soon left the organization, and the initial optimism gradually gave way to growing collective insecurity. This phenomenon, exacerbated by the economic crisis of the 1930s and by rivalries between nations with imperialist aims, led to the demise of the League of Nations.

Multilateralism 1.0 was not up to the challenges of its time, which initiated a process of international disintegration that undermined international relations and exacerbated international rivalries and conflicts (Kindleberger 1973). Although this first phase of multilateralism may have failed completely in practice, it did provide valuable lessons regarding multilateral collective action for the future.

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1   President Wilson's Message to Congress, January 8, 1918; Records of the United States Senate; Record Group 46; Records of the United States Senate; National Archives.

Multilateralism 2.0: Managing International Interdependencies and the Rule of Law in Political, Economic and Social Affairs

Multilateralism 2.0 emerged from the ashes of the League of Nations to create an entirely new basis for international cooperation (Emmerij, Jolly and Weiss 2003).[2] Combining a pragmatic realism, by granting a veto to the great powers that had prevailed in the second great world conflict, and an ambitious idealism regarding everything that touched on economic and social issues, international cooperation developed very rapidly. The creation of the United Nations brought about three notable changes in international cooperation: the use of the rule of law, the principle of equality of states (except in the Security Council) and the expansion of cooperation to areas of public policy such as education, science, currencies and finance, trade, development, culture and health.

The democratic principle was replicated at the international level, just like the principles of functionality and solidarity. Krasner (1983) defined multilateral cooperation as a set of principles, norms and rules or decision-making procedures around which actors' expectations converge in an issue area. Keohane (1990, 732) defined multilateralism as a practice of coordinating national policies for a group of three or more states. Ruggie (1992) defined multilateralism in the same way as Keohane, while identifying some important elements: three or more states cooperating according to a code of conduct that is "indivisible" and that ensures diffuse reciprocity. The idea that multilateralism consists in cooperation between more than three states seemed necessary.

Spirit counts more than numbers. In fact, the multilateral system that took shape after the Second World War was based on a unilateral and bilateral approach by the architects of the post-war order, the USA. The Reciprocal Trade Act (1934) of the United States inspired several trade agreements and the famous General Agreement on Tariffs and Trade (GATT), which institutionalized the "most favored nation (MFN)" principle, which meant that if two states parties to the GATT granted each other a mutual concession, it had to be extended to all other parties. The USA truly turned its back on isolationism and played a hegemonic role in the new international system.

The rule of law, the use of institutionalized dispute settlement mechanisms and widespread reciprocity form the basis of a pragmatic and progressive liberal internationalism aimed at the predictability and stability of a democratic international order ensuring the primacy of human rights. The UN system, with the Bretton Woods institutions (the IMF and the World Bank), led to ambitious objectives in international cooperation that engaged states in a

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2   This section is based on the introduction to Rioux and Fontaine-Skronski (2015).

dynamic of management of international interdependencies, which constituted an evolution from the imperative of national security and independence prevailing in multilateralism 1.0. Although a "world" policy system was never envisioned (because IOs generally referred to the application of national policies and measures), coordination and joint efforts in collective action were nonetheless effectively developed in a very fractured world (between East/West and South/North divides).

The reconstruction of the economy was based on the simple principle of a community of nations governed by the rule of law and bound together by trade. The goal of liberal internationalism was to combine sovereignty and interventionism, at both the national and the international levels, which meant that economic freedom would be subordinated to the goals of economic stability and social justice (Eichengreen and Kenen 1994).

Nonetheless, multilateralism 2.0 encountered two major difficulties. First, inequalities between states (meaning that, even if they claimed to be equal, multilateralism could not erase inequalities in development and power) remained. Indeed, although the system aimed to be universal and to integrate all states into the same "undivided" international order, a strong Western-centric perspective, in geopolitical and economic terms, prevailed. The second and perhaps most important challenge came from the structural changes inherent to globalization, which were (and will continue to be) increasingly deregulated to promote the rise of influential and powerful private actors.

Multilateralism 2.0 eroded in the 1980s and 1990s as the Bretton Woods institutions and the USA underwent an ideological shift, from a dynamic of international interdependence to one of globalization, based on the shrinking of state interventions. National systems became integrated into an increasingly deregulated global capitalism. A neoliberal ideological shift and the promotion of unfettered globalization by the USA fostered the emergence of a global governance oriented toward the withdrawal of states and the involvement of global firms in the definition of global rules, norms and standards. In this new world, managing international interdependencies is no longer sufficient (Graz 2004).

Multilateralism 3.0: The Challenges of the Global Governance of Interconnections in a Context of Globalization

The structural changes linked to globalization and digitalization processes constitute major adjustment challenges for IOs and the international community. In a world of interconnectedness, it is no longer a matter of managing interdependencies through national policy coordination. Going beyond

multilateralism 2.0 means considering the rise of new actors that are some-times more powerful than states. Some have introduced the concept of global governance (Rosenau 1995), while others evoke the concepts of polylateralism (Lamy 2015), network governance and transnational or multilevel regulation (Djelic and Quack 2018; Drahos 2014). What these concepts have in common is that they tend to take into account the plurality of actors and centers of governance that characterize multilateralism 3.0.

The challenge is to grasp the dynamics and results of these multiplied actions, and the logics of cooperation and rivalry that are deployed to structure globalization and its regulations. Overcoming this difficulty also implies the growing importance of regulatory and political cooperation. Multilateralism is changing in nature: it is agreed that states can, and often must, regulate, if only to ensure healthy conditions of competition or to achieve public policy objectives. Pascal Lamy evokes the notion of "precautionism" to distinguish interventions aimed at activating the precautionary principle from those with protectionist objectives. The issue remains to define the rules that will allow actors to agree on the definitions of market economy and "fair" competition.

Another challenge of multilateralism 3.0 is to make an accelerated transition to a dynamic that is in line with the imperatives of current global issues, such as ecological and digital transitions. The ecological transition requires a review of the foundations of both international cooperation and public policies, in all countries of the world. However, there is currently no IO responsible for organizing the efforts of the global community in this direction. Digital technology is also a revealing and accelerating force for positive and negative changes that states, and even less so IOs or large private companies, do not yet grasp. This will have to be achieved in order to activate a multilateral cooperation that can manage the opportunities and threats that arise from technological changes.

On the issues of GAFA (Google, Amazon, Facebook, Apple) regulation, mul-tilateral action is slow, and rivalries between the USA and China, which are both looking to defend their companies, have a spillover effect on the rest of the world. The COVID-19 pandemic has had an accelerating effect on structural change, which in turn reveals and amplifies the challenges of multilateralism 3.0. The current issue of the distribution of vaccines and the post-COVID-19 global economic recovery will define the forms that multilateralism will take, and how its practice will be articulated on large and small scales. The issues of climate change and cybersecurity require a flexible multilateralism that is open to a plurality of actors, where states cooperate to provide global public goods without necessarily creating a rigid framework in terms of national policies (Van Langenhove, 2011). At the same time, Lamy (2015, p. 5) reminds us that

nations will only be less disunited if more values unite them, which is a prerequisite for the recognition, and therefore the existence, of a supranational power, as we Europeans know. Then, finally, we will be able to speak without lying about the "International Community".[3]

Conclusion

We have discussed three historical configurations of multilateralism: (1) the national configuration and mercantilism; (2) the international configuration and the management of trade interdependencies; and (3) the global configuration, that of market integration, the borderless world and the transnational firm, which implies new institutional trajectories.

International organizations are particular forms of institutional arrangements that are currently facing complex challenges in regulating the world system. These challenges are multiple; they have various dimensions (political, economic, legal, social, cultural and environmental) and they are differentiated according to the distinct perspectives of a plurality of international actors, whether they be states, firms or civil society organizations. If IOs are socially and historically constructed organizations, they also reflect the arbitration and power relations that allow for the institutionalization of an order whose stability depends fundamentally on its capacity to respond to new challenges and, above all, to adjust to changes.

Although multilateral IOs are now facing a crisis of multilateralism, they are following a resilient institutional trajectory that could allow them to evolve and adapt. As Devin (2016) points out, IOs are always on the move: they are in constant transformation. However, sometimes shifts happen that cause organizations to disappear or find themselves marginalized, which impacts their effectiveness, credibility and legitimacy. International organizations are rooted in history, which can never be fixed. Contexts and systems evolve and change, and now the transformations brought about by globalization present IOs with the major challenge of demonstrating their relevance and capacity to adjust (Ruggie 2003).

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3 En français : Les nations, au fond, ne seront moins désunies que si davantage de valeurs les unissent, condition préalable à la reconnaissance, donc à l'existence d'un pouvoir supranational, comme nous, les Européens, le savons. On pourra alors, enfin, parler sans mentir de la « Communauté internationale ».

There are many unknowns about how new institutional trajectories will emerge in a world that is increasingly intertwined, technologically advanced and undermined by the effects of a change-accelerating pandemic. The ongoing transformations and their impacts on institutions, old and new, are silently charting the future of multilateralism. According to the Paris Peace Forum (Livre Blanc du Forum de Paris pour la Paix 2021, 4), "[m]ore than a rupture, the COVID-19 shock has acted as a gas pedal and amplifier of pre-existing political trends. In terms of international politics, multilateralism was the first casualty." Most states have preferred to go about managing the crisis alone, and corporations, while they must be involved and responsible in many ways, cannot organize the world and respond to issues that are beyond their control and their commercial interests.

New institutional trajectories are emerging in relation to the need for multilateralism to evolve in line with the dynamics of the transformations of capitalism in the early 21st century (Rioux and Fontaine-Skronski 2015). The challenge is to find a form of multilateralism that will provide channels for multilateral cooperation, bringing states, businesses and civil society organizations into action, and that will develop an interconnectedness addressing the structural changes of capitalism in relation to globalization, digitalization and the COVID-19 pandemic from an ecological transition perspective. If this is not achieved, the world could face a period of deglobalization, with effects even more devastating than those of globalization. Finding the right balance will be difficult but the pandemic has, paradoxically, exacerbated and accelerated changes that might lead the world toward new responses that will shape the new face of multilateral collective action.

Acknowledgments

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The Gradual and Uneven Consolidation of an International Investment Protection Regime Decoupled from Multilateral Economic Organizations

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Abstract

Can we speak of a rule of law in the multilateral system of trade and investment? This chapter focuses on a contemporary analysis of the rule of law, one that has strayed from its original purpose: to ensure that the equality of any individual or government prevails, before the law. By this, we mean a rule of law that is increasingly being used selectively to favor the interests of certain governments and companies over others.

This analysis examines how the original subject of the rule of law, that is, the individual, has been replaced by economic entities personified in corporations and how the agreements for the protection of foreign investment are the most useful instrument for companies to discipline the self-determination of governments.

Keywords

trade multilateralism – foreign investment protection regime – foreign direct investment – bilateral investment treaties – free-trade agreements – international investment agreements – investor state disputes settlement – commerce and navigation agreements – multinational corporations – NAFTA – UNCTAD – ICSID – GATT – WTO – OECD

Introduction

This chapter seeks to reconstruct, from a perspective that goes beyond the issues traditionally linked to trade multilateralism, what the meaning has been of the countless attempts to build an international regime to protect

foreign investment, which was initially conceived as a core part of the economic multilateralism of the post-Second World War period.

At the end of the 1940s, the multilateralism proposed under the United Nations approach by international economic institutions considered that all matters related to the free movement of trade and investment should be regulated within a single multilateral institution. However, over the past 75 years, multilateralism has turned out to be more institutionally effective in terms of trade, while it has faced serious difficulties in achieving multilateral management related to foreign investment movements and their consequent protection in the host countries. The failure of the original idea – to create a single institution that would handle trade and investment in a sort of tandem – must be attributed to the discrepancy between governments regarding the adoption of a free trade or protectionist economic and political project, but also to the margin of maneuver claimed by governments regarding the rights of self-determination vis-à-vis the attributions of foreign investment conceived to protect the enterprises' operations.

In this work, we propose to analyze, through a long-term timeline, the international institutionalization of foreign investment protection as the result of over 62 years of implementing a series of standards and strategies jointly designed from the beginning by companies, international organizations and the governments of the major capitalist countries, particularly the United States and the most powerful European countries who were victors in the Second World War. This process illustrates how corporations succeeded in incorporating their own interests and business vision into an interwoven network of conventions, agreements, treaties and international arbitration bodies that, as a whole, would later be known as a customary transnational law on investment.

For that reason, this analysis seeks to reconstruct, from a perspective linked to the more traditional issues of multilateralism, what the staple meaning has been of the numerous attempts to establish a single international investment protection regime, when, in fact, initially there were major attempts to regulate foreign trade and investment within a multilateral formula. In fact, the multilateral nature of the foreign investment protection agreements only began to take shape when they became a chapter on investment in free trade agreements (FTAs), as was the case with the North American Free Trade Agreement (NAFTA) in 1992. Nevertheless, bilateral investment agreements continue to be negotiated in parallel with FTAs, as has happened since 1959 when the first bilateral foreign investment protection agreement between Germany and Pakistan was implemented.

In order to move forward, three instruments were created sequentially and have operated functionally in line with corporate interests: bilateral investment treaties (BITS), FTAS with a chapter on foreign investment protection, and the investor – state dispute settlement (ISDS), an extraterritorial arbitration mechanism linked to the previous instruments. All the instruments conceived to protect foreign investment share certain features that have established a pattern that has not shifted since 1959, when the first BIT was signed. Roughly speaking, these are: (a) investors can directly sue a government receiving foreign investment; (b) state – state investment disputes are replaced by supranational arbitration; (c) international law can be applied to foreign investor – state relationships; and (d) in case of a dispute, exhaustion of local legal remedies may be excluded: the company can directly resort to international arbitration against a government and ignore national instances.

This chapter intends to respond to how, why and for what purpose economic development and public policies have been, and continue to be, formulated to a great extent based on these instruments, when empirical evidence has shown that there is no correlation between the number of BITS and FTAS negotiated and the amount of foreign direct investment (FDI) flows a country receives. Consequently, implementing such instruments ultimately means that these tools and their ISDS do not necessarily lead to more investment or development as such.

This chapter devotes part of its analysis to Latin America, as this region has registered a substantial number of corporate – state investment disputes since the mid-1990s. This area has also faced aggressive corporate lawsuits resulting in large compensation payments. Latin America has been a test tube for international investment arbitration and has become an international benchmark when negotiating BITS or FTAS elsewhere. Many of the investor – state arbitration changes made by governments outside the region when revising or negotiating their treaties were inspired by the Latin American experience. The reforms undertaken at the United Nations Conference on Trade and Development (UNCTAD) since 2014 and at the International Centre for the Settlement of International Disputes (ICSID) from 2019 have been the result of the enormous pressure of various countries, including some in Latin America, that have exerted considerable efforts to induce these changes.

The chapter comprises three lines of analysis. The first one considers the role the USA has played in creating the aforementioned instruments. Therefore, it examines how it has established a benchmark for the observance of FDI protection rules. This section also analyzes how international organizations have created an institutional response to the US government's and multinational

corporations' (MNCS) interests to impose the universality of a series of rules that, making use of international economic law, regulate and discipline FDI recipient countries' actions, particularly in terms of their national regulatory frameworks. The subsequent line of analysis examines the strategies that governments of developing countries have adopted individually and/or collectively to resolve the lawsuits stemming from state – company conflicts. It also outlines the approach that Latin American countries have designed to accommodate, neutralize and even annul the implementation of these instruments. This section also examines how the right of governments to self-determination is implicitly associated with these instruments. Lastly, the third line of analysis provides insights on how international economic governance transgresses the right of states to implement their own development policies through FDI protection provisions contained in BITS and FTAS.

Trying to Give a Structure of Its Own to Government – Corporation Relations with Regard to Foreign Investment

The focus that international economic governance has given to the series of rules regulating FDI protection has always been linked to the transformation of the structure and behavior of the MNCS. According to the UNCTAD World Investment Report 2015, the evolution of the regulations protecting FDI comprised at least four stages before 2021. The first phase occurred from the mid-1950s to 1964, during the Cold War. Before 1950, disputes were resolved by resorting to customary international law, but an increase in investment disputes showed the limitations of effective investment protection under customary law, especially because there was no proper mechanism to protect foreign capital. A major event in this regard was the nationalization of the Suez Canal in 1956 and the proliferation of state companies that took over the exploitation of natural resources, particularly in less developed countries, therefore affecting FDI interests (Gutiérrez Haces 2015, 28). During this period, 37 international investment agreements (IIAS) were signed. At this stage, the bets offered relative protection to foreign investors because the BITS did not yet have an extraterritorial arbitration mechanism, as would later be the case.

The second stage runs from 1965 to 1989 and coincides with the take-off of MNCS in the 1970s. In this phase, the number of IIAS increased to 377 and the first company – state lawsuit under the ISDS emerged out of the Netherlands – Indonesia BIT in 1968. Two aspects stand out in this period: the first refers to the rise of investor protection rules, thanks to the creation of ISDS and of codes of conduct to protect investors. The second aspect is about the emergence of other arbitration instances such as ICSID in 1965 and the UN Commission on

International Trade Law (UNCITRAL) in 1966. This period saw the creation of the Draft UN Code of Conduct on TNCs [transnational corporations] (1973–1993) and the OECD Guidelines for MNCs (1976).

To confront the empowerment process of MNCs vis-à-vis the capital recipient governments, there was a multilateral attempt to strengthen state sovereignty. During this period the UN presented three resolutions to respond to the situation: the UN Resolution on Permanent Sovereignty over Natural Resources (1962); the Declaration on the Establishment of the New International Economic Order (NIEO) (1974); and the Draft UN Code of Conduct on Transfer of Technology (1974–1985).

The third period in the construction of a foreign investment protection regime was from 1990 to 2007. It was characterized by an active international consensus on the intrinsic value of FDI and the support of developed countries for the regulatory protection system. An exacerbated proliferation of IIAs characterized this stage, with over 2,000 agreements ratified. This impacted on the outcome of the General Agreement on Tariffs and Trade (GATT) Uruguay Round (1986–1994), which included agreements associating trade with investment protection mechanisms, acknowledging the connection between trade and investment under the premise that a great deal of trade was performed between MNCs and their affiliates. This served as an inspiration to execute bilateral, regional or plurilateral agreements that followed the same parameters. The inaugural agreement and template in this phase was NAFTA (1992–2020), an FTA that included a long, detailed chapter on investment, with protection rules similar to those contained in previous BITs signed by the USA and an aggressive extraterritorial arbitration mechanism, the ISDS. NAFTA was more exhaustive than a BIT in many respects, in particular in its fully comprehensive definition of investment.

This agreement was the first to introduce and contain a binding ISDS for the USA, Mexico and Canada through Chapter 11. Additionally, it provided that all compensation resulting from a company – government dispute would have to be preferably paid in US dollars.[1] These aspects, together with the incentive provided by US participation, triggered a wave of FTA and BIT negotiations, which changed the correlation of strength between multinationals and host governments, especially when they saw the potential of an ISDS affixed to a trade agreement.

Not all efforts relative to the FDI regime commanded by the USA were successful in the 1990s. By the mid-1990s, the OECD launched the negotiations to create the Multilateral Agreement on Investment that included comprehensive

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1   This is preferred but not required. Sometimes a part is paid in the currency of the requested country.

FDI protection and liberalization. However, it was rejected in 1995, mainly by European countries. Something similar occurred during the Doha Round of the World Trade Organization (WTO), where investment was, once again, disallowed, as was also the case with Brazil's refusal to accept a chapter on investment on US terms, for the failed agreement to create a Free Trade Area of the Americas in 2004.

The little progress made by the investment regime at the multilateral level contrasted with the exponential increase in the number of executing BITs or FTAs that contained an ISDS, which now involved demanding and obtaining large indemnities. The practice by which the developing country takes on almost all the obligations and the MNC enjoys practically all prerogatives has been blown out of proportion.

During this period, international organizations such as the World Bank published guidelines on the treatment of FDI (1992), and the Asia-Pacific Economic Cooperation Non-Binding Investment Principles (1994) were launched. For its part, the WTO introduced the General Agreement on Trade in Services, the Trade-Related Investment Measures, the Trade-Related Aspects of Intellectual Property Rights in 1995 and, a year later, created the Working Group on Trade and Investment (1996–2003).

It is worth mentioning that the WTO initially did not consider establishing an ISDS for investment; the arbitration procedures were only meant to resolve trade disputes. During the WTO meeting in Singapore (1996), three working groups were created: Trade and Investment, Competition Policy and Transparency in Public Procurement. These issues had already been considered as part of the WTO agenda since Doha. However, during the WTO meeting in Cancun (2003), the so-called Singapore issues were discarded because they did not have a broad consensus, and it was decided to focus on trade facilitation.

After 2007, IIAs transitioned to a fourth stage (2008–present) aiming to build a regulatory FDI protection regime. At the WTO Ministerial Conference in Argentina (2017), the negotiation of an investment facilitation agreement began.[2] The agreement neither intended to incorporate substantive provisions, which had been requested by developed countries, nor sought to address the challenges caused O.K I changed it BITS and their IDSD (Reji 2018). This aspect reflects the power of multinationals who, at least until 2021, managed to avoid the scrutiny of multilateral arbitration within the WTO.

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2   In the context of the WTO, investment facilitation means the setting up of a more transparent, efficient and investment-friendly business climate, making it easier for domestic and foreign investors to invest, conduct their day-to-day business and expand their existing investment.

At the end of 2020, WTO members approved a roadmap that seeks to achieve more significant results in the next WTO meetings, in order to agree on investment facilitation for development devoid of an ISDS. In February 2020, the European Union circulated a statement entitled "WTO Structured Discussions on Investment Facilitation for Development" that reflected the level of consensus and dissent on that issue:

> For greater certainty, this agreement does not create new or modify existing commitments relating to the liberalization of investments, nor does it create new or modify existing rules on the protection of international investments or investor – state dispute settlements.
>
> WTO 2020, 2

Until November 2021, this initiative did not contemplate an ISDS because, until then, there was no agreed position on the arbitration mechanism to be used in case of an investment dispute.

The resistance of the European Union stood out in its aim to establish a sort of community arbitration procedure on investment that would gradually replace the innumerable BITs and FTAs that each European country held. This situation was finally reversed in 2009, thanks to the Lisbon Treaty. In May 2012, the Commission issued a draft of the proposal for a regulation on dispute resolution between investors and states in the EU's BITs. One of the aspects regarding arbitration that most concerned the EU was the division of responsibilities between the EU and its member states. Although the EU is accountable in international law matters and, consequently, will have to pay an adverse award, it reserves the right to hold the member state of the company that is the subject of the dispute accountable.

This stage saw the emergence of a stronger current of opinion that criticized the investment protection model, not only by calling into question the results these policies delivered, but also by implementing concrete actions to significantly modify these instruments. Among these, for example, we may underline the Reforming International Investment Governance initiative, orchestrated by UNCTAD (2015, 101–171).

The Role of the USA in the Attempt to Create a Multilateral Organization on Trade and Investment

Immediately after the Second World War, when the US had become the major creditor country and the process of decolonization threatened the imperial order, the US government attempted to propose the creation of a multilateral

organization that would advocate the promotion of free trade and that additionally included a set of rules that would facilitate FDI protection. These ideas were raised at the UN Conference on Trade and Employment in Havana, Cuba, between 1947 and 1948. Before the International Trade Organization (ITO) was formally proposed, there was a series of preparatory meetings among which the London meeting of 1946 stood out, where an ad hoc committee presented a draft charter. In this meeting, the representatives of the developing countries expressed their interest in continuing with their industrialization process and highlighted that the draft did not explicitly recognize their needs; therefore, the agenda under discussion had to be modified to include their right to development. This vindication was embraced by the US government, which decided that the charter must have a chapter on economic development. The London meeting marked the beginning of an endless sequence of meetings that repeatedly contemplated economic development as a sort of natural match for investment (Vandevelde 2017, 118).

Paradoxically, not only did underdeveloped countries raise their voices against the draft charter, but corporations also gathered to express their discontent due to the lack of protection from host governments. This claim materialized in 1947, when companies demanded the creation of a legal foreign investment protection regime. Subsequently, they lobbied and pressured for drafting an ad hoc code for FDI protection, which was eventually discussed in Geneva. The USA and Western Europe insisted that with or without the ITO, it was necessary to establish, according to international law, a minimum standard of treatment for investment and trade. This standard must include a fair market price, payment in case of expropriation, and prompt, appropriate and effective compensation. Both developing and socialist countries refused to recognize the minimum treatment, invoking the Calvo Doctrine's principles, claiming that it was inadmissible and contrary to international law for foreigners to enjoy more rights than nationals, granting them the right to invoke their country's protection (UNCTAD 2015, 10–11).

The Havana Charter set the precedent by establishing an unequivocal approach on how foreign investment promotion and protection must be understood. This approach highlighted the role of investment as a key instrument in economic policy in favor of development, seen as a factor that would boost free competition, and assuming that for all the countries to be able to attract FDI, it was necessary to draw on a clear legal framework that provided security and certainty to foreign investors. Such a requirement surpassed the national jurisdiction, hence the need for BITs.

However, no multilateral body in charge of overseeing and harmonizing international private capital operations came forth. Instead, or better said by default, a temporary agreement rather than a multilateral organization was

created, as was originally intended.[3] The replacement instrument was the GATT, which focused on the implementation of trade rules exclusively, leaving investment issues aside for future negotiations. Noticing the lack of progress on a multilateral initiative to protect investment, the USA began to execute trade agreements that included some prerogatives for its companies. From 1945, it started to negotiate a series of Friendship, Commerce and Navigation Agreements (FCNs), creating a new generation of long-time agreements.[4] Despite being meant particularly for trade, they included provisions to protect US FDI. In 1949, the US Department of State set aside the multilateral perspective and decided that FCNs had to be restructured to work bilaterally, as contemplated in President Harry S. Truman's Point Four Program (1949). This proposal materialized in the International Development Act (1950), involving a wave of investment from the US government and corporations to underdeveloped countries.[5] From Truman's viewpoint, his program was designed to alleviate the lack of industrialization in these countries and stimulate economic development by boosting industrial productivity, as otherwise no one would risk investing in an underdeveloped country without solid protection such as that provided by the FCNs. However, US corporations' investment focused on the exploitation of natural resources, especially oil and minerals. The bias of US private investment caused unease, and governments reacted by creating state companies designed to exploit natural resources. This antagonism played a critical role in restructuring US investment protection agreements. Throughout the 20th century, many host governments aimed to end foreign ownership of natural resources. Bolivia nationalized oil in 1937 and again in 1952; Mexico did so with oil in 1938; Venezuela did the same in 1943 and later in 1976; Peru responded similarly with copper in the 1960s and so did Chile in 1971. Analogous actions occurred in Iran in 1951 and in Egypt in 1956 concerning oil. To strengthen their individual moves, Iran, Kuwait, Saudi Arabia and Venezuela created the Organization of the Petroleum Exporting Countries in 1960, seeking to coordinate oil production and enable fairer and more stable

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3   In 1955, the National Advisory Council on International Monetary Fund and Financial Problems (NAC) observed that over the previous 30 years there had been three US attempts to reach a multilateral agreement on investment and all three had failed: the League of Nations Draft Convention on the Treatment of Foreigners and Foreign Enterprises (1929); the attempt to include investment provisions in the ITO Charter; and the 1948 Inter-American Conference of Bogota (Vandevelde 2017, 252–253).

4   Between 1948 and 1949, the USA restructured its FCNs and continued negotiating with them to protect its FDI until 1966, with the execution of its last FCN, and opened BITs under a different approach.

5   The economic aid initiative for least developed countries embodied in President Truman's Point Four Program in 1949 was the continuation of the economic aid proposal raised in the Marshall Plan of 1947.

prices. As a corollary, in 1975, during the Dakar Conference, an organization of countries producing raw materials was created. This was the consequence of various initiatives of over 75 countries in Latin America, Africa and Asia, which since 1960 had created producer-exporter raw materials associations. These measures were consistent and functional with the design of a development policy that needed export earnings to promote industrialization. The recognition by the governments of developing countries that they had the right to part or all of the income from the exploitation of their resources sparked the beginning of a long process in which governments and companies of the developed countries sought to impose investment protection measures through arbitration such as FCNs, and more recently BITs and FTAs.

The Germany-Pakistan BIT was a highly significant milestone in the progress of these agreements, as it indicated the beginning of a European FDI protection strategy amid the Cold War, which, to a certain extent, constrained the US strategy, still negotiated under the FCN model at the time. The first of its kind, this BIT allowed the parties to appeal to the International Court of Justice in the event of litigation. This option worked for the following decade, until the BIT between the Netherlands and Indonesia established the first arbitration mechanism, known as the ISDS, in 1968. Over the years, BITs have become more detailed and sophisticated and have looked at asymmetric negotiations.

In the 1970s, the State Department launched its BIT program in response to the wave of nationalization and multinational concerns. Among the main clauses were those that would become the hard and unmovable core of every agreement over time: equal treatment for investors; free access to the national territory of the contracting parties; national, fair and equitable treatment; the most favored nation clause; constant protection and guarantees abroad; prohibition against governments adopting unreasonable or discriminatory measures that may harm their rights; prohibition of expropriation, and that none of the parties could impose exchange controls that were unnecessarily prejudicial or arbitrarily discriminatory to the rights, investments, transport, trade and other interests of the other party's enterprises.

The creation of a US model was transcendental and disrupted the contents of the first BIT by modifying and adding new prerogatives to the typical dispositions of the European BIT model, such as FDI pre-establishment protection, enforcing the inclusion of the ISDS system, forbidding the use of performance requirements and eliminating clauses directly connected with investment promotion, among others (UNCTAD 2018, 13).

As the US engaged in a lengthy discussion with its companies regarding FDI protection, the UN General Assembly included a specific clause complementary to people's self-determination. It affirmed that all peoples had the

right to freely use their wealth and natural resources, irrespective of the obligations arising from international economic cooperation commitments. As a counter-response, the capital-exporting countries transferred the discussions to the OECD.

In 1964, during a meeting of the World Bank held in Tokyo, 21 developing countries openly opposed the creation, within the World Bank, of an extra-territorial arbitration body that would allow foreign companies to sue governments directly without having to go through a national court (Parra 2012, 66–67). Six years after the first BIT between Germany and Pakistan had been signed, the Bank opened the Convention on the Settlement of Investment Disputes between States and Nationals of other States for signature, despite the historic "No Tokyo."

The establishment of ICSID addressed the concerns of multinationals. In the late 1960s, BITs had a moderately binding nature, and the creation of ICSID responded to the demand for implementing a disciplinary recourse that could be used against nationalist governments.

The Convention sought to address a problem that had been compounded by the years. Due to the intense internationalization of companies and the increase in disputes with host governments, investors have become increasingly reluctant to resort to the national courts of host countries. Although there were international arbitration bodies to settle these altercations, this did not seem to be the solution for either companies or governments who refused to be subject to private arbitration. As such, the creation of ICSID as an extra-territorial arbitration instrument was an option for businesses.

Host governments were not of the same opinion. The creation of extra-territorial arbitration weakened the scope of action of national courts since an enterprise could sue a host government directly without the need to go through national diplomatic intermediation. Nor was national court mediation required since there were two extraterritorial arbitration mechanisms in place. ICSID was a crucial step. The administration of investor – state arbitration was a *sui generis* form of international arbitration, where one party was a state and the other was a private company. The creation of ICSID revolutionized international practices, as disputes between states had hitherto been settled peacefully or violently through embargoes, blockades or outright invasions, but always between states.

The approval of both the Convention and ICSID by the US Department of State and the US Senate later came with a very solid current of opinion: many believed that the approval of this arbitration body represented a great contribution from the USA to consolidate the international rule of law, since the set of clauses contained in BITs ensured that treatment of investments would be

governed by the rule of law principles. For the rule of law to materialize into a BIT, the latter had to include a clause where the parties explicitly consented to resort to arbitration, which in practice meant that a dispute would have to be settled under international law rather than diplomacy or national courts. When analyzing the proposal, the Department of State asserted that "[w]hen an American goes abroad, these treaties can be for him much the same sort of shield that the Constitution is at home" (Vandevelde 2017, 545).

The introduction of this clause, which has become indispensable to all other BITS and FTAS of all countries, has proven to be the transcendental shift in the history of the IIA. This meant accepting that an extraterritorial body might lead to arbitration, and therefore the US courts might be dispensable if the parties agreed. This was truly an innovation considering that 17 years earlier the ITO had not been approved due to US congressional distrust about its supra-nationality and that, as a result, GATT could be approved only because it was an agreement rather than a treaty, which meant its attributions did not override the US Constitution.

Various initiatives to protect FDI continued to bloom after 1965, and in the 1970s the concept of "investment guarantees" was introduced to provide certainty against what was called a "political risk" to protect investors from possible state actions or events that might endanger their investment.[6] In this sense, various national bodies have been established to protect investments, such as the Overseas Private Investment Corporation in the USA. Meanwhile, the World Bank sought to create a multilateral investment guarantee agency that, after several failed attempts due to developing countries' reluctance, eventually came into place with the creation of the Multilateral Investment Guarantee Agency in 1985.

At the same time, in 1967, the OECD produced a draft Convention on the Protection of Foreign Property. This Convention was never implemented but undoubtedly served to promote the harmonization of investment protection elements that developed countries included in their agreements. It is worth noting that ICSID's existence exerted an influence on the characteristics of the first model created by the OECD, particularly with regard to the form of arbitration that turned to national courts other than extraterritorial courts, as was the case of ICSID.

In line with the World Bank and OECD initiatives, Third World countries began to push for a position that supported permanent sovereignty, in particular

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6   This proposal was brought forward by the initiative of President Luis Echeverria and the Mexican government and was accepted at the UN General Assembly through Resolution 3171.

in Latin America. This position reached its peak in 1974, when the NIEO introduced binding obligations on investors and thus ensured their national autonomy to regulate them. The Charter of Economic Rights and Duties of States was adopted in 1974 as part of the NIEO initiative, which advocated the right of states to regulate and exert authority over foreign investments within their national jurisdiction, observing their laws and rules according to their national objectives and priorities. Nonetheless, this initiative weakened in the face of the events stemming from the 1982 foreign debt crisis, which led countries to adopt structural adjustment and economic liberalization policies to walk their way out of debt. The demands for the NIEO exacerbated developed countries' interests, and they responded by implementing new BIT initiatives where the USA, Austria, Japan and the United Kingdom had created their treaty outlines.

Building Strategies to Tackle Investor – State Disputes

Undoubtedly, one of the most reiterated and consistent criticisms leveled against the focus on investment protection embodied in BITs and FTAs has been that the rules stipulated by these instruments go against the flow of development. Most countries that negotiated the FTA and BIT rapidly since the mid-1990s were collectively convinced that they would trigger higher FDI inflows that would have a positive impact. During the negotiations, governments paid little attention to arbitration mechanisms until the first litigation against them began. The skewed structure of the BIT has become more and more contentious.

Foreign investment was heavily protected, with little or no responsibility or obligation to the host economy and the people, particularly in terms of protecting land, natural resources, and environmental and labor rights. This form of negligence or contempt has created a difficult environment for decision makers whose job it is to address these concerns. Governments devised various strategies to force arbitration, but with time, they inferred that the mechanics behind the strategy had to extend and contemplate both preventive and proactive actions, among which stand out those that arose from the Americas. Many countries have recognized that they are being held hostage by allegations, claims and even lawsuits from companies. South Africa cancelled almost all its BITs in 2012, yet it has continued to be the top African FDI destination; India became the leading location as recipient of FDI in Asia after releasing a new BIT model in 2015; and Indonesia, despite announcing in 2014 that it would terminate its BITs, saw inward FDI increase by more than 130 percent between 2016 and 2018 (Johnson et al. 2018, 7).

A similar exercise in many Latin American countries led to discussions about some of the requirements provided in BITs and, *in extremis*, they would decide to cancel an enterprise's exploitation contract. Such was the case of Spanish company REPSOL in Argentina (2012); US oil companies OXY and CHEVRON in Ecuador (2012); Mexican cement company CEMEX (2011) and Mexican flour producer GRUMA (2011 and 2013) in Venezuela; ELFEO and CADEB (2012), both affiliates of Spanish IBERDROLA and Aguas del Tunari in Bolivia (2000); and the mining company Tia Maria in Peru, a property of Grupo México (2011).

The decision to withdraw the argument linking the contribution of a BIT to the economic development of a region and, ultimately, a country had a number of effects. Most importantly, it prompted governments to seriously consider cancelling BITs and/or denouncing them before the ICSID. Governments challenged the immutable nature of the rules contemplated in the BIT and FTA, questioning the structure of ICSID. This exercise led governments to push for greater transparency as well as for the execution of the resources contemplated in international law, such as *amicus curiae*, which requested the presence of third parties on the panels.

In 2001, the Canadian, Mexican and US governments published a Note of Interpretation on NAFTA's Free Trade Commission about the meaning of some provisions contained in NAFTA's Chapter 11. This Note was critical for the future of developing countries because it originated from two developed countries. The Canadian protocol sought to defend the right of the government and the provinces to dictate public policies to protect primarily their development policies, their citizens, natural resources and the environment. This Note advocated the right to self-determination at all three levels of government and sought to de-litigate future litigation, supported by the indirect expropriation clause and performance requirements. The Canadian position reflected the misperception of NAFTA's Chapter 11 benefits from the perspective of the provinces and the federal government, but it also echoed the concern of the government and civil society about the increasing number of lawsuits coming from companies, mainly American, against the Canadian government and the cost involved in paying compensation. After 24 years of implementation, the renegotiation of NAFTA in 2018 allowed Canada to completely dissociate itself from ISDS and determine that any investment dispute should be heard in Canadian courts. Although Mexico and the USA have mutually agreed to maintain the same ISDS structure as NAFTA in the new agreement (the US – Mexico – Canada Agreement, USMCA), a major change has been made. The term "equivalent to expropriation" was removed and with it the meaning of the term was narrowed.

Broadly speaking, the governments of the Americas have questioned international arbitration and have gradually recovered their legitimate right to resort – in the face of overwhelming evidence – to national legislative bodies, which meant a return in some ways to the Calvo Doctrine in the 21st century. The Argentinian case turns out to be emblematic, as it openly ignores ICSID's article 54 and declares that every lawsuit and award of a foreign company must be closely examined by Argentinian courts, arguing that ICSID favors foreign investors and discriminates against local investors.[7] Other countries have also supported similar proposals, such as Colombia, Bolivia and Ecuador, which have directly reformed their constitutions and presented their position in these amendments. In some cases, overwhelmed by the indemnity amounts and the number of lawsuits, governments have decided to denounce the ICSID Convention and, as a result, initiated the process of delinking from its arbitration.[8] Naturally, this decision has serious consequences for a country, especially due to the enforcement of residual or survival clauses that grant a BIT between 20 and 40 years of grace after being denounced, which allows lawsuits against a country to go on despite them having cancelled the instrument.

Until 2020 the review and reform processes of many Latin American constitutions relating to lawsuits filed by companies against governments and to the need to settle them in national courts produced a legitimacy crisis for extraterritorial courts, leading to important changes in ICSID and UNCITRAL arbitration since 2014.

How Do IIAs and ISDS Transgress the Right of States to Implement Development Policies?

The defense, survival and even readjustment strategies of countries in the face of the effects brought about by BITs, through ICSID and UNCITRAL arbitration, have been far from uniform; however, these strategies allow the grouping of countries according to the courses of action they have taken. These strategies have been a common trait in all the countries in Latin America, but they have

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7 "Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State" (ICSID 2006, art. 54).

8 Ecuador decided to denounce the ICSID Convention in 2009, while Bolivia had done so in 2007. Nicaragua announced it would do so in 2008, and Venezuela formalized its irrevocable denunciation in 2012. The Argentinian government requested authorization from its congress to commence the ICSID denunciation process in 2012.

failed to find a common cause, as shown in the results of the First Ministerial Meeting of the Latin American States Affected by Transnational Interests, held in Ecuador in 2013. At the meeting, the convening countries endorsed the final statement, while some invited countries, such as Argentina, Guatemala, El Salvador, Honduras and Mexico, preferred to take note of the conclusions and statements to disseminate them within their own governments. Again, as in other moments in the history of Latin America, ideological differences, combined with distrust of this type of initiative, predominated among the participants, who preferred to continue accepting international arbitration.

Paradoxically, multilateral integration bodies such as MERCOSUR, the Andean Community or CARICOM did not act as a vehicle for achieving consensus and coherent positions on investor – state disputes. For their part, other countries in Latin America such as Chile, Colombia and Peru opted for individual strategies that were different from those of Ecuador, Bolivia, Venezuela and Argentina at the time.

In contrast with the toughest positions, represented by Bolivia, Ecuador and Venezuela, the measures taken by Peru were conspicuous, as this country preferred to create a government body called the State Coordination and Response System for International Investment Disputes (since 2006), which oversaw BITs, detected possible conflicts and, if necessary, coordinated the entire arbitration process. Something similar to this has been implemented by Colombia to prevent potential conflicts with investors. Other countries, such as Argentina, Bolivia and Nicaragua, conceived very different initiatives that primarily focused on defense during the arbitration process, rather than preventive actions to avoid a lawsuit.[9] Additionally, these forms of resistance created jurisprudence and alternative approaches that started to be considered by other countries outside the region.

Despite the entire set of rules and regulations stemming from BITs, ICSID and UNCITRAL, conflicts between governments and enterprises are far from being resolved. Their implementation has triggered several distinct changes both within and outside Latin American countries. As explained above, governments have orchestrated various strategies to reverse the negative effects of BITs, but together with this, a conspicuous ISDS industry has been developed, led by law firms and experts, former BIT and FTA negotiators and former

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9   The Arbitration Defence Assistance Unit in Argentina (2003), the Minister without Portfolio Responsible for the Legal Defence of State Recoveries in Bolivia (2008) and the Inter-Institutional Defence Commission of the State of Nicaragua against Investment Disputes (2007).

government officers who go back and forth between the ministries and international courts without pondering the existence of a conflict of interest.

With the arrival of new governments, new approaches to dealing with the problem emerge. In the case of Ecuador, the new bureaucracy decided in 2021 to re-enter ICSID and accept the BIT rules negotiated in the past, throwing overboard the efforts of previous governments to dissociate themselves from an arbitration mechanism that has proven to be harmful to the economic development of countries.

Concluding Remarks

Since the 1980s, international institutions and MNCs have tried to undermine state power, especially the right of countries to determine their economic development strategies. They have gradually imposed economic and political change on them, not only by dictating structural adjustment programs, but also through FTA and BIT negotiations that would modify not only countries' economic policies but also their national legislation. These efforts aimed to solidly establish an international regime for protecting foreign investment, where investors become privileged citizens of an international legal order designed above all to guarantee unlimited protection for the movement of capital owned by large corporations, challenging national governments' autonomy to dictate their own development policies. In this regime, investment rules can be viewed as a set of binding constraints designed to insulate state economic policy and development strategies for public policy (Schneiderman 2008).

In some ways the current economic crisis, together with the COVID-19 outbreak, has exacerbated the erosion of governance principles by pressuring governments to liberalize and establish even more flexible operating rules favoring foreign capital. The schemes to protect foreign investment analyzed here reveal a common trait: the tendency to constrain state power and impose sanctions against any flagrant failure to protect foreign investment safeguarded by a BIT or FTA.

Because the imposition of performance requirements on foreign investment or any discriminatory treatment of such investment is considered a violation of the agreement inside the BIT and the FTA, most governments find it very difficult to put their economic development policies ahead of international corporations' priorities. This deprives the governments of capital-importing countries of one of their most important duties: the ability to set public policy to facilitate development, preceding large companies' interests.

Throughout this chapter we have analyzed the politics behind international development from the perspective of the construction of an international foreign investment protection regime. This set of instruments and relevant arbitration mechanisms have been implemented for over 62 years, during which there have been conspicuously sharp and uneven contrasts. The consequences of these agreements, particularly concerning arbitration, have compelled multiple governments to question their significance when indemnity amounts derived from court sentences have represented a huge blow to the countries' public expenditure.

Furthermore, developing countries have gained experience in devising proactive contention and buffer strategies in the face of an exponential increase in foreign companies' lawsuits, especially concerning natural resources and environmental issues; however, most governments still contemplate negotiating BITs and FTAs. It is worth mentioning that governments voluntarily accept a loss of jurisdiction when negotiating these agreements. By utilizing these instruments, companies have managed to impose rules to make their performance respected, allowing them to locate, delocalize and relocate according to competitiveness and profit criteria, ignoring altogether the question of whether these actions might destroy the social fabric of a community.

Seen in this way, what would be the trigger that encourages governments to continue negotiating these types of agreements despite their dubious reputation? The quick answer would be having greater foreign investment flows and, consequently, more economic growth. How is it possible, then, to reconcile this lawful interest to the ample proof demonstrating that the requirements associated with a BIT or FTA damage many of the economic development policies of a country?

One of the consequences of this is that governments, fearing new demands, have preferred self-censure, giving companies greater freedom even when this damages development-related activity, such as exploitation of natural resources and protection of the environment.

In the late 1990s, a current of opinion emerged worldwide calling into question the performance of ICSID and UNCITRAL dispute resolution mechanisms, which was surprisingly endorsed by the governments and civil society of developed and developing countries. Yet the real dilemma lies in how to attract productive investment while simultaneously limiting companies' ambitions through ISDS. In February 2020, ICSID published a proposal to amend its procedural rules for IIAs and their ISDS. This proposal, which was an open draft to receive comments from states, governments and civil society, includes the most profound changes ICSID has proposed in over 50 years.

Among the proposed changes are the adoption of a greater range of dispute resolution mechanisms based on new mediation and conciliation rules and updated fact-finding, greater case transparency and a better balance between the interests of states and investors (CIAR Global 2020, 1–4).

Based on the above and on further analysis, in 2014 UNCTAD began to carefully analyze the IIA as well as ISDS and finally proposed a reform to the IIA regime, asserting that "[t]he question is not about whether to reform or not, but about what, how and the extent of such reform" (UNCTAD 2015, 120–171).

In 2015, UNCTAD refined its proposal and published in its World Investment Report a chapter entitled "Reforming the International Investment Regime: An Action Plan," which openly suggests a strategic-approach policy option. In this way, UNCTAD took up its old struggles and concerns from the 1970s, back when it was an international institution dedicated to promoting economic development, especially in the least developed countries. Its new stance has been a breath of fresh air for those countries that have been plagued by skewed investment protection rules that prioritize the interests of developed countries and private companies.

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CHAPTER 9

Reframing the International Trade and Investment Framework to Meet the Challenges of the 21st Century

Mehdi Abbas

Abstract

This chapter explores avenues for renewing the global trade and investment framework, namely the 29 WTO agreements, the 303 regional trade agreements (RTAS) and the 3,291 international investment agreements (IIAS). The crisis into which the WTO, the central institution of this framework, has been plunged will be the common thread of this reflection.

We aim to provide an answer that goes beyond the idea that the WTO crisis is due to the conflicting interests of a large number of members. This view tends to focus attention on issues internal to the WTO: its governance and decision-making procedures. It stresses the behavior of countries, formal decision-making processes or the governance mechanisms of the WTO. It largely confines the debate about the Doha Development Agenda (DDA) deadlocks to issues of institutional design and technical management of the negotiations. We assume a political economy approach. The multilateral trade and investment framework crisis can be explained, first of all, by the fact that it is regulated by agreements negotiated 25 years ago (1995) by the Quadrilateral (United States, European Union, Canada and Japan). China was not a member of the WTO at the time, the BASICS (Brazil, South Africa, India and China) did not represent more than 4.6 percent of world merchandise exports, the internet and digitalization were embryonic, and Asia-Pacific-centric global value chains had not fundamentally changed the global trade and investment system.

We will first examine developments of the global trade and investment system and the possible repercussions of the global health crisis on it. In fact, the global COVID-19 pandemic opens a new sequence in the globalization process, where power rivalries, evident since the 2007–2008 crisis, could lead to a more conflictual global political economy. That would make it more imperative to renovate the international trade and investment framework. Facing a less asymmetric and more state-centric and heterogeneous global trade and investment system, the new framework could open up to

(i) more flexibility regarding North – South relations, (ii) more institutional and normative pluralism regarding future trade agreements and (iii) institutional experimentation to improve wto governance.

Keywords

international trade and investment system – new international political economy – regional trade agreements – North – South relations – wto

Introduction

This chapter examines the structural and institutional changes in the international trade and investment system (itis) induced by the ongoing global covid-19 pandemic crisis, the war in Ukraine and the resulting new international political economy. The new international political economy refers to the interplay between the evolution of wealth and power relations, that is, the dynamics of actors' conflicting interests, and the transformation of international institutional arrangements, that is, the values, principles and rules on which actors' economic strategies are based.

While world trade decreased by 0.1 percent in 2019 due to trade tensions between the United States and China and slowing global growth, in 2020 it fell by 5.6 percent for goods and 15.4 percent for services (wto 2020). The outlook for the next years remains uncertain due to the incidence of covid-19 worldwide, the emergence of new variants of the coronavirus, and the effect of the war. The UN Conference on Trade and Development (unctad) estimates a 40 percent drop in foreign direct investment flows for 2020–2021 (unctad 2021, 1). Main international organization growth forecasts do not call for a global and sustainable recovery. After a 3.5 percent contraction in world gdp due to the "Great Lockdown," the imf predicts "desynchronized growth" accompanied by an increase in inequalities (2021). The oecd shares this view and makes its outlook conditional on the coordination of global vaccine production and distribution, as well as on continued government support measures (oecd 2021).

Therefore, the global pandemic crisis and the Russia-Ukraine conflict could constitute a tipping point in the process of globalization. In addition to the slowdown in economic activity, the decline in international trade – which has been evident for many years – and the deterioration in employment and living conditions of several million people have contributed to making the current crisis a revelation of the vulnerabilities in production and exchange networks

after five decades of globalization. Given its economic effects, the COVID-19 crisis is likely to bring about a restructuring of the geopolitical economy and, consequently, the reframing of the ITIS (Abbas 2016). This chapter argues that the crisis has opened a window of opportunity to rethink the governance of the international trade and investment system: It questions not only the purpose of international trade and investment governance (what are the values and social objectives of trade regulation?) but also its forms (how should multilateral collective action be organized?) and its substance (what would be the structuring principles of this collective action?).

This chapter explores possibilities for the renewal of the international trade and investment framework, namely the 29 World Trade Organization (WTO) agreements, 346 regional trade agreements (RTAs) and 3,291 international investment agreements (IIAs) (see Figure 9.1). The evolution of the WTO, the central institution of this framework, will be the main theme of this chapter. In doing so, the chapter examines the future of multilateralism as a principle for organizing international economic relations. The crisis in the governance of international trade can be explained first by the fact that the system is regulated by agreements negotiated and ratified 27 years ago (1995) by the Quadrilateral (United States, European Union, Canada, Japan). At that time, China was not a member of the WTO, the BASICs (Brazil, South Africa, India and China) accounted for no more than 4.6 percent of world merchandise exports, the internet and digitalization were in their infancy, and Asia-Pacific-centered global value chains had not profoundly changed the international division of labor. Hence, the WTO framework requires updating to deal with complex supply chains, contemporary production and consumption patterns, broader Sustainable Development Goals (SDGs), social and environmental
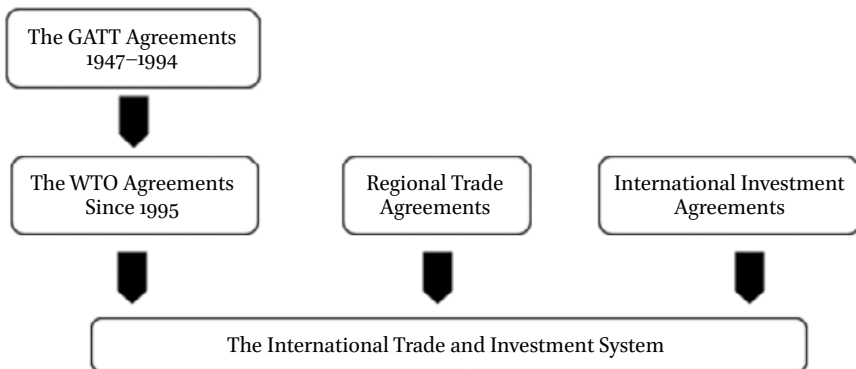

FIGURE 9.1   The international trade and investment system
SOURCE: AUTHOR'S PERSONAL COMPOSITION

issues, and particularly the new balances of wealth and power in the global political economy.

There are three reasons for an integrated analysis of international trade and investment. First, the complementarity between trade and investment flows, between nations' comparative advantages and firms' competitive advantages, is well established. Second, at the institutional and regulatory level, the WTO agreements and the RTAS include provisions relating to investment (agreement on intellectual property, agreement on trade-related investment measures, subsidies, mode of supply of services, technical barriers to trade, rules on state-owned enterprises). Third, the integrated approach encourages a move away from silo governance of trade and production issues. Indeed, future regulations will deal with competition, investment financing and technology transfers. As such, they will influence not only access to markets but also the functioning and structure of domestic markets and will be a determining factor in firms' location strategies.

This chapter will first examine the evolution of the ITIS and the possible effects of the global health crisis on it. This crisis, a manifestation of the socio-economic and socio-ecological contradictions of globalization, could open up a new sequence in which the power rivalries that have been evident since the 2007–2008 crisis will lead to new trade and normative conflicts. This will make it imperative to renew the architecture of international exchange. In the face of a less asymmetric and more heterogeneous trading system, the promotion of a new collective vision based on new principles and rules, offering greater flexibility and more institutional and normative pluralism, is a way to rebuild confidence in multilateral trade governance.

Post-COVID-19 Globalization

The global pandemic crisis is occurring in a context where the ITIS still has not recovered from the effects of the global financial crisis and the major trade slowdown it caused (Georgieva, Loayza and Mendez-Ramos 2018; Constantinescu, Matoo and Ruta 2015) (see Figure 9.2). Moreover, the imbalances revealed by the 2008–2009 global financial crisis have not been corrected in the last decade. Public and private over-indebtedness remains massive, while employment rates coupled with the precarious nature of many jobs are affecting increasingly large segments of the working population (ILO 2020). The recessionary effect of the current health crisis will also be long-lasting due to the macroeconomic and sectoral effects of both COVID-19 and the Great Lockdown.
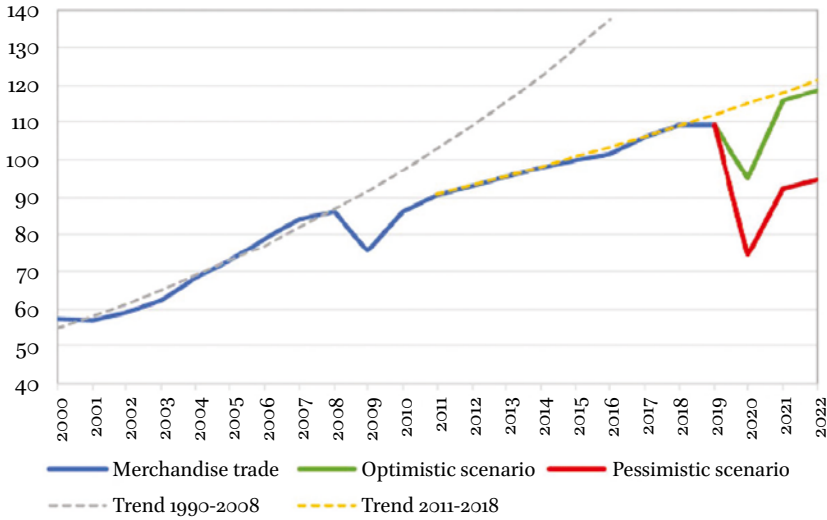
FIGURE 9.2   World merchandise trade volume 2000–2020
SOURCE: WTO (2020)

The recession caused by the COVID-19 pandemic resulted in a 12 trillion US dollar decline in gross world product over the period 2020–2021 (UNCTAD 2020a) and cumulative per capita incomes 20 percent lower than they would have been without the crisis in developing countries (excluding China) and 11 percent lower in advanced economies over the period 2020–2022. However, beyond the figures (see Table 9.1), the pandemic is having a lasting impact on transport traffic (air and sea freight, passenger and tourist transport), global supply chains and trade barriers in the form of export restrictions on medical supplies, vaccines, active principles and food products.

Post-COVID-19 globalization could be characterized by four structural trends. First, the COVID-19 crisis will perpetuate weak global demand, especially sluggish productive investment, as it has not been accompanied by a destruction or, to a lesser extent, a devaluation of productive and infrastructure capital. In most G20 countries, including the USA and all BRICS (Brazil, Russia, India, China, South Africa) countries, productivity slowed after the global financial crisis, in some cases to a lower level in 2019 than in 2009. In the USA, productivity grew by 17 percent in the decade from 1999 to 2009, but only by 12.5 percent in the decade that followed. In China, productivity growth has fallen from a spectacular 162 percent in 1999–2009 to 99 percent in the last decade (UNCTAD 2020a). Combined with financialization and increased corporate power, this sluggish growth is a source of instability as it leads countries into a spiral of slowing aggregate demand and financial fragility.

TABLE 9.1   Exports and imports volume of goods, selected groups and countries, 2018–2020 (percentage change over previous year)

Group/country	Volume of exports			Volume of imports		
	2018	2019	2020a	2018	2019	2020a
World	3.1	−0.5	−8.8	3.8	−0.4	−8.5
Developed Countries						
of which:	2.6	0.0	−12.0	2.5	0.1	−10.5
Japan	2.6	−1.6	−9.2	3.1	0.9	−4.4
United States	4.2	−0.5	−12.1	5.2	−0.3	−9.1
Euro area	1.9	−0.2	−13.3	2.2	0.0	−12.2
Developing Countries						
of which:	3.8	−1.1	−4.7	5.7	−1.2	−5.6
China	5.4	0.5	−4.4	6.9	−0.4	−2.0
Asia (excl. China)	3.7	−1.8	−4.4	6.9	−2.3	−6.6
Latin America	3.0	0.5	−8.7	4.8	−1.6	−12.0
Africa and Middle East	1.0	−3.9	−3.1	0.8	−0.2	−2.0

Note: (a) Percentage change between the average for the period January to May 2020 and January to May 2019.

SOURCE: UNCTAD (2020A, 20)

Second, the world's major economic powers will refocus their economic dynamics on their national, regional or continental markets. This refocusing has been at work in China since the global financial crisis and has been a factor in the major slowdown in world trade since 2012. It is also at work in the USA, where the Biden administration's plan in response to the pandemic is driven by domestic demand for consumption and investment in infrastructure. The same is true of the EU's Green Deal. The COVID-19 crisis has re-legitimized public policies to support demand and public intervention on market economic dynamics. It is also accompanied by a potential systemic risk due to the exponential increase in debt. The world economy could be more state-centric in the future.

The third structural trend is the deceleration in the development of global value chains (GVCs). Already at work since 2012, the slowdown of GVCs could become more pronounced as the health crisis has led to a break in supply chains that is damaging to firms and has revealed the vulnerabilities of national economies to this model of international production organization by multinational firms (MNFs). This deceleration is not just cyclical: The most profitable

location trade-offs have already been largely achieved, the fall in transport costs and transaction costs linked to the connection of different production plants is itself subject to diminishing returns, the rate of using new technologies of information is slowing down, and the export promotion policies that have accompanied industrial and service sector relocations since the beginning of the 2000s are no longer in vogue (Ferrantino and Taglioni 2014; WTO 2017). Due to the war in Ukraine, the ITIS may witness a re-nearshoring and a re-bundling of the defining elements of modern GVCs. Thus, the fragmentation of tasks (unbundling) and geographic dispersion (offshoring) – could be challenged (UNCTAD 2020b). Add to this, the economic damages of the war in Ukraine which will contribute to a significant slowdown in global growth from 6.1 percent in 2021 to 3.6 percent in 2022 &d 2023 (IMF, 2022). The war can deepen the fragmentation of the ITIS in relation to security concerns that could lead to a rise in protectionist measures. In addition, the lockdowns in China (April and Mya 2022) to prevent the spread of COVID-19 are also disrupting supply chain which could lead to renewed shortages of manufacturing inputs and higher inflation (WTO, 2022).

The fourth and final trend in the reconfiguration of production and exchange networks is the change in the US attitude toward globalization. This is evident in the trade war, illustrated by protectionist measures and unilateral sanctions against China and the EU. The hostilities culminated in open conflict with the WHO. However, the pandemic crisis is not the cause, nor is the stalemate in the WTO negotiations or the failure to complete certain regional initiatives, particularly the Transatlantic Trade and Investment Partnership (TTIP). The contestation of multilateralism and globalization began prior to the Trump administration and will continue during the Biden one. It is rooted in the adverse effects of globalization on the US economy and the power shift related to the rise of China. A similar analysis prevails in Europe, where the EU New Trade Strategy takes note of the fact that globalization has not kept its promises in terms of jobs and prosperity and that China is a "strategic rival" rather than a "trade partner."

Indeed, "hyper-globalization," to use Dani Rodrik's (2011) words, goes hand in hand with systemic crises (the Asian crisis and its repercussions, the global financial and the pandemic crises). The latter have finally eroded the discourse on the benefits attributed to globalization.[1] The Asian crisis (1997) marked

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1 Dani Rodrik defines hyper-globalization as a type of globalization aimed at the elimination of all transaction costs associated with the movement between the natural borders of nation-states of goods, services, capital and finance. These costs are not limited to tariffs and quotas but also include domestic regulations, standards, rules on product safety, rules on intellectual property and banking regulations.

China's entry into hyper-globalization. The global financial crisis (2008) has accentuated the de-industrialization of historical capitalist nations and eroded their competitive and technological advantages vis-à-vis emerging capitalist nations, primarily China. The COVID-19 crisis has exposed the global economy to systemic vulnerability (Sumner, Hoy and Ortiz-Juarez 2020). Although five decades of globalization have been accompanied by a fall in the number of people living below the extreme poverty line (less than \$1.90/day) from 1.9 billion to 700 million (this improvement mainly concerns China and Southeast Asia), it has also generated an increase in global inequalities (Milanovic 2016), a slowdown in the growth of the Human Development Index (HDI) over the period 2010–2020 and a worsening of global ecological degradation.

Thus, Rodrik's hyper-globalization, that is, the 1990–2014 period of integration of economies and increased competition, has led to the exhaustion of growth and has challenged the multilateral framework established by liberal institutionalism and its free-trade principles. At the same time, there is a growing awareness that the economic, social and environmental challenges facing the international community (reducing global inequalities and extreme poverty, preserving biodiversity, decarbonizing the world economy and producing global public goods) will not be solved within the current governance framework. It is therefore only logical that we are witnessing a return of states and an exacerbation of interstate rivalries – as illustrated by the rise of unilateralism, the multiplication of regional and bilateral trade agreements, the failure of the UN Global Environment Pact, the rise of "populist" governments, the assertion of a "geopolitical" European Commission and Brexit.

Conflictual Globalization in the Context of a New Balance of Power and Wealth

Let us recall an obvious fact: Globalization gives rise to an unequal distribution of wealth and a redistribution of power and of states' hierarchy. It affects the balance of power between states due to the changes in their autonomy and capacity. Thus, globalization reshapes the relative distribution of capabilities and vulnerabilities between states, which influences the nature and axes of conflict. This is why globalization does not imply more peaceful relations between all states. The disruptive effects of globalization in much of the world will likely contribute to new sources of conflict.

From a systemic point of view, the COVID-19 crisis is not a storm in a serene sky. It did not come out of nowhere. It is rooted in globalization-related socio-economic and socio-ecological contradictions, and in the growth model driven by export competitiveness. Export-led growth strategies built on a race

to the bottom in terms of regulations and environmental and social standards are no longer reproductible and appear less and less sustainable. On the one hand, profitable specializations are being frozen by the emergence of new commercial and productive powers. On the other hand, in a context of slowing growth, the world economy is experiencing a situation of excess capacity, reducing the potential for access to markets. In addition, there are biophysical and ecological constraints linked to intensive growth strategies and international integration that are highly resource-intensive.

From a geopolitical point of view, the accession of new economic competitors to the status of powerful countries profoundly modifies the governance of international exchanges (Hopewell 2015; Elsig, Hahn and Spilker 2019; Hosli and Selleslaghs 2020). Power is once again becoming the structuring parameter of international political economy relations (Drezner 2007; Schaffer and Pollack 2010). This leads to a more conflictual multilateralism in which issues of "strategic autonomy" and "national security," or "collective security" in the case of the EU, once again become the priority. The global economy is caught between a "Thucydides trap" and a "Kindleberger trap."[2] Unlike the global financial crisis, where the G20 and international financial institutions helped coordinate major stimulus packages and avoid trade conflicts, trade measures in response to the COVID-19 crisis have largely been driven by national interests. The coordinated approach of a decade ago has given way to unilateral strategies (Brown 2020). The production and distribution of vaccines, supposedly a global public good, have not escaped the interplay of interstate interests and rivalries.

The combination of the global pandemic crisis, China rising power and the Russia-Ukraine war lead to a move from *efficiency*-driven to *security*-driven ITIs. In such a context, trade and investment governance is shaped by conflicting preferences, values and interests among actors of unequal power. Focusing on power dynamics in the global political economy leads one to consider, on the one hand, that distributional issues prevail over efficiency issues in shaping trade and investment rules and, on the other hand, that cooperative behavior is conditioned by relative gains (Grieco 1990; Powell 1994). Periods of reconfiguration of the hierarchy of economies are characterized by increased productive and distributive conflicts because neither the ascending nor the contested powers are willing to validate asymmetric compromises with unequal gains.

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2   We refer to Graham Allison's (2017) analysis according to which the world economy is caught in the "Thucydides trap" of the systemic rivalry between China and the United States, on the one hand, and Joseph Nye's (2017) "Kindleberger trap" linked to the lack of leadership assumed either by a benevolent hegemonic power or by a coalition of states.

The former consider that they do not have to bear the costs of running institutions that do not serve their interests, and their rise in power confirms the benefits they derive from the status quo. Contested powers, meanwhile, believe that their relative decline is the product of institutional arrangements that are fundamentally unfavorable to them and of the abuse of ascendant powers. They no longer wish to bear the cost of governance and, refusing the status quo, engage the system in a conflictual dynamic (Allison 2017; Hurrell 2018).

How does this perspective shed light on the governance challenges of the international trade and investment system? First, the new balances of power have gradually eroded the grammar of a system based on non-discrimination (equal treatment), reciprocity and leadership. The new emerging powers do not follow a logic of equal treatment – on the contrary, they claim a more favorable special treatment, to which they believe they are entitled – and they break with the principle of "national treatment" by favoring, through a whole series of distortions, their national firms. Reciprocity, too, is being undermined: Usually based on the exchange of tariff concessions, it is now normative and regulatory barriers that prevail, whether in the areas of investment, competition, public procurement or health standards. As a result, the historical supporters of the reciprocal and orderly opening of markets no longer see any point in it (failure of leadership), especially as they believe that the emerging countries – China in particular – have benefited greatly from the system.

The established power (USA) is now less willing to compromise with the rising power (China). In the wake of the 1997 Asian crisis, the Washington Consensus produced the "Great Moderation" (1997–2007). Among the most notable elements of this Great Moderation is the integration of emerging economies into global production and trade networks and China's accession to the WTO (2001). This accession occurred a year after the US established "normal and permanent" trade relations with China (May 2000). Twenty years later, China is no longer a mere "normal and permanent" trade partner but has become a "strategic" or "systemic" rival. The technological, economic and normative challenges this change poses have led the USA to engage in a diplomatic-economic struggle, one of whose forums is the WTO. Thus, the WTO's stalemate is, above all, a reflection of the United States' strategic choices.

Expressed at the Nairobi Ministerial Conference (2013) and refined since then, the US position aims to get the other member states to undertake a reform of the WTO regime in line with their interests and, more generally, to initiate a renovation of international trade arrangements, as was done with the North American Free Trade Agreement (NAFTA), now replaced by the US-Mexico-Canada Agreement (USMCA). This strategy recalls the sequence that led to the launch of the Uruguay Round and the creation of the WTO: attacks on the

General Agreement on Tariffs and Trade (GATT) and multilateralism, a return to bilateralism, the fight against the trade deficit (with Japan at the time), an unprecedented commitment to regionalism (the launch of NAFTA) and, under the impetus of the "Reciprotarians" – of which Robert Lighthizer, the US Trade Representative between 2017 and 2021, was one of the spearheads – the assertion of an aggressive reciprocity. The US strategy aims to make the *status quo ante* impossible, hence the neutralization of the dispute settlement procedure and the use of a unilateral logic of power relations.

Second, the new multipolar international political economy of trade and investment is characterized by the complexity of making operational compromises. The Doha Round has, from its inception, suffered from the comparison with its predecessor, the Uruguay Round. It was seen as an "Uruguay Round-bis." This led to dissatisfaction with the poor results. However, the wealth and power relations that led to the ratification of the Uruguay Round no longer exist. On the contrary, for the first time since the Havana Conference (1947) the system is truly multilateral, rather than hegemonic or under the control of the Quadrilateral, the formal developed countries group in the GATT that imposed their agenda on the rest of the member states. The stalling of the Doha agenda is first and foremost a manifestation of the concrete learning process of multilateralism: It indicates that new "grand bargains" are probably unreachable.

Moreover, the substantial transformation of multilateral trade governance under the WTO regime makes the negotiation process considerably more complex. This assessment stems from three sets of interrelated factors.

First, WTO agreements do not cover only border protections; they also increasingly involve beyond-border regulatory measures and address the "third generation of trade barriers" (Cottier 2006).[3] Multilateralism has thus been transformed from negotiations on tariff concessions to negotiations on domestic policy and internal regulatory issues (competition policies, investment restrictions, government purchasing, industrial standards, etc.). This constitutes a big shift in the functional focus of the GATT – WTO regime. This, in turn, has been reinforced by rising concerns about the "*'Trade and …'* agenda," which could be addressed to the institution: trade and intellectual property, trade and investment, trade and competition, trade and environment, trade

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3   The first and second generations related to tariffs and to non-tariff barriers. The third generation relates to national and sovereign control systems. The most common non-tariff barriers to trade are technical measures, administrative rules and procedures, standard and expertise procedures, quantitative and regulations restrictions on imports, internal taxes, restrictions on competition and freedom of circulation, and labeling requirements.

and technical standards and, in the future trade and climate change, trade and decent work, trade and global health.

Second, WTO agreements contain provisions designed to enhance the international contestability of markets (Baldwin, Nelson and Richardson 1992; Graham and Lawrence 1996; Barton et al. 2006). Market contestability will consequently be concerned with non-trade policies and divergent regulatory regimes (e.g., environmental and competition policies, standards for the protection of intellectual property) as well as qualitative barriers to trade (Krugman 1997; Subedi 2006). The multilateral trading system has moved toward a rationale of incentives aiming to liberalize and establish common market standards designed to level the playing field in favor of transnational corporations and global financial actors.

Third, the WTO agenda includes a new set of rules with recommendations for compliance and procedural and substantive standards.[4] States have forged a new regulatory regime that aims to achieve "greater harmonization and mutual recognition of members' regulatory system" (Footer 2006). The Uruguay Round Agreement (URA) legacy is built on the central hypothesis that nation-state capacity, autonomy, authority and normative power have to be constrained by the structural power of markets. This does not fit with the return of states as actors in market regulation. The primacy of the global market (competition, international contestability of markets and non-discrimination principles) denies any pluralistic institutional configuration among nation-states. The Doha Development Agenda's (DDA) deadlock resulted from the inadequacy between these institutional forms and the "new normal" of the international trade and investment system.

Therefore, the existing governance model of international trade and investment needs to be renewed.

Toward a New International Trade and Investment Framework

The stalling of the DDA is an illustration of this growing conflict potential. This is why a renewal of multilateralism is needed. Many proposals for reform have been developed in recent years. However, these proposals suffer from three weaknesses. First, they are all formulated by supporters of free

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4   See sections 2.2 and 2.4 of the Agreement on Technical Barriers to Trade, 3.3 and 5 of the Agreement on Sanitary and Phytosanitary Measures, Articles VIII and X of GATT 1994. Furthermore, the WTO regulates the use of exemptions for non-commercial reasons (Articles XX and XXI of GATT and XIV of GATS).

trade (Bertelsmann-Stiftung 2018; Canada 2018; European Commission 2018; Warwick Commission 2007; Sutherland et al. 2004) who are in favor of the system, who pay little attention to the purpose of the negotiations and who are blind to the asymmetries and inequities in WTO agreements. Second, they are predominantly technocratic and focused on the governance of the organization. Third, they do not address the issue of the new international political economy produced by globalization but rather minimize the antagonism of preferences and the conflicts of power involved.

Since the WTO is a member-driven organization, new compromises can only be produced through an interstate process, which should be as open and inclusive as possible. Moreover, the consensus rule prevents any reform that calls into question the institutional legacy of the trading system.

The renewal of multilateralism must integrate the new power and wealth relations that structure globalization, deal with the structural and institutional heterogeneity of the ITIS, and address the economic, social, ecological and political failures revealed by the global pandemic crisis. Consequently, it will not be enough to reform the decision-making processes within the WTO (Narlikar 2019). The ITIS needs different values in order to re-establish its legitimacy and to manage its multipolarity. This is why this chapter suggests that global trade governance could be oriented toward the achievement of the United Nations' SDGs, opened to security and vulnerability principles. It will have to be geometrically variable both in form and in substance, providing flexibility in the normative and institutional design of its rules.

Having clarified these points, three possibilities can be envisaged.

Opening the WTO Regime to Institutional Experimentation

Institutional experimentation would concern both the introduction of new collective preferences into the WTO agreements and the institutional design of certain trade regulation measures. This would address the WTO's lack of legitimacy. Indeed, the WTO would gain in legitimacy if its function as a forum for discussion, exchange and expertise were consolidated. Article III.5 of the agreement establishing the WTO stipulates that it shall assume the function of "enhancing coherence in global economic policy-making." Institutional experimentation would be part of this.

The new international political economy that the ITIS is facing calls for greater flexibility in its architecture, which could be increased through institutional experimentation. This means neither "development-by-bricolage" (Wilkinson 2019) nor a grand design change, but rather calls for the use of instruments for trade policy renewal, such as *waivers* in the WTO agreements, *peace and escape clauses* and *firewall clauses*. These clauses would necessarily

be temporary, linked to the assessment of countries' needs (as is the case for Aid for Trade) and accompanied by monitoring of their implementation and their effects, both for the countries adopting the clauses and for other WTO members. This would aim to avoid the protectionist risk associated with such regulatory innovations.

Two priority areas could be used for experimentation. First, new derogations and exemptions under Article XX of the GATT and Article XXI of the General Agreement on Trade in Services (GATS) devoted to the challenges of ecological sustainability and social inclusion should be adopted. Second, the relationship between the WTO regime and the UN SDGs should be bolstered. The SDGs include many provisions over which the WTO regime has jurisdiction (sustainable agriculture, investment-related measures, transfer of green technologies, subsidies for renewable energy). Thus, for a period up to 2030 (end of the SDGs), measures – which could be considered as a kind of sustainable development peace clause – related to the treatment of environmental externalities, decarbonization of the energy mix or the production of global public goods (food and health security, free access to patents) could be authorized without exposing states to countermeasures or a dispute settlement.

The developing and least-developed countries draw attention to the protectionist risk of including environmental, climate or social (decent work) clauses. However, the consolidation of the forum function for political dialogue and expertise, coupled with institutional experimentation, would make it possible to limit this risk. As waivers are by definition temporary, a gradual extinction clause could be included *ex ante* in the experimentation mechanisms.

Institutional experimentation would also concern the social values of multilateral trade governance. It would seek to highlight the failings and inconsistencies of the current international architecture and would question the exclusively free-trade approach to multilateralism that has characterized the WTO regime since its establishment. This process would be accompanied by a political dialogue between the state members. It is often overlooked that one of the most significant WTO contributions is its role as a forum for discussion, disclosure and sharing of trade and regulatory preferences. The consolidation of this so-called political function is the main proposal to be retained from the report of the expert group on the revitalization of the institution (Bertelsmann-Stiftung 2018). In view of the serious strains on the smooth functioning of the international trading system, it would be appropriate to set up an independent commission to examine whether the record of three decades of the WTO regime is consistent with the principles of the Marrakesh Agreement. The preamble to the Agreement refers to "the achievement of full employment" and "a high and steadily rising level of real income and effective

demand," as well as the importance of "sustainable development" compatible with different levels of development. This commission would aim to clarify how the social values of multilateralism could be made more concrete.

Reshaping the Multilateral Globalization – Development Compromise

The DDA has been confronted with the "market access vs. development" dilemma. The topics selected for negotiation and the modalities for implementing agreed outcomes have not been conducive to the economic catch-up of the majority of developing countries and to an inclusive treatment that corrects the shortcomings of the URA (Davis 2019; Scott and Wilkinson 2021).

The re-legitimization of multilateralism necessarily requires a renewal of the WTO's Special and Differential Treatment (S&DT) for developing countries (DCs) and least developed countries (LDCs). The last two decades, marked by the stalemate of the DDA, allow us to identify two avenues for reflection.

The first concerns the differentiation between DCs and LDCs. The S&DT, established on the historical division between developed and developing countries, is not institutionally equipped to deal with a pluralistic and heterogeneous ITIS. The country-oriented S&DT with transitional periods inherited from the URA is no longer sustainable because the "developing countries" category is no longer homogeneous. But all the proposals related to the S&DT reform refer to the new definitions of country categories. Hoeckman, Michalopoulos and Winter (2004) suggest that an "LDC+ group" would encompass the countries that need special and differential treatment. Stevens (2002) proposes applying S&DT to relevant economic factors and criteria. Prowse (2002) argues for "country-specific audits" to determine a tailored mix of temporal exemptions and technical assistance for each developing WTO member. These proposals focus on the "country" dimension of the issue and are "business as usual" in thinking about the integration of DCs and LDCs within the ITIS. However, the redefinition of state categories will not modify DCs' and LDCs' marginalized status without a change of the content of some trade rules. Therefore, the definition of a new globalization – development trade-off requires, on the one hand, a new approach in the elaboration of S&DT measures and, on the other, rules focused on the UN SDGs.

Regarding the new approach for S&DT rules, developed countries argue that the lack of differentiation among the 130 countries that make up the DC – LDC group makes it difficult to reach a compromise. Developing countries are opposed to the principle of special and differential treatment being reserved for LDCs alone, which would reduce their multilateral trade rights. How can the structural heterogeneity of the international trade system be reflected

institutionally? Here again, institutional experimentation could help reach a compromise. One option would be to focus differentiation not on the status of countries but on the policies and measures negotiated, that is, the substance of the agreement. This is the approach used in the Trade Facilitation Agreement, which entered into force in February 2017.

Concerning the globalization – development compromise, it is necessary to address the "market access vs. development" dilemma. Trade governance needs to be able to address the global trade imbalance produced by ultra-mercantilist and trade expansionist policies that contribute to competition that destroys social cohesion and ecosystems. Multilateral trade governance should not be exclusively geared toward improving market access as the primary means of achieving the "sustainable development" objective stipulated in the preamble of the WTO agreements. Two WTO publications, *Making Trade Work for the Environment, Prosperity and Resilience* (WTO and UN Environment Programme 2018) and *Mainstreaming Trade to Attain Sustainable Development Goals* (WTO 2018), have highlighted the need for greater coherence and effectiveness to reach win – win opportunities on trade, climate change, environment and sustainable development.

To this end, the SDGs could serve as a substantive reference for multilateral trade negotiations. They constitute a lever for greater coherence in global governance. Apart from the formal affirmation of mutual support between free trade and environmental and climate protection, nothing has been concretely elaborated since 2015 to articulate WTO and SDGs regimes. Such an articulation implies that states must clarify their priorities between competitive integration, export expansion and ecosystem protection. The negotiation of a future agreement on investment facilitation could focus on the promotion of sustainable investment. The failure of the negotiations on the liberalization of environmental goods and services should pave the way for their reshaping in the direction of affirming criteria of environmental sustainability, as well as the reduction of the carbon footprint of goods and trade facilitation for goods. Similarly, the place of sustainable development and related obligations should be re-evaluated in RTAS and IIAS. The COVID-19 crisis highlights the need for more resilient production systems and a degree of "strategic autonomy" in the international division of labor, which will only be possible if countries allow sufficient policy space to diversify their economies and increase added domestic value. Therefore, the consolidation of a policy space for sustainable development and a low-carbon transition must become the goal of WTO negotiations. This could give rise to experimentation with flexibility in relation to green investment promotion, green innovation sharing and the dissemination of low-carbon technologies.

Faced with the Doha stalemate, developed countries have turned to bilateral and regional trade agreements that extend and consolidate the GVCs in which they have competitive advantages. In addition, there is a growing trend toward plurilateral negotiations, which risks fragmenting the trading system and eroding its multilateral character.

Regionalizing Multilateralism

The proposal to "regionalize multilateralism" echoes Richard Baldwin's "Multilateralizing Regionalism" (2006). Baldwin argues that current regionalism complements, rather than challenges, multilateral governance. Regional mega-agreements (such as the Comprehensive Economic and Trade Agreement, the Regional Comprehensive Economic Partnership and the Japan – EU Free Trade Agreement, among others) would be an institutional laboratory for multilateralism (Figure 9.3 related to the rise of RTAs). But the stalling of multilateralism cannot be passed over through regional agreements, which are themselves experiencing difficulties. By reversing Baldwin's expression, this chapter insists that the multilateral trade regime could consider reconfiguring production and trade networks on a regional or continental basis, as was mentioned in the first section.

The major economic powers (US, EU, China, Japan) are engaged in a process of intensification of their economic exchanges on a regional or continental
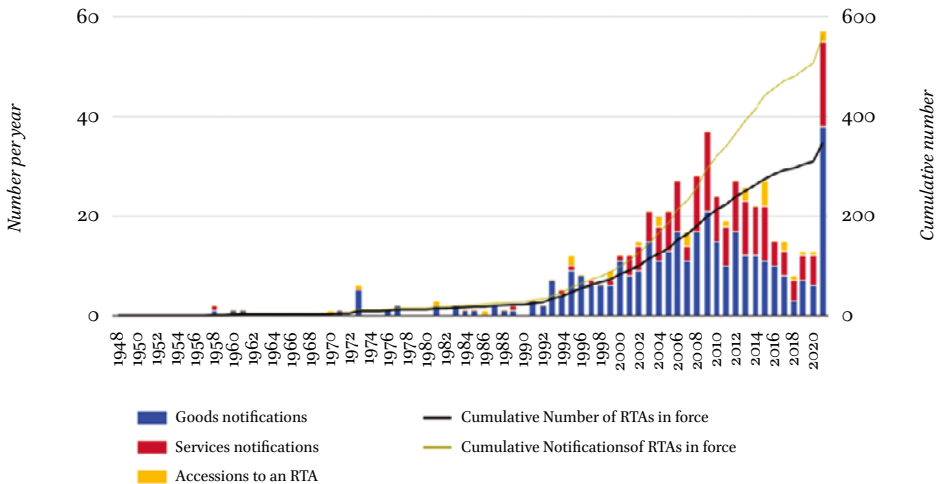

FIGURE 9.3   RTAs currently in force (by year of entry into force, 1948–2022)
Note: Notifications of RTAs: goods, services and accessions to an RTA are counted separately. The cumulative lines show the number of RTAs/notifications currently in force.
SOURCE: HTTPS://WWW.WTO.ORG/ENGLISH/TRATOP_E/REGION_E /REGION_E.HTM
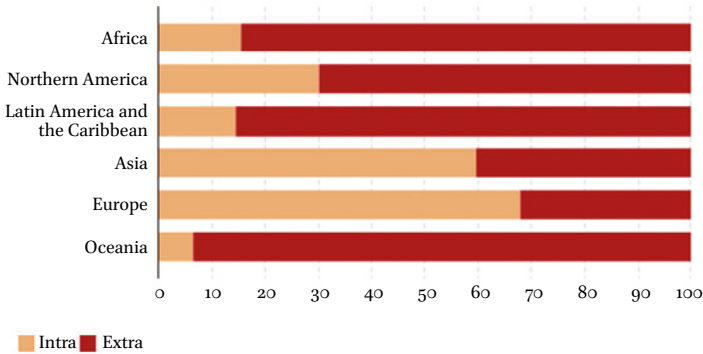
FIGURE 9.4   Intra- and extra-regional exports, 2019 (percentage of total
                     exports)
                     SOURCE: UNCTAD (2020C)

basis. The first section of this chapter has underlined the fact that production
and trade networks (Figure 9.4), as well as monetary and financial networks,
are increasingly regionalized.

The post-COVID-19 geopolitical economy may reinforce the trend toward
regional economic and monetary cooperation. Indeed, in recent years, reg-
ulations on intellectual property or on investment have been expanded
and strengthened, particularly through regional and bilateral trade agree-
ments. Furthermore, supply chains have never been truly global. Instead,
they are highly concentrated in three regions and in particular sectors.
Regional supply chains have always prevailed in the commodities sector,
where raw materials from developing countries are shipped for process-
ing and the end use is essentially aimed at geographically close developed
countries, although rapidly increasing demand from China has introduced
a more global component into production and trade networks since the
early 2000s. Some research shows that trade in goods and services is heav-
ily dependent on three regional supply centers, organized in Europe around
Germany, in North America around the USA and in Asia around China, which
has replaced Japan as the main pole of attraction for industrial Asia (UNCTAD
2020a). Truly global value chains are limited to labor-intensive industrial sec-
tors, such as textiles and garments, where a significant share of global pro-
duction is located in China. However, rising labor costs are pushing much of
this production activity out of China and into other locations, particularly in
Southeast Asian countries. In contrast, in more technology-intensive sectors,
such as information and communication technologies, the clusters in Europe,
North America and Asia have remained dominant despite China's increasing
role in intermediate stages linked to the clusters in Europe and North America
(WTO 2019).

The pandemic crisis has revealed the need for greater regional coordination to mitigate economic shock in terms of unemployment, corporate bankruptcy, financial market fragility and for the stability of GVC networks (Kimura et al. 2020). The crisis could be a lever to the densification of monetary and financial relations on a regional basis (Kim, Kim and Choi 2018). The regionalization of monetary and financial relations is related to the new balance of power in the global economy. The reframing of the CFA franc zone, the changing role of the European Central Bank (with the move toward more federal policies), the amendment to the Chiang Mai Initiative,[5] and the return of regional development banks in the debate on financing SDGs show that regional or continental-level regulations could be the building blocks of post-COVID-19 globalization. Even the climate – energy nexus evolves on a regional basis, considering that we have observed the regionalization of energy supplies as well as the consolidation of environmental and climate cooperation on a regional basis. This phenomenon is called "the growth of ecoregionalism" (Balsiger and VanDeveer 2012), as international environmental (biodiversity, fight against pollution emissions, sustainable infrastructures) and climate policies (adaptation) are implemented at the regional or continental level.

The pandemic crisis is likely to reinforce this trend. Consequently, would multilateral trade rules not benefit from formally acknowledging the emergence of the regional level of governance of international trade and investment networks? This means taking a step back from the WTO as a member-driven organization: Rather than exclusively working on a state-centric basis, it should also work on the basis of regional areas/agreements, allowing for collective bargaining and ruling.

The regionalization of multilateralism could follow two paths. The first is based on the fact that all WTO members participate in an RTA. It would then be possible to experiment with regional variations of multilateral disciplines. The issue would no longer be the articulation between regionalism and multilateralism, but the hybridization of multilateral rules according to regional trade and production issues. The multilateral framework would produce rules that allow for regional flexibility, as part of an ITIS organized around bilateral and/or regional strategic partnerships. The WTO's institutional arrangements (the Trade Policy Review Body and the RTA Transparency Mechanism, created in 2006) would evolve to monitor these partnerships.

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5   The state members of the Association of Southeast Asian Nations (ASEAN), plus China, Japan and South Korea, pledged at the 24th ASEAN+3 Forum to strengthen their financial cooperation to achieve resilient, inclusive and sustainable economic growth. The Multilateralization of the Chiang Mai Initiative (CMIM) for regional self-reliance, the Asian Bond Markets Initiative (ABMI) to facilitate cross-border transactions and the Strategic Guidelines for the ASEAN+3 Financial Process were agreed upon.

The second path is related to a globalization – development compromise and S&DT rules. It would be possible to consider that certain S&DT provisions could be elaborated on the basis of regional agreements or groupings. Indeed, trade and development issues are often similar for countries that are geographically close. This institutional experimentation could be complemented by an organizational evolution of the WTO through the creation of a Trade and Development Council whose function would be to debate and elaborate regulations in line with the commercial, productive and technological needs of the DCs and LDCs.

Conclusion

The global pandemic crisis has revealed many socio-economic, ecological and political failures and vulnerabilities, which call for collective responses based on new principles and ways of operating. The ITIS is no exception, especially since some of these vulnerabilities stem from the way the system is organized and the way economic globalization is deployed.

Although it is too early to assess the full impact of the COVID-19 crisis on international governance, several consequences of the pandemic could reinforce the dynamics of inequality, the dominance of large corporations, the unfair distribution of the benefits of globalization and the exacerbation of national egoisms. Are we heading for another "lost decade" with no hope of achieving the SDGs by 2030?

The governance of the ITIS is at a crossroads: It can either take a confrontational and protectionist path or, conversely, it can embark on a path of rethinking and renewed cooperation. Whether one or the other of these options prevails will essentially depend on the nature of the compromises that the main players of globalization (the USA, China and the EU) work out and on their capacity to associate other states to their institutional and regulatory preferences. The emerging economies have already changed the institutional path of globalization. The new hierarchy of power is coupled with a new grammar of international exchange. This new grammar should increasingly articulate institutional and regulatory flexibility, normative pluralism, variable geometry and critical mass agreements, in case of consensus failure.

It remains to be seen whether this new architecture, structured by power issues, will be able to take charge of the production of global public goods, the inadequacies of which the current crisis has revealed, and the place it will reserve for the least developed countries and vulnerable economies. These two challenges are at the heart of the project to create a new architecture for international trade.

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Environmental Governance and the Climate Challenge

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A New Climate Club Is the Best Way to Reduce Global Emissions of Greenhouse Gases

Guy Saint-Jacques

Abstract

With the election of President Joe Biden and the subsequent announcement that the United States would reintegrate the Paris Accord, there is new hope that progress can be accomplished at the 2021 United Nations Climate Change Conference to be held in Glasgow in November 2021 (COP 26). However, negotiations under the aegis of the UN Framework Convention on Climate Change (UNFCCC) have been very contentious in the past as unanimity is required to adopt resolutions. As a result, it is very difficult to agree on binding ambitious plans to reduce greenhouse gas (GHG) emissions or to agree on measures to adapt to climate change.

This chapter looks at the role of a few players in the international negotiations. For instance, Canada was instrumental in organizing the process in the 1980s that led to the adoption of the UNFCCC at the Rio Summit, but upheavals in domestic politics led to periods where Canada was less active and even opposed to taking strong action. In the last few years, this has changed with more attention and action taking place now to reduce GHG. It is also important to look at the case of China, the world's largest emitter of GHG, both at the UNFCCC where it leads the G77, and domestically as it has become the country that invests the most in renewable technology. The other big player to look at is the United States, as all indications are that the Biden administration understands the need to take strong action.

It is also important to look at the emphasis now given to climate issues by the private sector (insurance firms, business, etc.) as they understand the priority given by investors to environmental, social and governance (ESG) questions. Finally, possible actions, such as a tax on the carbon content of imported goods, could have a major impact on trade in the future.

Keywords

climate change – greenhouse gases – UNFCCC – COP26 – China's energy policy – Belt and Road Initiative

Introduction

A number of recent developments[1] have given new impetus to international discussions on climate change: President Xi Jinping announced at the UN General Assembly in September 2020 that China will be carbon neutral by 2060; Japan and South Korea have pledged to be carbon neutral by 2050; the United States has rejoined the Paris Agreement and President Joe Biden hosted the Earth Day Summit in April 2021; Prime Minister Justin Trudeau confirmed that Canada will be carbon neutral by 2050. All this helps prepare the ground for the 26th Conference of the Parties (COP 26) under the United Nations Framework Convention on Climate Change (UNFCCC), which took place in Glasgow, Scotland, in November 2021. However, it will remain difficult to achieve the additional commitments to reduce greenhouse gas (GHG) emissions that the urgency of climate change dictate. This chapter looks at the role Canada has played in climate change negotiations, why negotiations in the UNFCCC will never produce a binding agreement to further reduce GHG emissions, the challenge that China poses to the world with regard to climate change and why the G20 could be a better forum to create a Climate Club that would adopt a carbon tax, including on imports.

Canada's Historical Role in Climate Change Negotiations

Back in the 1980s, Canada was seen as a leader on environmental issues following its success in a dispute with the USA over acid rain, the signature of the Montreal Protocol on Substances that Deplete the Ozone Layer, and its hosting of international conferences such as "Our Changing Atmosphere: Implications for Global Security" held in Toronto in 1988. This conference led to the adoption of the UNFCCC at the Rio Summit in 1992, which was presided over by a Canadian, Maurice Strong. Progress continued with the adoption of the Kyoto Protocol in 1997, followed by the Copenhagen Agreement and, finally, the Paris Agreement in 2015. However, we are still very far from a binding agreement that would limit the global temperature increase to 1.5 degrees centigrade or less, as was aimed at in the 2015 Agreement.

Through its development assistance program, Canada also played a key role in helping China address its environmental challenges, a cooperation initiative that turned out to be very successful. This collaboration led to the creation of the Ministry of Environmental Protection and of the China Council

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1   This chapter is current with events prior to the Fall of 2021, when the chapter was written.

for International Cooperation on Environment and Development (CCICED), which has facilitated high-level policy exchange since its inception in 1992 (Evans 2014, 89). The Council, co-chaired by China's Minister of Ecology and Environment and Canada's Minister of Environment and Climate Change (ECC), sponsors research by internationally recognized experts and meets annually in the fall in Beijing. Canada also hosts the Secretariat of the Council at the International Institute for Sustainable Development (IISD) in Winnipeg. It provides the Premier and State Council with annual policy recommendations on the environment and sustainable development issues. The press release issued at the end of Prime Minister Trudeau's first visit to China in September 2016 specified that environmental collaboration would focus on enhancing efforts to address climate change through the full and effective implementation of the historic Paris Agreement, creating a working group on clean technology, cooperating on national parks management and confirming Canada's commitment to Phase IV of the CCICED.

A difficult question for the government will be whether to renew funding for the CCICED. The Canadian government will have to decide if the Council is still influential or even still required. China is not helping its case by having not invited Canada's then ECC Minister Catherine McKenna to co-chair the meeting of the China Council in Beijing in 2019. Despite the current turbulence in bilateral relations, and as there are no solutions to global environmental challenges without China's active cooperation, bilateral collaboration in the environmental sector is still appropriate.

The UNFCCC Process

As Canada's Chief Negotiator and Ambassador for Climate Change from 2010 to 2012, I was closely involved with the international negotiations under the UNFCCC. One of the peculiarities of that forum is that all decisions must be taken by consensus, which turns out to be a recipe for settling on the lowest result; this explains why little tangible progress is achieved at the annual COP since any country can block a decision. As William Nordhaus pointed out, "the key agreements, the 1997 Kyoto Protocol and the 2015 Paris Agreement, have relied on voluntary arrangements, which induce free-riding that undermines any agreement" (Nordhaus 2020, 10).

Over time, the UNFCCC has turned into a very frustrating forum as it has become very difficult to reconcile the positions of developed and developing countries. The latter are being led by China, which, for all practical purposes, controls the G77 and tries to hide in the group as a developing country. China is

also part of the BRICS (with Brazil, Russia, India and South Africa), which represent around 40 percent of global emissions but are very reluctant to adopt binding obligations.

To illustrate the challenge faced by the host country to negotiate a consensus, we may observe the unfolding of COP 16, held in Cancun in 2010. Patricia Espinosa, who was then the Mexican Foreign Minister and the president of COP 16, succeeded in getting the final declaration approved only after drafting it in secret during meetings called without notice in the middle of the night in the last few days of the conference. When the final session was called to order after a long wait, she tabled the document and said that it had to be adopted as is. Bolivia fiercely objected, underlining that it had not participated in the final negotiations. Espinosa rejected the call for changes, said that Bolivia's objections would be duly noted in the record of the meeting, and quickly put into effect the adoption of the Cancun declaration. The standing ovation that followed drowned out the protests of China, Saudi Arabia, Russia and other recalcitrant parties.

The Case of China

It is worth looking in more detail at the reasons that forced China to change its approach with regard to its energy use and the challenges it faces to reduce its emissions of GHG by switching away from coal and developing renewable technologies. China is a land of paradoxes and contradictions, and it is key to addressing climate change together with the USA. "China is currently responsible for 28% of the world's greenhouse gas emissions" (Finamore 2020, 1), which makes it the number one emitter of GHGs; this is in part because it is the biggest consumer of coal in the world. By contrast, it is also the country that has invested the most in renewable technology. On a historical basis, China is the second largest polluter, behind the USA.

Change in Policy

The policy of opening up and the economic reforms launched by Deng Xiaoping in 1978 resulted in phenomenal growth and the eradication of poverty in major parts of China. However, it took time for the country to acknowledge that the quality of its environment was deteriorating so rapidly that it threatened its economic development. Days with heavy air pollution had become the norm in major cities in China. In fact, a study revealed that life expectancy was reduced by five and a half years by living in northern China (Kaiman 2013).

However, as more people, including young children, developed respiratory problems, parents became not only worried about the health of their child (the one-child policy was still in place), but also about who would take care of them in their old age. People in Beijing started to consult the hourly US Embassy Air Quality Reports and realized that, while the WHO recommended that people should not be exposed to fine particulate matter (PM 2.5) concentrations of 25 or more for more than 24 hours, readings of the substance were often over 300 and even 500! This resulted in a public outcry on Chinese social media that the Chinese government could not ignore.

In October 2013, Premier Li Keqiang announced what came to be known as "China's ecological civilization" policy, which indicated that addressing pollution problems had become a government priority and laws would be reinforced and implemented. Moreover, the policy underlined that the performance of cadres would no longer be based just on their contribution to economic growth, but also on measures taken to address pollution problems. To make sure that it was understood, teams were sent around China to investigate the situation and officials were punished or demoted, which sent a clear message to everyone that fighting pollution had indeed become a priority. The government also framed its approach as part of its Made in China 2025 strategy, the goal of which was to change China's economic development model by relying less on primary industry and developing high-tech industries, reducing dependency on foreign suppliers and becoming a leader in, and exporter of, renewable technology.

China understands the risks associated with climate change. Desertification is very difficult to control in the north of the country (reforestation efforts have not been very successful) and agricultural production is more challenging with flooding or lack of water in many regions. As its population is mostly located in coastal areas, China is also concerned about coastal flooding that will result from rising sea levels. At the same time, it has been fearful of the consequences for its development if it were forced to reduce its emissions as part of a possible binding agreement under the UNFCCC.

Energy Policy and Use

China's energy policy should be understood from a security perspective: Over the last decade, the country has become very dependent on imports, with its primary energy demand increasing more than 45 percent during that period. In 2018, fossil fuels provided 88 percent of the energy used in China; according to the International Energy Agency (IEA), the likely number for 2030 is 76 percent (Ball 2020). China is the world's largest importer of oil and natural

gas (with Russia as its single largest supplier) and an important coal importer as well (Gross 2020). In order to tackle pollution, efforts have been made to replace coal with natural gas: Imports made up 45 percent of China's natural gas supply in 2018, up 15 percent compared with 2010. In 2019, 36 percent of imported gas came through pipelines (from Turkmenistan, Uzbekistan, Kazakhstan and Siberia – at the end of 2019, there was an increase of 80 percent in capacity after a new pipeline originating in Siberia came into service) and 64 percent as liquefied natural gas (LNG) – 60 percent of which was supplied by Australia and Qatar.

To reduce its dependency on foreign suppliers, China has chosen to use its large, low-cost and readily available domestic coal reserves, even if they are of poor quality; it is also an important source of employment, especially in poor provinces such as Shanxi and Inner Mongolia. The demand for electricity in 2019 was five times its level in 2000. It slowed down in the last decade, but growth still averaged about 7 percent per year.

> China burns half the world's coal and is still building new coal power plants, though they are increasingly uneconomic and unnecessary. Coal is also burned in factories that produce half the world's steel and cement.
>
> FINAMORE 2020, 2

It should be pointed out that "[China's] average production of steel is more than twice as carbon intensive as the United States'" (Baker, Shultz and Halstead 2020, 29). The share of coal in China's electricity production declined from 81 percent in 2007 to 66 percent in 2019, while that of natural gas increased to 3.2 percent. China is still experiencing overcapacity of coal-fired power, with its 1,058 plants running at less than 50 percent of capacity on average in 2018.

> Between 2015 and 2020, Chinese firms added approximately 275 gigawatts (GW) of gross coal-fired power generation capacity – larger than the entire coal-fired fleet of the United States, the world's third-largest coal consumer. More than 85% of this recently installed capacity uses modern supercritical and ultra-supercritical boiler technology – an expensive investment meant to last a long time – locking in demand for decades to come and underlining the renewal of China's long-term vows with coal.
>
> ERICKSON AND COLLINS 2021, 7

It should be noted that while the adoption of this coal technology is welcome, it might only emit 10 percent less carbon per unit of electricity generated than a conventional plant. In that same period, China shut down 46 GW of

coal power capacity, but it was mostly in wealthy coastal provinces such as Guangdong, in order to improve the local air quality and open up real estate for more revenue-boosting projects.

Until a few years ago, the performance (and hope for promotion) of local and provincial officials depended exclusively on economic growth. Hence, building a coal power plant was seen as a quick and easy career opportunity. As a result, there is a very powerful coal lobby in China, which has led to corruption that is still difficult to control. Even now, the State Grid Corporation (the world's largest utility company) and the China Electricity Council are pushing for more coal-fired plants, which they consider a reliable source of cheap power that is easier to manage than wind or solar power, which can fluctuate a lot during the day. In fact, another 247 GW of coal-fired plants was being planned or developed in 2021.

Although China is investing heavily to clean up its act domestically, it is further worsening the global situation, as exemplified by President Xi's Belt and Road Initiative (BRI). As of 2017, China had committed to, or offered, financing for more than a quarter of the world's coal-fired capacity being built outside China, often with Chinese companies as the engineering, procurement and construction contractors; 23 percent of the projects are using subcritical technology, the least advanced and most polluting form of coal-fired generation. For China, apart from extending its zone of influence, the goal has been to keep its industrial capacity working. In fact, in a business-as-usual scenario, BRI countries could be responsible for two-thirds of GHG emissions in 2050 (Ball 2020). This is clearly an area that needs attention as the policy pursued by China is not contributing to a global reduction in GHG emissions.

Renewable Technologies

Over the last decade, China has added 36 percent of the world's total new renewable generation capacity (wind and solar). "Between 2014 and 2020, the country added 235 GW of solar power capacity and 205 GW of wind power capacity, according to China's National Energy Administration (NEA)" (Erickson and Collins 2021, 11).

> According to the NEA, China added 71.67 gigawatts of wind power capacity last year, the most ever and nearly triple 2019 levels. New solar power also rebounded in 2020 to 48.2 gigawatts after falling for two straight years.... By the end of 2020, China had 281.5 GW of wind generation capacity, and 253.4 GW of solar generation capacity, the NEA data showed.
> XU AND STANWAY 2021, 1

For many years, however, a large part of that production was wasted because of the lack of high-voltage transmission lines and the reluctance of grid operators to include it. As a result, the production of renewable power in China was reduced by 17 percent in 2016, but investments and orders from the central government limited the reduction to 7 percent in 2018. Additionally, subsidies for renewable energy are being phased out as the government believes they will be unnecessary, since new installations can already compete with coal- and gas-fired power generation. In parallel, there is a major push in the transportation sector to move away from oil by developing electric and fuel-cell vehicles:

> [China] is also home to nearly half the world's electric passenger vehicles, 98% of its electric buses and 99% of its electric two-wheelers. The country leads in the production of batteries to power electric vehicles and store renewable energy on power grids.
>
> FINAMORE 2020, 22

What Is China Planning on Doing?

China has a track record of under-promising and over-delivering on its climate commitments. US President Barack Obama worked closely with President Xi to take action on climate change. Both countries emphasized their commitment to the Paris Agreement. China's National Determined Contribution (NDC) under the Paris Agreement calls for its GHG emissions to peak no later than 2030. Furthermore, Xi set China's first long-term target when he announced at the UN General Assembly in September 2020 that China would aim to become carbon neutral before 2060. The timing of this announcement was clearly designed to take advantage of the lack of US leadership at the international level – and perhaps to preempt pressure to act on climate from a new US Administration. However, we shouldn't forget that Xi's words were also intended for domestic consumption, sending a powerful signal to everyone in China that addressing climate change is a top priority.

We should not underestimate the magnitude of the challenge faced by China to reduce its GHG emissions. The country's 14th five-year plan (2021–2025) proposes to increase the share of non-fossil fuel energy in China's energy mix to 20 percent by 2025, up from 15.8 percent in 2020. It also sets modest goals to reduce energy consumption per unit of GDP by 13.5 percent and cut carbon emissions per unit of GDP by 18 percent. China's NEA proposes to boost power generation from solar and wind sources to around 11 percent of the country's

total in 2021, from 9.7 percent in 2020, with that figure rising to 16.5 percent by 2025. It also sets a new target of 70 GW of nuclear capacity in 2025, up from 51 GW five years earlier.

The country will set obligatory goals for different regions to reduce carbon intensity and ramp up inspections.

> They will also be given specific yearly targets for renewables' share of their total power consumption for the years leading up to 2030; the plan aims to ramp up the national share of renewables – which include hydrogen, wind, solar and biomass – to 40% by 2030…. The plan also seeks to boost the share of non-fossil fuels – which include renewables and nuclear energy – in China's national power use to 25% by 2030, another goal President Xi set at the UN General Assembly. The share at the end of 2019 was 15.3%.
>
> CHEN AND LU 2021, 2

Zhang Xiliang, who runs a climate model at Tsinghua University in Beijing, has developed a proposal that calls for electricity production to more than double by 2060.

> This growth would be driven by a massive ramp-up of renewable electricity generation over the next 40 years, including a 16-fold increase in solar and a 9-fold increase in wind. To replace coal-fired power generation (note: some 558 coal-fired plants will have to be shut down), nuclear power would need to increase sixfold, and hydroelectricity to double. Fossil fuels, including coal, oil and gas, would still account for 16% of energy consumed, so would need to be paired with carbon capture and storage (CCS) or offset by new forest growth that can suck CO_2 directly out of the atmosphere.
>
> MALLAPATY 2020, 2

China also firmly promotes the construction of a national carbon market. In December 2020, the Ministry of Ecology and Environment (MEE) released a trial version of the measures for the administration of carbon emissions trading and compiled the implementation plan for the 2019–2020 national carbon emission trading quota setting and allocation, indicating that the construction and development of the national carbon market had entered a new stage. The MEE will accelerate the construction of the national carbon market (by releasing the interim regulations on the management of carbon emissions trading

and by formulating related supporting documents such as emission reporting and verification, registration, trading and settlement) and complete a unified national registration system.

China's central bank is cooperating with the European Union to converge green investment taxonomies across both markets, aiming to implement a jointly recognized classification system for the environmental credentials of businesses by the end of 2021. China has more than 11 trillion yuan ($1.7 trillion) in green credit in circulation and over one trillion yuan in green bonds outstanding. Nonetheless, according to Yi Gang, China's central bank governor, the success of China's 2060 carbon neutral pledge is contingent upon a sharp increase in private funding. It is for this reason that the bank plans to revise its green finance policy framework over the next five years to allow capital markets a greater role in resource allocation. Goldman Sachs agrees: It estimated that the 2060 pledge could require $16 trillion worth of investment, 75 percent of which will need to be sourced from private investors (Yanchun 2021).

In my view, China has a lot of low-hanging fruits and could reduce its emissions much more aggressively, with measures such as the adoption of building code standards to reduce energy consumption, and a move away from coal with more imports of LNG. The government must also continue to emphasize nuclear energy as well as carbon capture and storage at its coal-fired plants. It would not take much for China's emissions to peak as early as 2025!

A Fair and Effective Solution to Climate Change

The world each year emits over 50 billion metric tons of carbon dioxide equivalent.

> About 75 to 80 percent of carbon dioxide comes from the fossil fuels burned in just 20 countries by four major sources: power plants, vehicles, buildings, and factories.... Indeed, of the four important sectors, electric power is the easiest to deal with, because it is now cheaper to build wind and solar power plants from scratch than it is to fuel and maintain most existing coal power plants.
>
> HARVEY 2020, 179

The COP 26 in Glasgow has confirmed that the UNFCCC has become a contentious forum where it is almost impossible to reach a binding agreement that would apply similar constraints on all major emitters. This will call for another solution. In 2009, the USA launched the Major Economies Forum on Energy

and Climate (MEF), a group of seventeen economies that gathered at the ministerial level to facilitate the climate negotiations under the UNFCCC. As this forum does not include Argentina, Saudi Arabia and Turkey, it might be better to replace it with the G20; it could be called the Climate Club, as suggested by William Nordhaus (2020), and promote the adoption of a binding agreement in that forum, considering that G20 countries are responsible for 80 percent of GHGs.

Member countries could agree to undertake harmonized emission reductions designed to meet a climate objective (such as a two-degree temperature limit). Instead of imposing quantitative restrictions, such as emission limits, a more fruitful rule would focus on a carbon price that would increase over time. Countries could use carbon taxes (which would easily solve the problem of setting the price) or a cap-and-trade mechanism (such as the one used by the province of Quebec and the state of California). To be effective, such a tax has to be coupled with carbon tariffs on imports from countries with inadequate climate policies. A second and critical change could be that nations that do not participate or do not meet their obligations incur penalties. While many types could be considered, the simplest and most effective would be tariffs on imports from non-participants into club member states. One brand of penalty would be a countervailing duty on the carbon content of imports. A second would be a uniform tariff on all imports from non-participant countries into the club.

This approach is already being discussed; for instance, Ursula von der Leyen, President of the European Commission, has called for carbon tariffs in the EU as well as a carbon border tax to avoid leakage. The Baker – Shultz Carbon Dividends Plan calls for

> a transparent carbon fee (that) would start at $40 per ton and increase by five percent per year above inflation. According to modeling by Resources for the Future, an American nonprofit that researches resource use and allocation, if the plan were enacted in 2021, it would cut U.S. carbon emissions in half by 2035 from 2005 levels.
>
> BAKER, SHULTZ AND HALSTEAD 2020, 34

Once adopted, such an agreement would send a clear signal to the markets and provide a significant incentive to reduce emissions by adopting renewable technologies and other measures to increase energy efficiency.

Of course, some countries could raise objections and claim that such border measures would run against World Trade Organization (WTO) rules.

WTO law permits border adjustments (i.e., additional taxes) on imports if the importing country imposes the same taxes on domestic goods. Canada's carbon pricing legislation lists 22 fuels, each with its own specified charge. These charges apply to imported fuel as well as fuel sold domestically.... A WTO decision setting out conditions upon which carbon border taxes could be covered by an exception could be very helpful.

JOHNSON 2020, 1

It should be kept in mind that countries whose products are subject to unilaterally imposed carbon border taxes may impose retaliatory tariffs.

The private sector would welcome measures that establish a level playing field. In January 2020, Larry Fink, CEO of BlackRock, the largest asset manager in the world, declared that "climate risk is investment risk" and announced that going forward, BlackRock would ask every firm in its portfolio to disclose its carbon emissions (Henderson 2020). Many of the world's largest asset owners (pension funds and sovereign wealth funds) are coming to the conclusion that climate change is the most important risk to the long-term health of their portfolios.

Conclusion

The Biden Administration continues to see China as a strategic competitor, more formidable than the Soviet Union, but it sees it as an essential partner to address climate change. With China being the largest global emitter of GHGs and the USA a close second, cooperation will be essential to make progress on reducing emissions.

Beijing will likely continue using negotiations on climate issues to shield its domestic human rights record and regional aggression. Worse still, it will probably demand economic, technological, and security compromises from the United States and its allies – such as their agreeing not to challenge China's coercive activities in the South China Sea – for which those countries would receive little, if anything, in return.

ERICKSON AND COLLINS 2021, 4

This should be opposed, since only competition, not supplication, will induce Beijing to reframe its approach to emissions and climate change. With carbon border adjustment mechanisms in place, Chinese firms would have to change the way they source energy to remain economically viable in key foreign markets.

China's strategic importance in resolving global issues such as climate change implies that Canada and other countries will need to pursue engagement with China in the future, even if bilateral relations remain tense for a while. It is to Canada's advantage to ensure that China reduces its emissions of GHG and toxic chemicals, which often find their way into food products exported around the world. Hence, it is obvious that Canada should continue to work with China on environmental issues.

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Biodiversity Loss under the Lens of Multilateralism: An Environmental Governance and International Law Perspective

Valériane Thool

Abstract

More than ever, the United Nations is facing global environmental threats, due to poor governance strategy and various obstacles related to multilateralism. Environmental problems are, by definition, transboundary issues. This chapter will focus on one of the main challenges of environmental law and governance: biodiversity loss. The conservation of biodiversity has been recognized as a common concern of humanity. Nevertheless, even if a vast majority of UN member states agree on the importance of tackling environmental issues such as this one, the lack of binding regulations and good implementation leads to poor results.

Using Sustainable Development Goals 14 and 15, I will discuss governance and legal issues concerning the identified goals, and the international community's capacity to meet them in practice. One of the major problems concerning biodiversity conservation is the multiplication of instruments contained in its legal regime as well as the overlap of actors involved. This chapter will also evaluate the upcoming challenges that the world and the United Nations will have to solve in the next decades in terms of biodiversity challenges at a multilateral level.

Keywords

biodiversity loss – multilateralism – environmental governance – international law – environment – Sustainable Development Goals – United Nations – biological diversity

The United Nations recently celebrated its 75th anniversary, while the international community is facing ever greater challenges such as climate change, democratic erosion and migration crises. One of these challenges is the unprecedented loss of biodiversity. The erosion of biodiversity is not a recent phenomenon, contrary to what the media claims. Five waves of species extinction have occurred in the history of our planet (Arbour et al. 2016). However, unlike the mass extinctions – the last of which occurred nearly 100 million years ago – the loss of biological diversity that our ecosystems are now experiencing is due to human activities (Barbault 2011, 485). Most international legal instruments have identified the loss of biodiversity as a major concern for several decades. This concern is becoming increasingly grave, especially as the international community must find solutions to the decline of biodiversity for which humanity is responsible.

Globalization has pushed the limits of natural resource management, urbanization, trade and productivity. Hence, the decline of biodiversity is not merely in its infancy (Otero et al. 2020, 3). One of the most fundamental problems in biodiversity governance is the tendency to dissociate biodiversity protection from human health and well-being. Yet the conservation of biodiversity is a basic concern for humanity (Convention on Biological Diversity 1992, preamble). Its erosion creates a myriad of consequences that are harmful to both humans and the planet, including deterioration of the environment in which humans live, depletion of food resources, increased health challenges, greater pressure on human rights and serious questions about the quality of the global economy.

The Food and Agriculture Organization of the United Nations (FAO) indicated in its 2020 report on the state of world fisheries and aquaculture that 34 percent of assessed fish stocks are caught at a biologically unsustainable level (FAO 2020, 50), while for a large number of developing and underdeveloped countries, fish is the primary source of food. It is also known that the ocean absorbs 30 percent of the carbon dioxide produced by humans, and that 80 percent of all terrestrial species of animals, plants and insects are found in forests. In another FAO report on the state of the world's forests, it is stated that the preservation of the area and quality of forests contributes to the good nutrition and food security of populations and also promotes the development of resources for human health. Medicines used in healthcare in Asia, Latin America and Africa are derived directly from forest resources (FAO 2020). Therefore, the protection of biodiversity must be at the heart of multilateral debates on climate change, health and nutrition.

These environmental issues challenge the standards and practices of the current model of multilateralism, which is criticized for its lack of effectiveness

and its inadequacy in the face of major global challenges. However, post-Second World War multilateralism was the predominant tool of international relations in the 20th century. It has allowed both developed and developing countries to sit at the same table and permitted new orientations to emerge from multilateral discussions. In so doing, the inclusion of developing countries in multilateral meetings has changed the international agenda and the forms of decision-making.

This change has been particularly noticeable in the UN system and in environmental issues. In 1992, the United Nations Conference on Environment and Development brought environmental protection issues to the forefront. This conference was prolific, as several legal instruments aimed at protecting the environment were adopted simultaneously by states (i.e., United Nations Convention on Biological Diversity; United Nations Convention on Combating Deforestation; United Nations Framework Convention on Climate Change; Declaration of Forest Principles; Rio Declaration on Environment and Development; Agenda 21). For example, paragraph 6 of the preamble to the Convention on Biological Diversity stated that the Contracting Parties are "[c]oncerned that biological diversity is being significantly reduced as a result of certain human activities."

On September 30, 2020, at the Biodiversity Summit, and just days before the UN's 75th anniversary, UN Secretary-General António Guterres put his finger on the major issue of environmental multilateralism: "Neglecting our precious resources can exacerbate geopolitical tensions and conflicts. Yet, too often, environmental health is neglected or downplayed by other government sectors" (UN 2020). Guterres' words are powerful. They show that the biodiversity paradigm is undergoing an alarming shift: The protection of the planet's resources, and especially biodiversity, is no longer just an environmental issue but is becoming a real geopolitical issue that should no longer be pushed aside in favor of other issues put forward by governments.

Consequently, 75 years after the creation of the United Nations, where do we stand in terms of environmental governance and multilateral action to protect biological diversity? This chapter first proposes to analyze the main challenges of biodiversity multilateralism. One of the major obstacles lies in the tangle of actors involved in the multilateral management of sustainable development objectives related to biodiversity protection, as well as in the multiplication of legal instruments and policies adopted by multilateral forums. This complicates the reading of states' international obligations and does not benefit the integration of strategies and action plans. Second, it will present possible solutions to improve biodiversity governance at a multilateral level.

Environmental Governance in the Era of the Sustainable Development Goals (SDGs)

Environmental governance refers to the set of rules, practices and institutions that surround the management of the environment in its various forms (Haque 2017). The traditional concept of multilateralism is based on the elaboration of treaties adopted by the international community as a whole or in part, and to which states are committed (Keohane 2020). In the field of environmental protection, this governance implies a multiplication of actors and specialized institutions, making multilateral actions a tangle of ideas whose vision may be common but whose implementation is not always concerted. However, the global nature of the issues related to biodiversity loss requires concerted and multilateral action on the part of international actors.

Biodiversity Governance: Toward a Defragmented Fragmentation

The institutional landscape in international environmental governance is a nebulous system. For a long time reserved for specialized circles, biodiversity conservation has come to the forefront due to the complexity of the issues it raises, the rise of biotechnology, the scarcity of available natural resources and attempts at appropriation, but also due to the media coverage of its degradation. The fact that biodiversity extends from land to sea complexifies the institutional landscape, which explains why so many international and regional organizations have chosen to take up these issues. The organizations whose task is based in whole or in part on biodiversity conservation issues have not only multiplied but have also become sectorized. However, the global nature of these issues requires specialized institutions to collaborate and find joint solutions.

Within the UN system itself, several specialized agencies, organizations, funds and programs are mandated to work on biodiversity issues. This does not include the treaty institutions, such as the United Nations Environment Programme (UNEP), the Secretariat of the Convention on Biological Diversity, the United Nations Conference on Trade and Development (UNCTAD), the International Seabed Authority (ISA), the High-Level Political Forum on Sustainable Development, the United Nations Forum on Forests, the FAO or the International Maritime Organization. These are all actors involved in biodiversity issues. Whether the multiplication of these actors benefits the governance of biodiversity is a justifiable question.

The multiplication of international actors involved in setting agendas, actions and regulations makes the achievement of the SDGs laborious. In recent

decades, environmental multilateralism has led to the adoption of numerous legal instruments aimed at conserving the marine environment and combating pollution of all kinds (König 2013). Regional environmental protection agreements have added another layer to the already complex "legal millefeuille." Examples of regional conventions that concern well-defined geographical areas are numerous, including the Convention on the Protection of the Marine Environment of the Baltic Sea Area (April 9, 1992), the Declaration on the Protection of the Arctic Environment (June 14, 1991) and the Protocol concerning the Conservation and Management of Marine Protected Areas in the South-East Pacific (September 21, 1989). Sectoral conventions on the conservation of biodiversity also exist, such as the Minamata Convention on Mercury (October 10, 2013), the International Tropical Timber Agreement (2006) and the International Convention on the Protection of Birds (October 18, 1950). They provide a framework for the management and protection of certain animal or plant species, as well as acceptable scientific research methods. The superposition of many environmental protection instruments has widened the gap between the "frenzy" of the normative process and the environmental degradation, which has continued to intensify (Maljean-Dubois 2021).

This multilayered environmental governance structure implies fragmented actions that render the implementation of these actions singularly ineffective. The adoption of multiple binding texts, but also strategies, agendas and policies in the field of biodiversity whose management and monitoring are fragmented, makes it increasingly difficult to read the obligations and action plans (Rogalla von Bieberstein et al. 2019, 822). As a result, we are witnessing the defragmentation of biodiversity action. This defragmentation is part of the will to find coherence in fragmented and sectoral actions.

The United Nations' Sustainable Development Goals 14 and 15

The beginning of the 21st century was marked by the failure of the Conferences of the Parties on the environment and biodiversity to develop effective and ambitious action agendas (Odendahl 2016). The adoption of the 2015 SDGs complemented the 2000 Millennium Development Goals (MDGs), but in the end, they were limited to refining the goals already established. While the SDGs set out clear environmental objectives and targets on paper, their implementation remains a challenge and the states quickly drew a negative outcome. However, the Strategic Plan for Biological Diversity 2011–2020 and the Aichi Goals "Living in Harmony with Nature" have attempted to provide a more elaborate roadmap for achieving Goals 14 and 15 (CBD COP10 2010). Unlike the SDGs, the Aichi targets are quantified or specified on the issue

of their implementation. For example, Sustainable Development Goal 14, "Conserve and sustainably use the oceans, seas and marine resources for sustainable development," called for, among other things, the sustainable management and protection of marine and coastal ecosystems, including building resilience, and the prevention and significant reduction of marine pollution of all types, specifically from land-based activities, by 2020. In more precise terms, Aichi Goal 6 states that by 2020,

> all stocks of fish and aquatic invertebrates and plants are managed and harvested in a sustainable, legal manner and using ecosystem-based approaches so that overfishing is avoided, recovery plans and measures are in place for all depleted species, fisheries do not have significant adverse impacts on threatened species and vulnerable ecosystems, and the impact of fisheries on stocks, species and ecosystems remains within safe ecological limits.
>
> CBD COP10 2010

Aichi Goal 11 requires the protection of 10 percent of coastal and marine areas through the establishment of marine protected areas. Yet current results show that the target is far from having been met so far (Rochette et al. 2014, 32). These clearer goals allow states to propose more effective programs and policies and to better assess state progress.

The lack of coordination and the need for cooperation in order to achieve the objectives of conservation of the marine environment were the main reasons for the creation of the "Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond national jurisdiction" (UN General Assembly 2005, para. 73). This working group aims to identify the main scientific, legal and economic issues and aspects concerning the conservation of marine biodiversity and to propose solutions and methods to promote international cooperation and coordination (UN General Assembly 2005, para. 73).

Sustainable Development Goal 15, "Conserve and restore terrestrial ecosystems, ensuring their sustainable use, sustainably manage forests, combat desertification, halt and reverse land degradation and halt biodiversity loss," implies taking urgent and strong action to reduce environmental degradation, halt biodiversity loss and, by 2020, protect threatened species and prevent their extinction. It also means taking action to prevent the introduction of invasive alien species, to significantly mitigate their impacts on terrestrial and aquatic ecosystems and to control or eradicate in priority alien species by 2020. Aichi Goal 9 complements this goal by proposing that

by 2020, alien invasive species and pathways are identified and prioritized, priority species are controlled or eradicated, and measures are in place to manage pathways to prevent the introduction and establishment of these species.

CBD COP10 2010

However, there is reason to question the effective implementation of the goals and thus the achievement of the targets identified by the states. The updated scientific assessment on progress toward the Aichi Biodiversity Targets and options for accelerating progress (also referred to as Assessment 14/1), dated November 30, 2018, stated in its preamble that the Conference of the Parties [to the Convention on Biological Diversity] was "deeply concerned that, despite the many positive actions undertaken by Parties and other entities, most of the Aichi Biodiversity Targets are not on track to be achieved by 2020" (CBD COP14 2018).

In response to the failure to meet biodiversity protection targets, states have begun negotiating a draft text with 21 specific targets for biodiversity protection by 2030. The targets aim to reduce threats to biodiversity while meeting the needs of the population with regard to sustainable and equitable management of natural resources. Among the targets identified, the text proposes that "at least 30% of the world's land and marine areas should be conserved through protected area systems." The text supports the idea of reducing "environmentally harmful" subsidies by a minimum of 500 billion US dollars per year and, in parallel, to increase funding for biodiversity by at least 200 billion US dollars per year. The text is expected to be adopted in 2022, but the current draft lacks ambition and ignores the urgency of the situation. It will not be sufficient to address the impacts of human activity on marine and terrestrial biodiversity.

Finding Effective Solutions to Biodiversity Loss

Environmental multilateralism faces great challenges in governance and biodiversity conservation. The longer it takes to reach effective action, the greater these challenges become. The urgency of the situation – as with that of the fight against climate change, which is closely linked to the loss of biodiversity – must be the driving force behind coherent, concerted action that truly responds to the issues identified by scientists. Several solutions are being explored by the international community, notably (1) those based on nature, (2) those aiming to massively involve financial markets and, finally, (3) those that allow for both biodiversity conservation and the economic development of all populations.

Nature-Based Solutions

Nature-based solutions are those solutions that benefit both the conservation of nature and the well-being of societies. This concept was proposed by the International Union for Conservation of Nature (IUCN) at the 2009 Conference of the Parties to the United Nations Framework Convention on Climate Change. According to IUCN, these solutions are

> actions to protect, sustainably manage and restore natural or modified ecosystems to directly address societal challenges in an effective and adaptive manner, while ensuring human well-being and producing biodiversity benefits.
>
> COHEN-SHACHAM et al. 2016, 2

The UNEP stated in October 2020 that the solution to biodiversity loss lies in nature. The United Nations Development Programme (UNDP) has meanwhile called for "putting nature at the heart of sustainable development" (UNDP 2020). It also states that "we can no longer afford the 'environment versus economy' miscalculation" (UNDP 2020). In other words, economic development must not be the excuse for not finding solutions based on what nature can offer. Too often, the economy and biodiversity protection are pitted against each other. Thinking in this way is a major mistake. On the contrary, biodiversity conservation is a prolific sector for the economy. Investing in biodiversity conservation means creating jobs. In doing so, biodiversity conservation creates economic growth.

Market-based protection means using the market to promote the conservation and sustainable use of biodiversity to achieve the economic, financial and environmental objectives of economic actors. The use of the market is possible when the value of biological diversity is recognized, and when this value has a significant impact on the economy (OECD 2003, 20). Ultimately, the market corrects its own failure in the extent it can protect biodiversity. The OECD report "Harnessing Markets for Biodiversity" underlines "the need for substantial investments to preserve biodiversity" and recognizes "the unique role that the private sector can play in promoting and sustaining the use of biological resources" (OECD 2003, 3).

Economic multilateralism has been pushed to the point where a set of entities dedicated to financial stability, trade liberalization and internationalization of production activities have developed in the late 20th and early 21st centuries. Added to this is the fact that countries do not yet count natural resources in their wealth. In doing so, the system widely used in the world favors destruction over conservation. However, all stakeholders agree that

the evolution of economic and financial governance is essential not only for sustainable development but also for the implementation of environmental agendas. The question is how economic governance can be put at the service of biodiversity conservation.

Economic multilateralism can be a weapon in the fight against biodiversity loss. For example, market-based protection means using the market to promote the conservation and sustainable use of biodiversity to achieve the economic, financial and environmental objectives of economic actors. The use of the market is possible when the value of biodiversity is recognized, and when this value has a significant impact on the economy. The OECD report "Harnessing Markets for Biodiversity" makes very clear

> the need for substantial investments to preserve biodiversity and recognizes the unique role that the private sector can play in promoting and sustaining the use of biological resources.
>
> 2003, 3

Financial Markets Must Take Biodiversity and Nature into Account

According to the UNDP, to achieve the goals of the 2030 Agenda, it is necessary to "transform our economic systems, including by making the loss of biodiversity a financial risk" (UNDP 2020). The UNDP wants to reject investments that are harmful to biodiversity and to redirect them toward activities that place nature at their center. Investments that would allow for the restoration of forests and mangroves, investments in nature-based businesses or regenerative agriculture should be favored. However, how can we finance the fight against biodiversity loss?

Even before the COVID-19 crisis, many developing countries were struggling to finance the investments needed to achieve the 2030 Agenda for Sustainable Development. These difficulties are the result of decades of unbalanced adjustment programs, premature liberalization in some regions and constraints on long-term development financing. Finance is the set of mechanisms that provides the economy with the capital it needs to function. However, sustainable finance considers extra-financial criteria such as environmental or social impact. Sustainable finance includes different categories, and in particular green finance, which brings together all the financial operations in favor of the energy and ecological transition and the fight against climate change. These operations are often called "green bonds." Responsible investment integrates ESG (environmental, social and governance) criteria into the investment process and encourages companies and investors to consider environmental, social and good governance criteria in their decision-making.

Since the 1990s, a UN initiative on sustainable finance has emerged. The United Nations Environment Programme Finance Initiative (UNEPFI) was born out of a partnership between the UNEP and the global financial sector, following the adoption of the UNEP Statement of Commitment of Financial Institutions to Sustainable Development after the Rio Summit in 1992. Through the signing of this statement, financial institutions recognized the role of the financial services sector in making the global economy and lifestyles more sustainable. At the same time, they committed to integrating environmental and social considerations into all aspects of their operations.

This idea of financing sustainable development is not new, but it has yet to take hold. This initiative has highlighted the willingness of private investors to act in favor of more sustainable investments. With biodiversity financing estimated at between 78 and 91 billion US dollars per year, it goes without saying that the efforts of private and especially institutional investors must increase to meet the ambitious targets of the SDGs (Parker et al. 2012). Getting the SDGs back on track, especially those requiring significant public investment, will depend on coordinated international support and policy responses to increase reliable sources of public funding, including through debt instruments, and to ensure that such funding is channeled to long-term development projects.

This is precisely what other UN agencies are trying to do, complementing the work undertaken by UNEPFI to finance the fight against biodiversity loss. As a matter of fact, UN agencies have the capacity to stimulate long-term international financing and to devise a restructuring that will go hand in hand with the implementation of biodiversity protection goals. Their work fills the gaps in UNEPFI's limited mandate. Thus, these other actors have initiated programs to incentivize sustainable finance but have applied them in a sectoral manner.

UNCTAD, for example, has redesigned its BioTrade Initiative, which aims to foster the conservation and sustainable use of biodiversity through the promotion of trade and investment in BioTrade products and services. The revision rewrites the program's principles and criteria for policymakers and businesses to guide them in more biodiversity-friendly trade (UNCTAD 2020). The newly updated principles and criteria are intended to encourage investment in activities that are conscious of their impact on biodiversity.

It is known that most sustainable investments are directed toward terrestrial or river and lake biodiversity, but very little is directed toward marine biodiversity conservation (OECD 2019, 9). However, studies show that ocean or marine biodiversity conservation drives economic development. Based on this information, the international community has discussed the importance of financing biodiversity protection, integrating "the multiple values of biodiversity in relevant legislative and policy frameworks, development and finance

plans and policy and decision-making processes at all levels," and encouraging "businesses to assess their dependencies and impacts on biodiversity to inform decision-making" (Sharm El-Sheikh Declaration, disposition 1(a), 2018). Moreover, according to many experts, making biodiversity loss a financial risk would add value to biodiversity conservation financing and eliminate environmentally harmful financing (OECD 2019, 45).

The next COP 15 on biodiversity is scheduled to meet in Kunming, China, to address these issues. Just as COP 26 on climate change focused on climate finance, this next meeting will be an opportunity to discuss biodiversity finance. Considering the urgency of the situation, it is more than necessary that states and all stakeholders commit to massive and sustainable funding for biodiversity conservation. To date, the COP 15 outcome document calls for reducing environmentally harmful subsidies by at least 500 billion US dollars per year and increasing funding for biodiversity conservation to at least 200 billion US dollars per year. On this point, it remains to be seen whether these ambitions will be effectively implemented or remain mere words.

Ensure the Most Ambitious Policies and Targets that Protect Biodiversity and Leave No One Behind

The international community must find effective solutions to guarantee ever more ambitious policies and objectives for biodiversity conservation, while including all populations. These guarantees must be designed to promote solutions that are beneficial not only to economic development, but also to the development of a healthy planet.

Calling biodiversity "humanity's safety net," the UNDP, when drafting the 2030 Agenda, stated that it is essential to "ensure that global environmental agreements are sufficiently ambitious and integrated into each national policy" in order to significantly combat biodiversity loss. The SDGs, even if accompanied by well-defined targets, must be concretely implemented. Seventy-five years after the creation of the United Nations and following decades of fragmented multilateral dialogues on biodiversity protection, there is now a crying need for a biodiversity framework with bold targets and high ambitions for biodiversity conservation. Biodiversity loss is a multifaceted problem. Its impact on human beings is considerable and extends into a variety of areas. Thus, the implementation of the UN's ambitions must be done in a concerted way with the different actors concerned in order to respond in a coherent and global manner to the challenges posed by the loss of biodiversity.

First, maintaining biological diversity is essential to planetary balance (Guilloux and Zakovska 2004, 3). Biodiversity plays an essential role in the functioning of ecosystems and the services they provide, nutrients and water

cycles, water retention in soils, resilience to invasive species and self-regulation of pollution. The ocean, for example, is the largest supplier of oxygen on the planet, well ahead of forests (UNESCO 2018, 43). The loss of biological diversity leads to a disruption of the oceanic balance, and as a result the ocean can no longer absorb as much pollution and give back as much oxygen.

Second, the erosion of biodiversity also has a major impact on food security. For example, 3 billion people in the world are dependent on marine biological resources. Poorer communities need them both as a source of primary protein and as a commodity, sometimes enabling entire populations to meet their basic needs (FAO 2021). Similarly, the Convention on Biological Diversity states that biodiversity accounts for 50–90 percent of the livelihoods of rural and forest households. Without effective conservation of biological resources, an entire segment of the world's population fears not only impoverishment but also loss of access to adequate food. For this reason, the global action undertaken for the conservation of biodiversity must be done in a concerted and united manner.

Conclusion

Only multilateral actions can effectively combat the loss of biological diversity. This is why the crisis of multilateralism must be overcome. The lack of solidarity and protectionist tendencies threaten the capacity of the international community to meet its objectives in the fight against biodiversity loss. To do so, international cooperation must be strengthened through concerted actions that are consistent with the policies adopted by states in the field of biodiversity conservation.

There is broad agreement among the international community on the need to strengthen and improve cooperation and solidarity to build a more resilient, inclusive and sustainable future. This need has been emphasized in many areas, such as vaccine production and distribution; cooperation and regulation in science, technology and innovation; reform of the international financial system; and the desire to decouple growth from carbon dioxide emissions. While agreement on the need to cooperate is essential, effective implementation and deepening of cooperation is fundamental.

Thus, while many authors had argued that environmental multilateralism was in crisis (Maljean-Dubois 2021; Arbour et al. 2016), it seems that the success of COP 21 in 2015 in the fight against climate change has imparted new energy and ambition to the field of biodiversity conservation. Since then, there has been a renewed impetus to adopt agendas and increased thinking about

how to proceed in order to achieve meaningful outcomes to mitigate biodiversity loss. This does not mean, however, that the crisis of multilateralism is over and that biodiversity governance is at its best. The fight against biodiversity loss is far from over and the actions of states in the coming years will be crucial.

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Fostering Sustainable Economic Growth, Transformation and Promotion of Responsible Consumption and Production: The Subnational Government's Role in Contributions to Multilateralism

Patrícia Iglecias

Abstract

Brazil is facing a very difficult moment due to the chaotic institutional relationships in many sectors of politics and the economy. When we focus on the environmental sector, the situation is the same: a severe crisis, specifically regarding climate change policies. In the recent past, during the Conference of Parties (COP 21) in Paris (2015), when the Paris Agreement was adopted, Brazil set an important target to reduce national greenhouse gas (GHG) emissions by 36–38 percent GHG reduction below the national baseline in 2005. Today, reaching these targets is under serious threat.

Naturally, a large part of these targets refer to GHG reduction associated with land use, land use change and forestry. These are the biggest challenges in this country. However, the challenge to reduce industrial and fleet GHG emissions has become increasingly important to Brazil. São Paulo has been preparing policies to deal with these challenges and applying them. In 2012, the government introduced a subnational policy for 29 activities of the industrial sector demanding the realization of such GHG inventory and reporting them to the Environmental Agency (CETESB). This was a pioneering action in a country where carbon dioxide is not a regulated pollutant. The main objective was to reinforce the monitoring of GHG inventory in industrial plants in the state.

Thus, São Paulo has implemented a new innovative policy, the São Paulo Environment Agreement. This Agreement is entirely voluntary, without any legal liability. The initiative was launched in November 2019 and was adopted by 55 subscribers, including companies in the private sector and associations. Furthermore, in 2021, the Agreement was still expanding and included 193 subscribers. Its objectives are to stimulate new areas of the private sector to adopt and increase sustainable practices; to facilitate access to markets that enforce high standards and low carbon emissions in products and services; and to contribute to the maintenance of the Nationally

Determined Contribution (NDC) targets from the Paris Agreement. The adoption of this voluntary Agreement should be well researched in order to provide a better understanding of the policies and results that can be expected from it.

Keywords

Paris Agreement – climate change – environment – local government

Introduction

Multilateralism and the constitution of international organizations are phenomena related to the construction of an international order, in which the search for the elaboration of rules of coexistence between nations is imperative. In reality, multilateralism implies an active and efficient role of member states in forums such as the United Nations. Nevertheless, regarding environmental governance challenges, it is possible to note that local governments have a prominent role in meeting UN Sustainable Development Goals (SDGs). CETESB, the Environmental Company of São Paulo State, is a very good example of how local governments meet SDGs.

In this sense, decentralized international cooperation is recognized as a set of actions conducted by subnational governments in order to step up their scale of participation, in this case in the regional role of Brazil, and promote the sustainable development of the country for present and future generations. The Brazilian Constitution of 1988 was one of the first in the world to recognize the individual right to a healthy and stable environment, establishing that local governments are also responsible for its protection. The constitution also associates the preservation of the environment with the maintenance of quality of life. To ensure such rights, various legal instruments, such as the monitoring of environmental quality and environmental licensing, have been carried out by subnational environmental entities in Brazil.

Brazil is a federation comprising 26 states and the Federal District. CETESB, the environmental agency in São Paulo State, is one of the oldest and most prestigious agencies in Latin America, and it is constantly seeking to improve its work by strictly overseeing activities subject to environmental licensing. The idea is to ensure the continuous improvement of the quality of the environment in order to meet the expectations of society in the state of São Paulo and also to improve the standards of excellence in environmental management and services provided to users, ensuring that CETESB serves as a national

and international reference center in the environmental field. The reduction of the amount of inadequate solid waste disposal in São Paulo is an example of its effectiveness: in 1997, 77.8 percent of municipalities in the state sent their urban solid waste to inadequate waste disposal sites. In 2020, this number was reduced to less than 4 percent.[1]

The State of São Paulo currently occupies the 21st position in the ranking of the largest economies in the world , besides being the most industrialized state in Brazil with the highest concentration of multinational companies in the Southern hemisphere. These characteristics present both challenges and opportunities, and the environmental agency must therefore be very attentive to the respect of normative emission limits in order to avoid environmental harm. For this reason, the environmental legislation in São Paulo is generally more restrictive than the national environmental legislation, especially with regard to pollution prevention. For instance, São Paulo enacted a law for contaminated land and brownfield management several years ago, which still does not have an equivalent at the federal level. Environmental oversight in São Paulo is a reference not only for other Brazilian states but also for other Latin American countries. The CETESB, as the regional center for the Stockholm Convention, provides education and guidance to other Latin American countries, for example regarding Attendance to Chemical Emergencies training. The aim is also to promote commercial missions, in order to cooperate in trade relations.

São Paulo State has opened international offices in Shanghai, Dubai and Munich, financed by the private sector, with the objective of supporting companies to export products and services, to identify new businesses and to establish partnerships with foreign institutions and companies. The State is an attractive destination for investments because of its green economy area and the promotion of responsible production and consumption.

Subnational Government Initiatives

In 2019, the state government launched the São Paulo Environmental Agreement with 55 signatories, which includes municipalities, business associations, companies, industries and international observers, among other organizations. The Environmental Agreement is administered by the CETESB, the State Secretariat for International Relations and the State Secretariat for Infrastructure and Environment. As of 2021, the São Paulo Environmental Agreement

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1   https://www.cetesb.sp.gov.br/inventarioestadualderesiduossolidosurbanos2020.

included more than 670 participants (CETESB, 2021a).[2] The main objective of the agreement is to encourage voluntary reduction of greenhouse gas (GHG) emissions in São Paulo. Recently, a technical document was published as a reference for members to monitor and report their GHG emissions (CETESB, 2021b). Adherence to the Environmental Agreement allows member states to identify the leading entities and strategies in order to face the challenges brought about by climate change and to assist the government of São Paulo in improving the competitiveness of companies and municipalities located in the territory.

Taking into account that the agreement is relatively recent, having been open for signature only since November 2019, the government of São Paulo is proud of the success of its initiative. However, several challenges for the implementation of this agreement remain, such as the necessity to involve other areas of the government and more cities, and the need to increase the government's technical base. Currently, the members of the São Paulo Environmental Agreement are significantly concentrated in the metropolitan region; the participation of cities in the agreement will thus be necessary to increase the internalization of voluntary actions to reduce GHG emissions in the state.

The development of the Environmental Agreement encourages the green economy by strengthening the actions of enterprises that wish to align their actions and policies with ESG (environmental, social and governance) indicators (CETESB, 2021c). Additionally, CETESB created an Environmental Chamber of Climate Change to provide technical support to the Environmental Agreement, to map the GHG emissions and to elaborate technical guidelines.

The São Paulo Environmental Agreement and Its Relation to the Paris Agreement

Putting the São Paulo Environmental Agreement in relation to the Paris Agreement aims to align São Paulo's subnational initiative with the net zero principles recently launched by the United Nations, considering the idea of zero carbon emissions by 2050.[3] The idea is to set the objectives of the São Paulo initiative together with other Paris Agreement members with regard to

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2   As of September 2022, the São Paulo Environmental Agreement included more than 1600 participants.

3   The Paris Agreement is a legally binding international treaty and includes commitments from all countries to reduce their emissions and work together to adapt to the impacts of climate change. Its central aim is to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above

capacitating firms, stimulating new actions and creating innovative projects. This is a huge challenge for São Paulo in the sense that the state has committed, as a subnational government, to contribute to achieving the national goals underlined in the Paris Agreement.

The São Paulo Environmental Agreement is demonstrating that a subnational government can contribute with local agreements aiming to reduce GHG emissions, maintaining relationships with large, medium and small enterprises. Currently there is a link between economies and countries that encourages the erosion of geographical barriers to socio-economic development of activities. Several sectors are represented such as renewable energy companies and associations; chemical industries; agribusiness; sugar and alcohol plants; retail companies; public health institutions; refrigeration, heating and air treatment industries; steel industries; logistics and railroad management companies; electric vehicles firms; and other sectors of the economy of São Paulo.

The first technical guideline is composed of four sections. The first one is about legislation and international agreements, with regulatory references. The second concentrates on climate change and market references, such as green bonds, ESG, the Entrepreneurial Sustainability Index (ISE B3) from the São Paulo Stock Market and sectoral accreditation. The third section includes calculating GHG emissions, inventory publication, methodologies with directives from the Intergovernmental Panel on Climate Change (IPCC), Norma ISO 14064–1, the GHG Protocol and the Global Protocol for Community-Scale GHG Emissions.

Members are required to send information about emissions and goals to CETESB on an annual basis from 2021 to 2030. The setting of targets will take into consideration the emissions level in 2020.

Responsible Production and Consumption

The Brazilian context requires integration of public policies aimed at protecting an ecologically balanced environment and at boosting economic development in order to achieve the desired level of sustainability. The contemporary analysis of public policies should take into account not only rational and procedural aspects, but also the confrontation with ideas and interests.

São Paulo has been working in this direction. By fulfilling its aim to induce economic growth not only in the southeast but in the whole country, São Paulo

pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.

has been advancing the implementation of public policies that can achieve sustainability in an amplified sense – not only with the São Paulo Environmental Agreement, but also with responsible production and consumption policies.

In 2015, based on the National Policy on Solid Waste (2010), which comprises principles, objectives, instruments and directives related to the integrated management of solid waste and its consequent responsibilities, São Paulo published Resolution 45 (Infraestrutura e Meio Ambiente 2015), which stipulates that in order to grant operational environmental licenses, proof of existence of a system of reverse logistics for certain products and packages is required as a prerequisite.

The CETESB Directory Decision n. 76/2018/C took another step in the same direction, by defining quantitative and geographic goals for each sector and establishing a procedure for proving compliance with the duty to promote reverse logistics of listed products and packages in ordinary environmental licensing. By this means, the CETESB Directory Decision n. 76 strengthens the concretization of sustainable development as a premise of environmental licensing.[4]

Environmental licensing is the administrative procedure whereby the competent environmental agency licenses the location, installation, expansion and operation of an enterprise or activity that uses environmental resources that are considered to be effectively or potentially polluting, or those that, in any way, may cause environmental degradation, considering legal and regulatory provisions besides technical standards applicable to the case. All activities, constructions or enterprises that use environmental resources that are considered effectively or potentially polluting, as well as those capable in any way of causing environmental degradation, are subjected to environmental licensing.

Moreover, the decision clarifies the civic responsibility established in the National Policy on Solid Waste by defining the roles of each actor involved in the production chain. The responsible production and consumption patterns proposed by the National Policy on Solid Waste cover the whole product life cycle:[5] development, raw material extraction, productive process, consumption and adequate final destination and disposal.

These patterns are established to secure the needs of current generations and to enable better life conditions, without compromising environmental

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4 According to National Environmental Policy (Law 6938/81), the construction, installation, expansion and operation of establishments and activities that use environmental resources, whether actually or potentially polluting or capable of causing environmental degradation, will depend on prior environmental licensing.

5 The product life cycle in our context has to take into consideration the circular economy. The idea is that the waste of one system can become the input of another, thereby increasing resource efficiency and decreasing environmental load.

quality and the fulfillment of future generations' needs. They have a close relationship with the content of article 225 of the Constitution of the Federative Republic of Brazil (1988), which confirms the right to an ecologically balanced environment for current and future generations and considers the notion of intergenerational equity. At the state level, the implementation of reverse logistics plans depends on the analysis of technical and economic viability by the CETESB. And the company's success is the result of its nuanced approach, which is not just about enforcing the law.

Through the program "CETESB with Open Doors" the company, as the executor of the reverse logistics program, receives, through the Solid Waste Department, inputs from municipalities, civil society and productive sectors to improve reverse logistics systems and mechanisms for requiring their implementation in permit-granting procedures. The CETESB thus seeks to build the constitutional notion of equity from the perspective of duty, that is, the recognition by those who directly or indirectly generate solid waste of their own responsibility for reverse logistics. The participative construction of a cradle-to-grave system allows for environmental protection without abdicating economic development, thus demonstrating a reliable way to truly implement sustainable development in solid waste management while fostering sustainable economic growth.

Conclusion

Subnational and local governments are usually the ones closest to the inhabitants of cities and those with better conditions to protect the environment through the local environmental agencies that are responsible for the fiscalization. Full integration of actions on different levels is essential for better results.

Local authorities have been engaging for a long time in international discussions on sustainable development. Environmental protection involves the recognition of human dignity, which means equality, responsible production and consumption and access to quality education, which is linked with access to information. Regarding sustainable production and consumption, the informed consumer can make better choices. This is the key to achieving the environmental and economic goals that are important for the future of sustainable development.

As a huge economic and industrial hub and the largest consumer market in Brazil, the state of São Paulo has been working on several related initiatives and projects, such as introducing the São Paulo Environmental Agreement and the process of reverse logistics.

These are just a few examples of how subnational and local authorities are, in many cases, already leading on innovation. Finally, the idea is to highlight the importance of local authorities' engagement to support the implementation phase of the SDGs and others global challenges.

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Challenges for the Coming Years: Learning Regional Lessons on Environmental Protection and Achieving the Participation of Indigenous Peoples in the United Nations System

Walter Arévalo-Ramírez

Abstract

The chapter will explore two specific challenges that the UN must face in this new era of environmental degradation and climate crisis, which depart from the issues it was prepared to face when it was founded. Nowadays, after 75 years of work by universal and regional bodies, regional human rights courts such as the Inter-American Court of Human Rights have taken important steps toward the protection of the environment, with new regional treaties or with creative connections between regional human rights charters and the protection of the environment. These developments need to be observed, appraised and included in the universal efforts led by the UN, and a closer universal – regional dialogue is needed.

Regarding a second issue, the underrepresentation of indigenous peoples, their rights and their environmental agendas is still a challenge both at the UN and the local level. Securing active, permanent and effective representation of indigenous peoples in international bodies is vital for understanding different perspectives and solutions for particular environmental issues and climate change.

Keywords

international law – regional courts – biological diversity – human rights

Introduction

In commemoration of the 75th anniversary of the inaugural session of the United Nations General Assembly (UNGA), this chapter aims to assess specific challenges that the organization must face to contribute to the full realization of the provisions enshrined in the UN Charter: (i) the regional dialogue regarding environmental protection and (ii) the participation of indigenous peoples in the UN system.

These challenges represent some of the most complex agendas faced by both states and international organizations, and they have been a recurrent topic in recent meetings of specialized organs. A resolution adopted by the Human Rights Council on March 23, 2021, regarding its agenda item 3, "Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development," illustrates the link between the two challenges, namely, the fundamental relationship between human rights and the environment, the latter being essential for both biodiversity and regional environmental protection, as well as for indigenous peoples:

> Requests the Special Rapporteur, in fulfilling the mandate:
> (a) To continue to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, in consultation with Governments, relevant international organizations and intergovernmental bodies, including the World Health Organization, the United Nations Environment Programme and the United Nations Development Programme, and relevant multilateral environmental agreements, human rights mechanisms, local authorities, national human rights institutions, indigenous peoples and civil society organizations, including those representing local communities and other persons in vulnerable situations, women, children and youth, the private sector and academic institutions ....
>   HUMAN RIGHTS COUNCIL 2021, PARA. 6

Furthermore, Advisory Opinion No. 23 of the Inter-American Court of Human Rights (IACTHR), issued on November 15, 2017, following Colombia's request in March 2016, is one of the most significant advances regarding the protection of the right to a healthy environment within international tribunals at the regional level aimed at promoting good practices relating to human rights and commitments regarding the environment (Republic of Colombia 2016). Indeed, it exemplifies the need for regional developments to be acknowledged

in the universal dialogue, the UN bodies and the UNGA, in their urgence to become the proper forum to disseminate such developments. In the Opinion, the IACTHR developed an international legal framework for substantive and procedural issues in environmental law, in order to ensure the protection of the environment and its connection with the fundamental substantive and jurisdictional duties of states. In doing so, the Court recognized the right to a healthy environment as a right in itself, not only as a circumstance relating to the enjoyment of more traditional human rights such as the right to life, and it set the first precedent for its recognition as an autonomous right. The main contribution of the Opinion is that it specified the scope of the environmental obligations that derive from the general duties to respect and guarantee the rights to life and personal integrity.

The IACTHR achieved this development through a systematic interpretation of different international instruments for the protection of the marine environment, such as the Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region (1983) and the Convention on Biological Diversity (CBD) (1992) in relation to the American Convention on Human Rights. The following section analyzes the evolution of the concepts of environmental rights and biological diversity in the context of the IACTHR and their role in the Advisory Opinion. The latter constitutes a regional development that needs to be enshrined by the UN as a contribution to its goals in the coming years, as it has done in the past with topics such as the protection of the environment in wartime (Morris 1993).

Regional Lessons for the UN: Linking Biological Diversity and Human Rights

The history of the request for an advisory opinion regarding environmental rights in Latin America is characterized by great challenges. Colombia faced a difficult legal scenario in its 2016 request in which it sought to enact preventive measures to protect the fragile Caribbean Sea ecosystem from the increase in large infrastructure projects that could cause large-scale environmental damage (Jaimurzina and Sánchez 2017), for the American Convention does not include a provision that explicitly recognizes the right to a healthy environment or the protection of biological diversity.

Even in the absence of such specific provisions, Colombia was able to establish a link between human rights and the environment by inferring a relationship between two apparently unrelated treaties: the Convention for the Protection and Development of the Marine Environment in the Wider

Caribbean Region (WCR) and the American Convention on Human Rights – Pacto de San José. This strategy is not unfamiliar to the UNGA when it exercises its legislative powers and, for this reason, constitutes an example that it should embrace. This linkage was also possible thanks to the previous innovative case law by the IACTHR related to indigenous peoples, in which a connection between the right to life and the right to a healthy environment was recognized in light of a systematic interpretation of several regional instruments (IACTHR 2005).

Colombia included in the request the argument of "functional jurisdiction," which considers that states are responsible for activities that affect human rights even beyond their borders, if they are bound by environmental obligations in broader protection zones. This argument referred to a broader understanding of "jurisdiction" as enshrined in article 1.1 of the American Convention to include areas where the state exercises functions in an environmental protection zone. As an evolving concept, this new definition was difficult for an international court to accept, and its acknowledgment would have marked a progressive development of international human rights law. Thus, although this argument was partially rejected by the Court, the strategy was transcendental to opening the door to the study of the questions formulated by the state of Colombia.

As a consequence of Colombia's litigation strategy, the Court incorporated obligations from the Cartagena Convention in the Advisory Opinion in order to protect the rights of the population against serious environmental transboundary damage. In other words, the IACTHR carried out an exercise

> of observation and subsequent implementation of the codification made by the states in their treaties, raising the standards enshrined in a treaty, into principles and customary law that is now part of the *corpus juris* of the Inter-American System.
>
> ABELLO-GALVIS AND ARÉVALO-RAMIREZ 2020, 410

This is the kind of exercise that bodies with treaty-drafting (Peterson 2005) powers, such as the UNGA, should aim to implement in the coming years to collectively tackle global issues, such as the environment or pandemics, not only with resolutions but also with binding instruments (Asamoah 2012).

The questions presented by Colombia in the Opinion pertain to several issues faced by the international community today: The first aimed to determine whether, under functional or extraterritorial jurisdiction such as transboundary harm, the international responsibility of a state can be declared for breaches to environmental treaties that harm human rights. The second sought

to clarify if the actions or omissions of a state that may cause serious damage to the marine environment are compatible with the American Convention obligations. Finally, the third question intended to determine the obligations derived from the American Convention regarding the prevention of environmental damage (IACTHR 2017a).

As stated in the request, breaches to the CBD lead to damages in the WCR that are often serious and irreparable. This premise is based on the fragility of the Caribbean Sea ecosystems, which are composed mostly of coral reefs, mangroves and seaweed, all of which are fundamental to sustain the necessary resources of coastal communities (Republic of Colombia 2016).

The marine environment of the WCR was presented as an example of biological diversity as it became a reserve of a variety of organisms and ecosystems. Colombia expressly stated that

> the Wider Caribbean Region and, specifically, the Caribbean Sea, is considered the heart of Atlantic biodiversity and the source of resources that sustain the way of life of the coastal populations and contribute to the region's economic growth.
>
> REPUBLIC OF COLOMBIA 2016, PARA. 12

Consequently, for the state of Colombia, serious damage caused to the marine environment in the WCR would affect not only its ecosystems but also the possibilities of survival of coastal communities in the economic and social fields.

Colombia's request constituted an opportunity for the IACTHR to rule on the obligations of states concerning the construction of large infrastructure projects when these may cause serious transboundary damage to the environment (Feria-Tinta and Milnes 2019, 50).

Even though the request was clearly delimited by a geographical area (the Caribbean Sea Region) and a specific environment to protect (the marine environment), the IACTHR decided to rule on the relevance of the environment for the protection of human rights in every region that is under the jurisdiction of the American Convention (IACTHR 2017a, para. 35). This is the paramount reason for the United Nations to take note of this development, since it now binds a broader global region and, being based on general international law and environmental law, the Opinion is a good basis for cross-fertilization in a global dialogue between regional and universal dispute settlement mechanisms and forums (Sands 1998, 85).

The reference to the notion of "environment" of the IACTHR in its Advisory Opinion made its interpretation applicable to any environmental context, including the conservation of the marine environment as an expression of biological diversity, and to any geographical region. This, since it delimited

a framework on the environmental obligations of states that derive from the general duties of respect and guarantee of rights to life and personal integrity under the American Convention, removed any limitation to environmental treaties in the Caribbean.

Accordingly, perhaps one of the most important conclusions of the Advisory Opinion refers to the fact that environmental damage should be interpreted not only as an impairment of the enjoyment of the rights to life and personal integrity, but also as a violation of the right to a healthy environment (Bratspies 2015, 31), understood as an autonomous right, with mootness before international courts.

Turning the Right to a Healthy Environment into a Regional then a Universal Right

One of the greatest challenges of the Inter-American human rights system has been finding legal mechanisms to justify the direct or indirect protection of the right to a healthy environment, considering that it is not expressly mentioned in the American Convention or the American Declaration of the Rights and Duties of Man (Feria-Tinta and Milnes 2019; Ordoñez 2020). This is a challenge seen in several other regional human rights jurisdictions, and an issue found also in the United Nations human rights system (Collins 2015).

In previous cases, the IACTHR had studied the environment as a right related to others, mainly in relation to cases concerning indigenous communities, and had adjudicated only on rights on which it had express competence (right to liberty and property) (IACTHR 2005, para. 137; 2006, para. 118; 2007, paras. 121–122), or to declare violations of the obligation of non-regression derived from article 26 of the American Convention (IACTHR 2009; 2017b).

The Court eventually developed the principle of interdependence and indivisibility of human rights, recognizing that the different categories of rights constitute an indissoluble unity that is based on the recognition of human dignity (IACTHR Advisory Opinion 2017a, para. 46). Following this principle, the IACTHR builds an environmental legal framework in AO-23 (Vega-Barbosa and Aboagye 2018), under which the Court resolved the challenge posed by the absence of the right to a healthy environment in the American Convention and recognized an intertwined relationship between the environment, sustainable development and human rights.

Article 26 of the American Convention does not expressly include a reference to the right to a healthy environment, but this provision makes direct reference to the economic, social, cultural, scientific and educational standards contained in the Charter of the Organization of American States (OAS).

Following this interpretation, the Court recognized the environment as one of the three pillars (economic, social and environmental) necessary for the comprehensive development of the human being, a principle enshrined in the OAS Charter (Cerqueira 2020, 27). This formulation followed the same approach provided in several international instruments:[1] the notion that a healthy environment is a prerequisite (Rodriguez-Rivera 2001, 1) for the enjoyment and exercise of all other rights.

The Court concluded that the right to a healthy environment, recognized in Article 11 of the Protocol of San Salvador, must be included among the economic, social and cultural rights protected by article 26 of the American Convention. It also reiterated "the interdependence and indivisibility of the civil and political rights, and the economic, social and cultural rights, as they should be understood integrally and comprehensively as human rights, with no order of precedence, and as enforceable in all cases before the competent authorities" (IACTHR Advisory Opinion 2017a, para. 57). Thanks to this development, after the Advisory Opinion, it is possible to infer that the right to a healthy environment is justifiable and autonomous before the institutions of the Inter-American human rights system, by virtue of article 26 of the American Convention.[2]

The Opinion of the Court was not limited to the recognition of a healthy environment as an autonomous and justifiable right; it also established the general scope of its content. First, the IACHR referred to the collective and individual dimensions of this right. The Court indicated that a healthy environment is a principle independent of circumstances, a universal value and a global interest (Abello-Galvis and Arévalo-Ramirez 2019, 220) since it must be guaranteed for present and future generations (IACTHR Advisory Opinion 2017a, para. 59).

On an individual level, the Court noted that damage caused to the environment has a direct and an indirect impact on people. In other words, it reiterated the connection between the environment and the enjoyment of other human rights, such as life and personal integrity.

The Court concluded that some rights are more susceptible to being violated in the face of environmental damage. Those could be classified in two groups: substantive rights and procedural rights. Certain substantive rights, such as the right to life, personal integrity, not to be forcibly displaced (IACTHR Advisory Opinion 2017, paras. 67–69), health, property, privacy (IACTHR Advisory Opinion

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1   That is, the Paris Agreement, which includes the express recognition of climate change and human rights (Márquez 2020).

2   See Separate Opinions of Judges Vio Grossi y Sierra Porto.

2017, paras. 53–55) and the right to access to water and food, can be directly affected by any degradation of the environment.

At the same time, procedural rights contribute to the protection of the environment by acting as necessary tools to identify, implement and monitor environmental policies and practices. In that sense, those rights include the right to freedom of expression, association, information, participation in decision-making and effective remedy (IACTHR Advisory Opinion 2017, para. 64).

The Court recognized the right to a healthy environment as an autonomous right, without the need to determine a definite harm to a connected right or individually considered victims. This implies that the right protects legal interests that can be claimed without the need for another right to be violated, for example the protection of different components of the environment such as forests, rivers and seas. Furthermore, the Court seems to formulate a preliminary approach regarding nature as the holder of rights (Giannino 2018) and nature as a legal subject (Tigre 2020), since it states that

> [i]t is intended to protect the nature and the environment, not only because of the benefits they provide to humanity or the effects that their degradation may have on other human rights, such as health, life or personal integrity, but because of their importance to the other living organisms with which we share the planet that also merit protection in their own right. In this regard, the Court notes a tendency, not only in court judgments, but also in Constitutions, to recognize legal personality and, consequently, rights to nature.
>
> IACTHR ADVISORY OPINION 2017, PARA. 62

Thus, it could be interpreted that biological diversity is one of the elements protected by the right to a healthy environment, a fundamental argument that should be considered by the United Nations in the coming years. The fight to protect biodiversity is not separated from the effective protection and enjoyment of human rights. Damage to biological diversity would constitute a mechanism of proof to demonstrate the violation of the right to a healthy environment when it generates a risk to individuals. However, under this interpretation, it could eventually lead to a violation of the right to the environment autonomously and without the need to affect the rights of people (Abello-Galvis and Arévalo-Ramirez, 2022).

Although this interpretation seems to be preliminary and an important first step for the recognition of new subjects of law, the Court focused more on developing a systematic interpretation based on various international instruments

in order to establish the scope of state obligations related to the duty to respect and guarantee the rights to life and the integrity of persons relating to damage to the environment. This emphasis shows the scope of the advisory function of the Court and the importance of the request made by Colombia. The IACTHR not only accepted its competence to analyze the request made by Colombia but also responded favorably to it. The Court provided clarity in the establishment of substantive content of state obligations concerning the protection of the marine environment.

Furthermore, Colombia, through its litigation strategy, led the IACTHR to a systematic interpretation of the instruments that comprise the Inter-American human rights system, by providing context for its obligations concerning environmental treaties. In this regard, the Court considered that one of the main purposes of the advisory function is to provide tools for states to effectively comply with human rights obligations. The Court indicated that

> the task of interpretation it performs in the exercise of its advisory function not only clarifies the meaning, and purpose of international human rights norms, but also, above all, assists OAS Member States and organs to comply fully and effectively with their relevant international obligations, and to define and implement public policies to protect human rights. Thus, its interpretations help strengthen the system for the protection of human rights.
>
> IACTHR ADVISORY OPINION 2017, PARA. 24

Another reason to promote dialogue between the UN and regional experiences regarding international law and the environment is the fact that these regional opinions, practices and decisions embrace and develop universal principles (Abello-Galvis and Arévalo-Ramirez 2016, 15), multilateral treaties and universal customary law. In the Advisory Opinion, the Inter-American Court, in order to determine the scope of the obligation to respect and guarantee the rights to life and personal integrity,[3] turned its attention to the standards of international environmental law (IACTHR Advisory Opinion 2017, para. 55). The Court used the obligations of states vis-à-vis different international instruments to incorporate them into the obligations derived from the American Convention (Abello-Galvis and Arévalo-Ramirez 2019, 218).

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3   Nonetheless, as indicated by the Court, these obligations also announce the protection of all substantive and procedural rights related to the environment.

For instance, the Court used systematic interpretation based on the United Nations Convention on the Law of the Sea (UNCLOS) (1982) and the CBD to determine the correlative obligations to the substantive and procedural rights regarding the protection of the environment (Jimenez Moran Sotomayor 2020) and the right to life and personal integrity. The Court, throughout its analysis, pointed out that one of the reasons why it repeatedly refers to the CBD is that it has been ratified by 34 of the 35 OAS member states (IACTHR Advisory Opinion 2017, para. 176), and it reflects most of the environmental obligations that define the scope of the duties under the American Convention. Within this framework, the Court established, first, that the environmental obligations under the American Convention are determined by the principle of due diligence (which corresponds to the guaranteed obligation enshrined in its article 1.1) and indicated that the principle of prevention acts as a general obligation in both human rights and environmental matters.

To fully understand the scope of the concepts of "damage" and "prevention" in environmental law, the Court analyzed UNCLOS, which includes a general obligation to protect and preserve the marine environment within national jurisdiction and outside of it (IACTHR Advisory Opinion 2017, para. 57). Likewise, to qualify the type of damage to be prevented, the IACTHR referred to article 14.1 of the CBD, which established a duty to prevent significant adverse effects on biological diversity. Consequently, this body recognized the obligation of states to prevent significant environmental damage, inside and outside their territory.

The Court, bearing in mind those instruments, accepted a protective interpretation of the term "significant" and concluded that any damage that directly or indirectly causes negative effects on substantive rights provided in the American Convention must be prevented (Abello-Galvis and Arévalo-Ramirez 2019, 221). Taking into account that the obligation of prevention is a performance obligation, the Court emphasized that all measures in the power of a state must be taken to prevent the activities carried out under its jurisdiction from causing significant environmental damage. Consequently, it affirms that some specific obligations arise from this principle, such as the duty to regulate, supervise and control, to require and approve environmental impact assessments and to mitigate environmental damage.

Regarding the duty to mitigate environmental damage, the Court turned to UNCLOS and the CBD, articles 198 and 14, respectively. It recognized that one of the measures that states can adopt in order to mitigate significant environmental damage is to notify the state that could be affected, without delay and as quickly as possible. This reframing of the principle of prevention generates

considerable effects, since it widens the scope of application of the principle, previously recognized exclusively in cases concerning territories of indigenous peoples (IACTHR Advisory Opinion 2017, para. 161).

The second general obligation identified by the Court was the duty of prevention, widely recognized in the Rio Declaration and the CBD. It must be noted that the IACHR broadened the scope set by the International Court of Justice (2010)[4] by assuming that, in cases concerning the protection of the right to life and personal integrity, states must adopt effective measures to prevent serious or irreversible damage, even in the absence of scientific certainty.

Regarding the obligation to cooperate, the Court expressly recognized it as part of article 26 of the American Convention and noted that it derives from the principle of good faith, constituting a fundamental principle in the prevention of the pollution of the marine environment (ICJ 2010, para 184). The Court emphasized the importance of the obligation of notification, contained in several international treaties such as the CBD, articles 5 and 14, along with the obligation to consult and negotiate in good faith, including the obligation to exchange information contained in article 17.2 of the CBD.

The Participation of Indigenous Peoples in the UN System: a Challenge for the Coming Years

The UN has faced several difficulties since its creation; an old challenge that has gained greater relevance in the days of postcolonialism is the lack of indigenous peoples' participation within the organization, mainly due to the difficulties associated with the non-recognition and exclusion of some of these groups in local and regional settings. The UN Human Rights Council has requested several documents to shed light on the issue in order to find novel ways to solve it. One of the most recent set of efforts revolves around the report prepared by the Secretary-General, in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Office of Legal Affairs, entitled "Ways and Means of Promoting Participation at the United Nations of Indigenous Peoples' Representatives on Issues Affecting Them" (Human Rights Council 2012). In this sense, the objective of the present section is to make a comprehensive review of the most relevant issues covered by the report, highlighting the fundamental issues that need to be understood as challenges for the UN in the coming years.

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4   Case Concerning Pulp Mills on the River Uruguay, Argentina vs Uruguay, Judgment on the
     Merits, International Court of Justice, 2010.

First Challenge: Recognition

State Recognition

By their very nature, indigenous peoples' governing structures work differently from nongovernmental organizations and state agencies. It is well known that the traditions of various indigenous communities in relation to their organization depend to a great extent on family ties. Therefore, their organizational structure must be understood based on ancestral legal and cultural norms (Human Rights Council 2012, para. 7).

It is true that several states recognize constitutionally, legally and, in some circumstances, politically the different forms of organization of indigenous peoples that reside within their territory. Nevertheless, there are other states that still do not contemplate the possibility of recognizing them, particularly when the peoples and their institutions themselves are not recognized within the state by traditional communities or political actors. Full recognition of the diverse means of organization implemented by indigenous peoples is urgently needed for them to achieve legal rights and political participation within the state (Human Rights Council 2012, para. 8).

Recognition by the Economic and Social Council
as a Nongovernmental Organization

Within the United Nations, the recognition issue is different. In principle, for an indigenous peoples' organization to participate in sessions of the Economic and Social Council, it must meet certain criteria to acquire consultative status (Human Rights Council 2012, para. 10). By virtue of ECOSOC resolution 1996/31, the Council established a series of principles for establishing consultative relations with NGOs. Among them, principle ten provides, inter alia, that the organizations must have established headquarters, with an executive officer and a democratically adopted constitution, that shall be deposited with the Secretary-General of the United Nations (ECOSOC 1996, para. 10). The issue with the requirements lies in the fact that some indigenous peoples' organizations may not have any headquarters, and even less a written constitution, bearing in mind that many of these communities are managed through oral traditions.

These demands make it more difficult for indigenous peoples to participate in the Economic and Social Council sessions, as meeting all the criteria established in Resolution 1996/31 is almost impossible. Unfortunately, due to this inconvenience, these organizations have been unable to become actively involved in meetings and events where issues of direct relevance to them are discussed. It is well known that in the past, due to the absence of accreditation,

these organizations were unable to enter the United Nations building in New York even as the draft Declaration on the Rights of Indigenous Peoples was being considered (Human Rights Council 2012, para. 11).

Procedural Rules for Indigenous Peoples' Participation in United Nations Main Bodies, Agencies and Committees

General Assembly

Only member states are able to participate at the UNGA, the sole exception to this being entities and intergovernmental organizations that have received standing to join the meeting as observers (Human Rights Council 2012, para. 33). Regarding NGOs, the UNGA can also invite them as observers for special meetings (Human Rights Council 2012, para. 34). This means that if any committee of the Assembly is going to deal with relevant indigenous issues, there is the possibility of indigenous peoples' organizations being invited. The promotion and endorsement of this type of invitation are challenges to tackle in the coming years, as many more topics discussed at the UNGA directly touch on the rights of indigenous peoples.

Economic and Social Council

Participation by NGOs in the Economic and Social Council is regulated by the Rules of Procedure and Resolution 1996/31. The resolution contains a list of principles that must be followed in order to establish consultative relations with NGOs (ECOSOC 1996), most of them being hard to fulfill by indigenous peoples' organizations, as mentioned above. The consultative status within ECOSOC is accessible through an online application form, but the granting of this status is a prerogative of member states.

Human Rights Council

The participation of NGOs within the Human Rights Council is regulated by General Assembly Resolution 60/251. Paragraph 11 of the aforementioned resolution provides that participation is governed by the rules of procedure established for the General Assembly committees. Hence, only NGOs in consultative status with the Economic and Social Council can be accredited to participate in the meeting of the Human Rights Council (2012, para. 49). This directly impacts and impairs the chances for indigenous peoples to be an active, permanent interlocutor in fundamental human rights debates.

Permanent Forum on Indigenous Issues

The United Nations Permanent Forum on Indigenous Issues is an advisory body to the Economic and Social Council. Its mandate, according to Resolution 2000/22, is to deal with indigenous issues relating to economic and social development, culture, environment, education, health and human rights (ECOSOC 2000). Likewise, the Forum has contributed to raising awareness and promoting the integration and coordination of activities related to indigenous issues. Besides states, civil society can also attend the Permanent Forum annual sessions (Human Rights Council 2012, para. 16). However, only five categories of participants can pre-register for these sessions: (i) indigenous peoples' organizations, (ii) indigenous parliamentarians, (iii) NGOs in consultative status with the Economic and Social Council, (iv) national human rights institutions and (v) academic institutions (Human Rights Council 2012, para. 17).

Expert Mechanism on the Rights of Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples, the Permanent Forum on Indigenous Issues and the Special Rapporteur on the rights of indigenous peoples are the three United Nations bodies with the mandate to deal specifically with indigenous peoples' issues (UN Department of Economic and Social Affairs n.d.). In particular, the Expert Mechanism has the duty, under Resolution 6/36, to assist member states in achieving the goals of the United Nations Declaration on the Rights of Indigenous Peoples (OHCHR 2007). Moreover, Resolution 6/36, under paragraph 9, provides that the annual meeting of the Expert Mechanism shall also be open to indigenous peoples' organizations (OHCHR 2007, para. 9).

Nonetheless, participation in these sessions is not as easy as it would seem. An organization seeking accreditation to the annual sessions of the Expert Mechanism must submit a letter to OHCHR and complete an online questionnaire indicating details about the organization, its work regarding indigenous peoples' issues and, finally, the organization must explain how it wants to contribute to the meeting (Human Rights Council 2012, para. 20).

United Nations Voluntary Fund for Indigenous Populations

The United Nations Voluntary Fund for Indigenous Populations was established in virtue of Resolution 40/131, with the purpose to assist representatives of indigenous communities and organizations to participate in the deliberations of the Working Group on Indigenous Populations by providing financial assistance (UN General Assembly 1985), yet its scope has been expanded over

the years in various resolutions. Any member of an indigenous community can apply for a grant, but in order to be a beneficiary the person must fulfill certain criteria set by the Board of Trustees (OHCHR n.d.).

Conclusion: Facilitating Participation – Promoting Recognition and the Advantages of Indigenous Peoples' Participation in the United Nations

Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples affirms that indigenous peoples have the right, through a representative chosen by themselves in accordance with their own procedures, to participate in decision-making in matters that affect their rights and to maintain and develop their own decision-making institutions (UN General Assembly 2007, art. 18).

For the United Nations to contribute to the full realization of the provisions contained in the Declaration, in particular article 18, it must undertake initiatives to promote indigenous peoples' participation through new ways and means. In fact, this is an obligation contemplated in article 41 of the same Declaration (UN General Assembly 2007, art. 41). Consequently, the Expert Mechanism on the Rights of Indigenous Peoples, in its fourth session held from July 11–15, 2011, adopted a final report (A/HRC/18/43) with proposals to be submitted to the Human Rights Council at its eighteenth session (Human Rights Council 2011).

The most relevant proposal was the one encouraging the UNGA to adopt permanent measures to ensure effective participation at all levels of indigenous peoples' organizations, bodies, assemblies and councils at the United Nations, with similar participatory rights as NGOs in consultative status with the Economic and Social Council (Human Rights Council 2012, para. 3).

Furthermore, in Resolution A/HRC/21/24, the Secretary-General set forth possible steps to promote the participation of recognized indigenous peoples' representatives at the United Nations, in bodies such as the General Assembly committees, the Economic and Social Council and the Human Rights Council. The establishment of a preliminary process to determine new and more adequate criteria for eligibility and accreditation of indigenous peoples' representatives with their direct involvement was suggested, because it is their right to take part in discussions regarding matters that affect them (Human Rights Council 2012, para. 56).

Indigenous peoples' participation in the United Nations meetings could contribute to improving the resolution of issues that directly affect these communities. Indeed, as stated in the report of the Secretary-General, "indigenous

peoples are best placed to produce authoritative advice on their situation and select the most appropriate methods to tackle the challenges they face" (Human Rights Council 2012, para. 13). Additionally, their active participation in the various spaces offered by the United Nations will facilitate and strengthen the rapprochement and cooperation between indigenous peoples and governments.

Acknowledgments

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PART 5

Human Rights and Migration Governance

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Migrants' Protection and Assistance in the Face of a Changing World: Taking Stock of the Challenges and Responses

Emnet B. Gebre

Abstract

The majority of migrants cross international borders to work, to reunite with family or to pursue studies. These categories of migrants generally do not have specific protection needs. In contrast, migrants fleeing conflict, persecution and natural disaster situations, and even those who are compelled to leave their countries of origin in search of better economic and social opportunities, face tremendous protection challenges during their journey. Many irregular migrants are highly vulnerable during their migration journey, facing a heightened risk of violence, exploitation and abuse, leading to traumatic experiences or even loss of life. Looking at this reality on the ground, the 75th anniversary of the United Nations represents an occasion to provide an overview of how the organization has addressed the persistent and ever-growing challenges surrounding migrant protection and assistance. This chapter highlights existing normative and institutional gaps in addressing challenges related to migrant protection and assistance and the responses taken, primarily at the policy and programmatic level, to address them.

Keywords

irregular migrants – human rights of migrants – international migration law – IOM – migrant vulnerability – minilateralism – Global Compact on Migration

Introduction

Harrowing stories of migrants risking everything for a better life have woefully become common. They consistently reveal the growing challenges surrounding irregular migration and the lack of response that is commensurate with the scale of the problem – not necessarily in terms of the volume of irregular

migrants (Ardittis and Laczko 2017, 2–3), but mostly in terms of the extent of human sufferings and vulnerabilities.

The majority of migrants cross international borders to work, to reunite with family or to pursue studies. These categories of migrants generally do not have specific protection needs. In contrast, migrants fleeing conflict, persecution and natural disaster situations, and even those who are compelled to leave their countries of origin in search of better economic and social opportunities, face tremendous protection challenges during their journey. For many youths, the hope of finding better education or employment opportunities justifies the risk of migrating irregularly. The belief that migration, by any means possible, is the only pathway to a successful (or at the very least an improved) life is deeply engraved in the minds of many sending communities. While migration can be considered an opportunity and a strategy of adaptation to social, economic, political and environmental change, it can also be a source of high vulnerability when not done through safe and regular pathways.

Many irregular migrants are highly vulnerable during their migration journey, facing a heightened risk of violence, exploitation and abuse, leading to traumatic experiences or even loss of life. Between 2014 and 2020, an average of 5,804 migrants died per year worldwide due to dehydration, drowning, killings, shootings and car accidents, among other things (IOM, n.d.). Oftentimes migrants employ the services of criminal enterprises, including smugglers and traffickers, to reach their intended destination, exposing themselves to physical and mental harm, extortion and kidnapping. As smugglers' modi operandi change to become more violent and exploitative, the line between smuggling activities and trafficking becomes blurry. Victims of trafficking face many risks and protection challenges ranging from forced labor in tough conditions to sexual abuse and other types of exploitation, which result in the violation of their fundamental rights. Despite difficulties in giving accurate data, the International Organization for Migration (IOM) has assisted over 100,000 victims of trafficking globally since the mid-1990s (IOM 2020a, 49).

Among the migrant population, unaccompanied and separated children constitute a significant portion, making the issue of child migration of paramount importance for origin, transit and destination countries. Given their physical and mental susceptibility to harm, the situation of migrant children raises serious protection issues. This, coupled with a lack of adequate assistance and protection services, poses severe threats to their fundamental rights. Within these contexts, children are often denied access to education and other basic services, making them extremely vulnerable to poor health and social conditions, including mental illness, substance abuse and

sexual and gender-based violence (UNICEF and IOM 2017). The hardship migrants encounter is further compounded by the lack of access to protection and support services due to a lack of resources or discriminatory policies and practices in countries of origin, transit or destination. Many migrants, including children, are subjected to administrative detention and deportation without prior screening to determine their eligibility for protection status as refugees, victims of trafficking or beneficiaries of subsidiary protection (US Department of State 2020).

It is worth recalling that it is not only those who leave their habitual place of residence irregularly who experience challenging journeys leading to human rights violations. Low-skilled migrant workers who migrate using regular channels are also subject to risk factors that threaten their lives, health and well-being. This, unfortunately, is the reality of many migrant workers from sub-Saharan African and Southeast Asian countries employed in the Middle East as domestic workers or in other low-skill work, including construction, agriculture and manufacturing. Recent reports reveal that 6,500 migrant workers have died in Qatar in the past ten years, working mainly on the World Cup infrastructure projects (The Guardian 2021). In many parts of the world, migrants' vulnerabilities have also been exacerbated by the COVID-19 pandemic due to the compounded effects of pre-existing socio-economic and health conditions, restrictive government measures, and stigmatization and exclusion (IMREF 2020).

Looking at this reality on the ground, the 75th anniversary of the United Nations represents an occasion to provide an overview of how the organization has addressed the persistent and ever growing challenges surrounding migrant protection and assistance. This chapter highlights existing gaps in addressing challenges related to migrant protection and assistance and the responses taken, primarily at the policy and programmatic level, to address them. As pointed out in 2013 by the Special Rapporteur on the human rights of migrants, despite the complexity and transnational nature of migration issues, a comprehensive governance framework capable of addressing protection challenges has been lacking, necessitating "a need for an international migration governance regime strongly focused on human rights" (UN General Assembly 2013a, 8).

The issue of migration governance is torn between upholding a state's international obligations in the field of human rights and guaranteeing the state's sovereignty and its exclusive right to settle domestic politics in various domains such as the integrity of borders, economic policy, unemployment, demography, cultural values and identity, citizenship and national security. In

her explanation of the causes of the challenges faced by migrants claiming their human rights, Milena Chimienti alluded to the concept of "liberal paradox," developed by Hollifield, to illustrate

> the tension between the will of liberal states to protect their national borders from newcomers – who are seen as economic, cultural and human risk for citizens of their country – and international human rights, which aim to protect people on an individual basis, independent of their citizenship status.
>
> CHIMIENTI 2018, 1

The gaps in the global migration governance system reflect states' reluctance to cooperate because effective international cooperation will require them to consider other countries' interests – a task that is extremely challenging to undertake when states do not have clarity about their own national interests. States are paralyzed by a misconceived idea that they necessarily have divergent interests on the matter and, consequently, "win – win" agreements in a highly heterogeneous world are very difficult to reach, especially in the North – South context where differences in economic growth, as well as cultural and demographic considerations, are accentuated. The "transnational connectiveness" and interdependence of states – for better or for worse – has long been denied in the field of migration because the latter was seen as the sole problem of sending countries, whose requests for more multilateralism were vetoed by receiving countries. This asymmetry of power has led to the development of a fragmented governance regime that consists of a plethora of informal forums outside the UN in lieu of a formal multilateral regime (Kainz and Betts 2021, 65–89).

In response to several refugee and migration crises from Syria to Venezuela, Afghanistan, Bangladesh and Libya, among others, significant policy changes have recently been initiated, foretelling the advent of an international consensus around the issue of migration. Adopted on September 19, 2016, by the United Nations General Assembly, the New York Declaration for Refugees and Migrants marked an important milestone in setting up a collective understanding for international migration governance. States unanimously expressed the political will to address the plight of refugees and migrants, protect their rights and share the responsibility to manage large movements through international cooperation (UN General Assembly 2016). The commitments laid down in the New York Declaration were further spelled out in two separate instruments: the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration.

It has been said repeatedly that the Global Compact for Migration (GCM) does not revolutionize the international legal order in any way, as it merely reiterates the legal commitments of states under already existing international conventions applicable to migrants (McAdam 2018, 574). This leads us to wonder how we can explain the gaps that prevented the needs of vulnerable migrants from being met thus far, if the relevant provisions that could be mobilized to protect vulnerable migrants already existed. Institutionally, the adoption of the New York Declaration brought about a much more significant change by enabling the integration of IOM into the UN system. Many other instruments featuring an inclusive and comprehensive approach have also been adopted to fill existing normative gaps that make the protection and assistance of vulnerable migrants the weak link in the international normative and institutional system.

Migrant Protection and Assistance: The Weak Link in the International Normative and Institutional Framework

Against the backdrop of fragmented global migration governance, clear guidance on the application of relevant international norms, especially those deriving from human rights law, for the protection of vulnerable migrants was missing for a long time. Moreover, in contrast to what already exists for refugees, labor migrants or migrant children, there was an institutional vacuum on top of this normative gap due to the absence of an organization mandated to protect and assist vulnerable migrants, leaving their humanitarian and protection needs unaddressed.

Normative Gap: The Absence of the Right to Entry for Vulnerable Migrants

Treaty law and customary law are the principal sources of international migration law (IML). The latter has historically been the bedrock of IML, which manifests itself through basic principles governing different aspects of one's migration journey. From departure to admission, sojourn and return, the movement of persons has been regulated by customary international law that guarantees the right to leave one's country, the principle of non-refoulement, the prohibitions of collective expulsion, access to consular protection and the principle of non-discrimination (Chetail 2014; 2017). Over time, customary law has been supplemented by treaty law, which features a sectoral approach to migration: protective provisions for migrants are scattered in different branches of international law, each corresponding to specialized regimes. Rather than

being a stand-alone branch of international law, international migration law is constituted by heterogeneous norms scattered throughout various fields of international law, including refugee law, transnational criminal law, labor law and human rights law.

In this day and age, the fragmented nature of global migration governance is ill-suited to address protection needs arising from mixed migration situations that encompass complex population movements, constituted by refugees, stateless persons, asylum seekers, economic migrants, unaccompanied and separated minors, environmental migrants, smuggled persons, victims of trafficking and stranded migrants. These categories of migrants are usually "travelling together, generally in an irregular manner, using the same routes and means of transport, but for different reasons [and with] varying needs and profiles" (IOM 2019a, 141–142). As the situation of migrants evolves along their journey, their legal qualification is likely to change. A migrant may also tick more than one box and fall into overlapping categories. The majority of migrants do not fit perfectly into protected categories under international law even though they can still be highly vulnerable and subject to risks of human rights violations and abuse at all stages of their migration journey. Perilous and alarming as their situation may be, a significant number of men, women and children do not fulfill the criteria set by existing instruments to be deserving of a protection status. This categorization, initially planned to protect a specific group of people, has in fact a perverse effect. While the granting of refugee status saves millions of individuals from persecution, the classification leaves many more unprotected as they don't administratively fit in that exact category but still have protection needs. One can legitimately argue that the current system was built not so much to ensure that a specific group benefits from protective measures but more to sort migrants according to restrictive criteria and thus exclude the vast majority from protection regimes. This approach has the detrimental effect of creating a sense of hierarchy among human suffering so that "categories such as 'refugees' and 'migrants' tend to naturalize the social construction – as if there was a qualitative difference between these persons" (Chimienti 2018, 2). The concept that refugees are more deserving of a legal status from which protection is derived than other groups of migrants does not stem from a universal truth. It is rather a political construct whose fluctuations throughout different periods have depended on the political, ideological and economic priorities of Western countries, testifying to the relativity of the distinction. Karen Akoka explains that the definition, interpretation and application of the term "refugee" have been heavily influenced by the international political climate, diplomatic relations and the job market. There was a time

when the refugee and migrant statuses, far from being hermetically separated, were used in a complementary manner according to the political, diplomatic and economic costs and benefits provided by the attribution of each status for a given nationality (Akoka 2018 15–30).

A human rights-based approach to migration can, to some extent, mitigate the effects of the categorization. Unlike refugee law, human rights law is of variable geometry with the distinct leverage of having a universal scope, which permits in principle the protection of the fundamental rights of all migrants regardless of the cause of their flight and their immigration status. It also allows for an extensive application of the principle of non-refoulement, affording wider protection than refugee law. Vulnerable migrants are entitled to benefit without discrimination from the protective provisions provided by international and regional human rights law in their capacity as human beings. Indeed, "human beings are not deprived of the rights inherent to them as such, as a result of their migratory status or any other circumstances" (Trindade 2011, 149). A human rights-based approach to migration defines the obligations of states under the jurisdiction of which the migrants are found. It is required from the state to uphold migrants' rights as the latter are entitled to the respect, protection and fulfillment of their rights. As rights holders, migrants can claim their rights to the state, which must meet its international and regional obligations as a duty bearer. Moreover, human rights law contains provisions that justify both reactive and proactive measures to address migrants' vulnerabilities by preventing possible human rights violations but also remedying possible materialized infringements. However, the recognition and acceptance that migrants, like everyone else, are entitled to inalienable rights are not always a given. The absence of a single legally binding instrument covering all the relevant rights of migrants can explain the challenges and gaps in protection. While international and regional human rights instruments are pertinent to protect the rights of migrants, most of them do not explicitly mention the latter, which can create an open door for possible discrimination in the enjoyment of the rights provided by human rights conventions.

Nevertheless, the major gap that drives migrants to take high risks and fall prey to criminals lies in the absence of a right to access states' territories for migrants in highly vulnerable situations. While the right to leave one's country is well established, the right to immigrate is far from being regarded as such. International human rights law does not recognize a right to enter a foreign state's territory, even less a right of residence. The UN Human Rights Committee has explicitly confirmed the absence of such a right in international law as follows:

> The Covenant [civil and political rights] does not recognize the right of
> aliens to enter or reside in the territory of a state party. It is in principle a
> matter for the state to decide who it will admit to its territory.
>
> <small>UN HUMAN RIGHTS COMMITTEE 1986, 5</small>

Thus, the right to freedom of movement only entails the right to leave any
country, including one's own country, without a right to access another state's
territory. This asymmetry between the right of emigration and immigration
has given inspiration to expressions such as "the suspended step of the stark"
to qualify the situation in which migrants might find themselves (Wihtol de
Wenden 2013, 22). Without a right to admission into the territory of a state,
many migrants are "on a journey without a destination" (Paz 2018, 517), left
in limbo in transit countries, often impotent to effectively address the protec-
tion and assistance needs of stranded migrants. The freedom of movement is
conceived with respect to the state's territory or, at best, its jurisdiction, which
serves as a reference for determining the extent of an individual's entitlement
to it (Paz 2018, 517). The right to mobility is not defined as a continuum because
of the legal vacuum between the moment individuals leave their country and
the moment they are at the discretion of the destination country's jurisdiction.

The universal exit guaranteed by human rights law is also subjected to
restrictions for the sake of destination countries' interests in a way that uses
diplomatic and financial means to nip the problem in the bud. Origin and tran-
sit countries are experiencing mounting pressure from developed nations to
reinforce the controls on exit. Sometimes, the techniques used by border and
immigration officers to prevent would-be migrants from leaving the country
heavily contravene fundamental rights, including their freedom of movement
and their right to liberty and security.

Once migrants, including undocumented ones, have entered the territory
of a state, they have the right to enjoy the full range of human rights and be
treated with dignity in accordance with international and regional human
rights instruments. For instance, according to the Convention on the Rights
of the Child, unaccompanied and separated migrant children must not be dis-
criminated against in the enjoyment of their civil, political and socio-economic
rights on the basis of the status of a child as being unaccompanied or sep-
arated, or as being a refugee, asylum seeker or migrant (UN Committee on
the Rights of the Child 2005). And yet states bypass their duty to respect, pro-
tect and fulfill the human rights of all individuals regardless of their status by
externalizing their borders and outsourcing their responsibility with regard to
migration controls and asylum processing. This type of approach allowed the
European Union to circumvent the European Court of Human Rights' (ECHR)
judicial control over the treatment of migrants under the jurisdiction of the

member states (ECHR 2012).[1] In 2013, the Special Rapporteur characterized this practice as "particularly troubling as it means that the responsibility for migration control is shifted to countries outside the EU and that, consequently, the recourse of those migrants to human rights mechanisms within the EU becomes legally restricted or practically impossible" (UN General Assembly 2013b, 58). Beyond this race to the bottom for the protection of migrants' rights, the externalization of borders, compounded by the reinforcement of border controls, does not necessarily have the intended deterrent effect on the plan of individuals to migrate. On the contrary, it pushes them to resort to desperate measures and take incalculable risks to reach their destination by using more hazardous routes entirely at the mercy of smugglers and traffickers (Red Cross EU Office 2013). The externalization of border controls has led origin countries to use coercive measures to prevent their citizens from leaving their countries, posing a significant threat to migrants' enjoyment of their fundamental rights. The existing operational gap leaves many vulnerable migrants unassisted without proper allocation of a protection mandate to a specific organization, in turn exposing them to human rights violations.

Institutional Gap: The Absence of an Organization Mandated with the Protection of Migrants' Rights

The fragmented tapestry of migration governance was also reflected at the institutional level, where "a coherent and easily identifiable institutional framework" was lacking for quite some time because of the absence of a UN migration agency (Betts 2010, 5). The IOM has been handling migration-related issues since 1951. However, its commitment to the human rights of migrants has not been without question. The absence of express reference to human rights in its constitution as well as allegations that its early operations were carried out in the interest of Western countries to restrict the irregular entry of migrants into their territory have been points of criticism. The main contention had to do with the fact that "the interests of states are front and center, and the migrant, considered as a bearer of rights and duties, does not appear [in the IOM Constitution]" (Goodwin-Gill 2019). The lack of an explicit legal protection mandate similar to that of the UNHCR, UNICEF or the International Labour Organization and its project-based funding have meant that IOM has been perceived as deferential to its member states at the expense of migrants' rights. The UN Special Rapporteur on the human rights of migrants has pointed out that "the mandate and funding of IOM pose structural problems with regard to

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1   The ECHR applies a broad interpretation of "jurisdiction," which is not limited to the territory of the member states and can encompass, for instance, the ships of their armed forces sailing on the high seas.

fully adopting a human rights framework" (UN General Assembly 2013b, 60). The incompatibility of some of its interventions, including assisted voluntary return programs, offshore asylum claims processing, provision of services in detention centers and border management systems, with international human rights, particularly the principle of non-refoulement and the right to seek asylum, have been pointed out by human rights advocates. In 2003, Human Rights Watch pointed out that IOM did not effectively mainstream international protection norms to match its operations with its rhetorical commitment to protecting human rights beyond simply adopting human rights-friendly language (Human Rights Watch 2003, 3). Inversely, for IOM's proponents, the absence of a specific protection mandate enabled the organization to play a gap-filling role. It provided IOM with a much-needed flexibility of action to adapt to the challenges of contemporary migration trends, as shown by its involvement in favor of persons displaced by natural disasters and the impacts of climate change. As such, unlike other organizations that are restricted by their strict legal mandate and scrutinized each time they want to navigate new waters, IOM has been able to take under its wing a broader range of populations of concern, often left unassisted by states and other organizations.

One must recognize that IOM has come a long way as it has evolved considerably over the past twenty years and matured into a vital humanitarian actor contributing to the advancement of the protection agenda of vulnerable migrants. The organization has developed a large range of policies and frameworks that enable the mainstreaming of a rights-based approach into its work. The Human Rights of Migrants: IOM Policy and Activities (2009), IOM Protection Policy (2015), Gender Equality Policy 2015–2019 and Humanitarian Policy – Principles for Humanitarian Action (2015) can be cited as compelling examples. The elaboration of the Migration Crisis Operational Framework (MCOF) and the Migration Governance Framework (MIGOF) has also provided IOM some legitimacy, reflecting its commitment to human rights and humanitarian principles. The MCOF, for example, states that

> IOM adheres to humanitarian principles … [and] is further bound and committed to the existing legal and institutional frameworks contributing to the effective delivery of assistance and protection and ultimately to the respect and promotion of human rights and humanitarian principles.
>
> IOM 2012, 11

IOM has often been engaged in a tricky balancing act because of potential conflicts between its humanitarian role and migration management activities necessary to preserve its relationships with donor states. Lately, IOM has been attempting to reconcile the two sectors, considering that migration

management and migrant protection are not necessarily incompatible. For IOM, well-managed migration is beneficial to the human rights, human dignity and well-being of migrants. In the past, this premise was difficult to verify as the criteria to gauge a better management of migration were lacking until the elaboration of the Migration Governance Framework in 2015. The latter explicitly recognizes that the fulfillment of migrants' rights and the advancement of socio-economic well-being of migrants and society are, among other things, fundamental prerequisites for good migration governance (IOM 2015).

For instance, the way in which IOM has intervened and handled the situation in Libya throughout the years is indicative of the long-standing dilemmas the organization faces as a service provider for EU member states on the one hand, and an advocate for migrants' rights on the other. Before Gadhafi's fall, at the beginning of its interventions in Libya, there were perceptions that the organization mainly acted in the interest of the EU member states through capacity-building activities to manage and control irregular migration from Libya to the EU (Bradley 2020, 82–92). Its projects on border management, return and provision of services to detention centers were decried for their detrimental effects on the rights of vulnerable migrants to access asylum and to be protected against ill-treatment. During the 2011 revolution and the subsequent crisis, IOM has proved to be a major player in the humanitarian system given its decisive role in addressing the needs of vulnerable migrants in a crisis situation. Its fruitful collaboration with UNHCR for the benefits of migrant protection and humanitarian assistance was also noted. The willingness to shed light on the vulnerability of migrants in an emergency situation was acknowledged, leading to the development of critical policies and frameworks such as the MCOF and the Humanitarian Policy. After the revolution, even though IOM did not stop servicing the European countries, including through capacity-building interventions provided for the Libyan authorities to control irregular migration, IOM continued to be more and more vocal about the human rights violations perpetrated against migrants. All things considered, one must admit that IOM has gradually emerged as a much less unapologetic actor that, on some occasions, has not hesitated to speak up for migrants' rights and denounce practices that violate the human rights of migrants. The organization's strategic document (2019–2023) states that by 2023 it aims to evolve into a "principled" organization "guided by the principles enshrined in the Charter of the United Nations, including upholding human rights for all" and prioritizing the "respect for the rights, dignity and well-being of migrants" (IOM 2020b, 9).

At the operational level, IOM has had difficulties addressing protection and assistance issues in a holistic manner, particularly in the context of mixed migration. The exclusive approach utilized by international institutions has

had many shortcomings since, for a long time, interventions were thought of in terms of legal categories, while in reality migrants in need of assistance did not belong to a particular legal category entitled to protection and assistance. The approach was not comprehensive but also lacked sustainability, because while significant achievements were undertaken to provide direct assistance to migrants and address immediate and even medium-term needs, long-term solutions were not given the necessary precedence (IOM 2018, 1). Taking note of these drawbacks, it is worthwhile to soul-search and position migration governance in a way that strengthens the institutional response mechanism toward addressing challenges arising from the complexity of contemporary migration.

Migrant Protection and Assistance: Toward an Inclusive and Comprehensive Approach

In the face of mixed migration flows, there is a clear understanding that programming should not leave anyone behind. A growing willingness to encompass a wide range of vulnerable migrants and focus on their humanitarian and protection needs, regardless of the cause of their flight, helps to put into perspective the compartmentalization between categories of migrants and promote a universal and holistic approach to migration through the adoption of new instruments aimed at reaffirming existing norms. In a bid to fill in normative gaps and help states adapt to new challenges, the UN has a role to play in creating synergy between internal and external initiatives.

Promoting a Universal and Holistic Approach to Migration

The use of the concept of vulnerability is part of the effort undertaken to promote an inclusive, comprehensive and resilience-oriented approach to migrant protection and assistance. It is believed that it can help better understand and address multilevel underlying factors through a holistic and sustainable intervention on the ground. For several reasons, the concept of "vulnerable" can be deemed appropriate to qualify migrants, especially those in an irregular situation (Gebre 2016). The first reason stems directly from the general failure of categorizing migrants in mixed migration contexts. It must be recalled that under the current state of international law, many categories of migrants fall through the cracks of international protective regimes. For instance, for a long time, despite the existence of an international framework, the recognition of the vulnerability of smuggled migrants was far from evident because of the misconception that smuggling is primarily a commercial transaction that does not necessarily entail the use of force, coercion, abuse and deception.

Although the relationship between the smuggler and the migrant is fundamentally different from that between the trafficker and the victim, these differences are not sufficient to dismiss the vulnerabilities of migrants in the context of smuggling. Nowadays, the modus operandi used by smugglers involves so much violence and has such exploitative purposes that the line between the two categories has become blurred. As such, the concept of vulnerability can be regarded as palliative, because its recourse tends to fill this gap with the advantage of

> establishing the reality of a situation irrespective of a determined legal status ... [and] enables to capture the different scenarios of migration affecting people, but also the different stages of an individual's migration, given that the person's situation varies during the migratory journey.
> BLONDEL 2015, 264

Moreover, while introducing an approach based primarily on the needs of vulnerable migrants, the reference to vulnerability enables us to resolve "the problem of disconnection between legal protection and the person's lived reality" so as "to give priority to the real needs of the migrant over the legal category to which he or she belongs" (Blondel 2015, 263). Beyond the attention on the needs of migrants, the aim is to focus on migrants' human rights and the ensuing obligations for states to respect, protect and fulfill the latter. The Office of the United Nations High Commissioner for Human Rights advocated for the use of the expression "migrants in a situation of vulnerability" to designate "persons who are unable to effectively enjoy their human rights, are at increased risk of violations and abuse and who, accordingly, are entitled to call on a duty bearer's heightened duty of care" (OHCHR 2018, 12). Likewise, international organizations such as IOM have incorporated this inclusive phrase into their programmatic activities to cover migrants who are not covered by existing protection regimes and are in need of protection and assistance services (IOM 2018).

The second reason is that vulnerability is a variable geometry concept that covers a multitude of situations. It enables probing not only the vulnerability present in each individuality, but also that stemming from a particular context or environment (Soulet 2014, 22). Vulnerability is thus understood as the "limited capability to avoid, resist, cope with, or recover from risks or experiences of violence, exploitation, or abuse that they are exposed to or experience within a migration context" (IOM 2018, 3). This limited capability is the result of the unique interaction of risk and protective factors at various levels (e.g., individual, household/family, community and structural) (IOM 2018, 3). Vulnerability in the context of migration can be intrinsic and extrinsic. Linked

to the exodus, extrinsic vulnerability does not depend on the qualities characterizing the concerned individual. It is the result of an event outside the latter that puts her or him in a difficult situation. This extrinsic vulnerability linked to the exodus can be doubled or aggravated by an intrinsic vulnerability when the individual is already part of the categories of persons considered vulnerable. As such, vulnerability is "situational and personal" in that it can be associated with "the reasons for leaving the country of origin," "the situations that migrants encounter during their journey and at their destination" and "a person's identity, condition or circumstances" (OHCHR 2018, 14–16). It is also interesting to see that a migrant in a situation of vulnerability is not solely characterized by the risk factors to which he or she is exposed. Migrants also have the resources within themselves that help them to be resilient and adapt. Adopting a vulnerability lens helps identify the risk and protective factors that characterize a migrant's situation to address, minimize and mitigate the risk factors and leverage the protective factors through a programmatic response framed at the individual, household, community and structural levels (IOM 2019b).

Beyond the identified analytical and programmatic advantages, recourse to the concept of vulnerability also makes it possible to situate in a space – time continuum the risk threatening the individual or the group by taking into account "the social conditions of production of the potential [risk]" (upstream) and "the conditions for the materialization of the [risk]" (downstream) (Soulet 2014, 24). Thus, this concept encourages us to look at the preventive and curative actions that society, the state or the international community take to manage the existing risks. In this perspective, the choice in favor of the concept takes on a particular meaning given its links with the notion of protection:

> to speak of the greater vulnerability of a social group is immediately to situate it on the scale of production, either by implying a greater structural exposure to a particular risk or by pointing out a gap of the protection device.
>
> SOULET 2014, 14

While translating the existence of "[a] shortfall of resources or the lack of framework conditions affecting the individual capacity to cope with a critical context" (Soulet 2014, 26), reasoning in terms of vulnerabilities enables us to bring up the questions linked to protection gaps on the ground of inequalities in the face of risks.

However, despite its apparent merits, the concept of vulnerability may also have its limits in the sense that one can fear that this shift in terminology can

negatively impact the legal treatment of migrants, perceiving them as "persons in need" rather than rights holders. The downside of this approach is the risk of regression of migrants' rights because their protection is perceived not as an entitlement resulting from human rights law and other legal status but as a humanitarian gesture dependent on the goodwill of states rather than binding legal commitments. In the words of Camille de Vulpillières, rather than dealing "with acknowledged and guaranteed subjective rights," the focus is put on "the possible protection the administration freely gives to some selected persons" (de Vulpillières 2020, 133–145). Moreover, there is also the risk that using the expression "migrants in vulnerable situations" undermines the effectiveness of migrants' protection and assistance because the term is a catch-all category encompassing a multitude of overlapping categories of migrants, for whom tailored responses addressing "underlying protection needs" and focusing on "systemic reasons for risk" will be problematic to develop and implement (Goodwin-Gill 2019). Notwithstanding its drawbacks, the concept has been incorporated in the New York Declaration and the GCM.

Creating Synergy between Internal and External Initiatives

The GCM features a holistic approach to migration in the sense that it aims to cover all stages of the migration cycle (origin, transit, destination and return) and address the drivers of migration, including environmental degradation, and protection concerns, through a human rights lens. By giving attention to mixed migration movements, the compact is admirable in the sense that it is the first international instrument that strives to transcend the traditional binary vision between forced and voluntary flows, while promoting an inclusive approach. While the adoption of the GCM created a wave of enthusiasm and embodied hope for the future of migration governance, it remains a framework aimed at boosting international cooperation and whose effective implementation lies in the hands of states that will select the means at their discretion.

Prior to the adoption of the GCM in 2018, several instruments adopted in other areas of global governance had advanced the protection agenda of vulnerable migrants through a cross-fertilization process and an inter-systemic approach. The 2030 Agenda for Sustainable Development (SDGs) is one of the most compelling instruments to give prominent attention to migration-related issues. Starting with the pledge of leaving no one behind, the 2030 Agenda recognizes that the dignity of the human person is fundamental to global development and, as such, the benefits of the Agenda's provisions should be guaranteed without discrimination (UN General Assembly 2015, 4) and "implemented in a

manner that is consistent with the rights and obligations of states under international law" (UN General Assembly 2015, 18), including international human rights law. The SDGs contain several protective provisions relevant for vulnerable migrants, such as eliminating all forms of discrimination and violence against all women and girls, including trafficking and sexual and other types of exploitation (Goal 5.2). It urges states to end abuse, exploitation, trafficking, and all forms of violence against and torture of children (Goal 16.2) as well as to promote and enforce non-discriminatory laws and policies for sustainable development (Goal 16.10 (b)). As part of efforts to promote full and productive employment and decent work for all, the SDGs require states to take measures to eradicate forced labor, modern slavery, human trafficking and the worst forms of child labor (Goal 8.7). They also include the protection of labor rights and the promotion of safe and secure working environments for all workers, including migrant workers, particularly women migrants, and those in precarious employment (Goal 8.8).

The Paris Agreement also represented a significant qualitative leap for the protection of climate migrants. It explicitly introduced a human rights-based approach to climate change, suggesting that

> [p]arties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children persons with disabilities and people in vulnerable situations ....
>
> UNFCCC 2015, 11

Before the Paris Agreement, it must be recalled that efforts to mainstream human rights and migration in the international climate regime contributed to the advancement of the protection agenda of climate migrants (UNFCCC 2011). The Sendai Framework for Disaster Risk Reduction 2015–2030 is also worth mentioning as it contains several relevant provisions for the protection of vulnerable migrants in the context of disaster. Beyond recognizing the link between disaster and displacement, the Framework promotes a preventive and reactive approach to disaster-induced displacement. It prioritizes

> the adoption of policies and programs addressing disaster-induced human mobility to strengthen the resilience of affected people and that of host communities, in accordance with national laws and circumstances.
>
> UNDRR 2015, PARA. 30 (L)

The inclusion of migrants in the design and implementation of disaster risk reduction can empower and build their resilience by addressing risk factors contributing to their vulnerability (UNDRR 2015, para. 36(a)(vi)). The Framework also promotes the principle of migration used as a strategy of adaptation to disaster through evacuations and relocations.

Although the implementation modalities of these instruments raise questions, it must be acknowledged that their adoption within the UN system has contributed to giving greater visibility to the rights and needs of migrants and represented progress toward less fragmentation in global migration governance. As such, these initiatives will serve as a foundation on which to build future strategies and interventions managing cross-border movements of people. This is all critical as the challenges arising from mixed migration require a multilateral, holistic and cooperative approach that is guided by international human rights law.

Initiatives aimed at filling existing normative protection gaps were also developed outside the UN system using consultative and bottom-up approaches and informal ad hoc processes through state-led mechanisms that produce non-binding norms. Launched by Norway and Switzerland in October 2012, the Nansen Initiative, which became the Platform on Disaster Displacement, aimed to address the protection gaps of people displaced across borders in the context of disaster and climate change. The Nansen Initiative first developed the Nansen Principles and later launched the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change in October 2015. While the Nansen Principles did not fixate on regulating the protection of environmentally displaced people, it sought to serve as a basis for future normative responses that must be provided to fill existing gaps. Regarded as non-binding norms (Tuitjer and Chevalier 2015, 147), it must be noted that the Nansen Principles and the Agenda for Protection are merely guiding and promotional tools rather than soft law. Although the Platform on Disaster Displacement does not explicitly advocate the adoption of a new ad hoc instrument, the development of the protection agenda and key messages for the relevant processes at the global and regional level can feed the international or regional normative process.

In the same vein, the Migrants in Countries in Crisis Initiative (MICIC) is also part of efforts to improve protection and assistance for vulnerable migrants through a state-led consultative process. Launched in 2014 by the United States and the Philippines, the MICIC Initiative aims to address the needs of migrants caught in situations of conflict or natural disaster, given that despite their vulnerabilities, the latter are often left behind in the context of crises and excluded

from preparedness, emergency response and recovery efforts. After a series of large and inclusive consultations, the MICIC Initiative developed Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster. The Guidelines provide practical guidance to relevant stakeholders on how to plan and prepare preventive interventions, as well as respond and recover from situations of crises in ways that protect migrants, reduce their vulnerabilities, enhance their resilience and empower them and their communities.

As part of the so-called minilateral system (UN General Assembly 2017, 89), these initiatives provide a clear comparative advantage in terms of flexibility of organization and action. One may concede that the success of the Nansen Initiative would have been difficult to achieve if the institutional mandate had been carried out by a Special Rapporteur or an international organization (McAdam 2016, 1518). Minilateralism facilitates international cooperation and creates forums where states can engage on particular issues related to migration and discuss potential solutions. In an era of defiance toward migration, these initiatives have the merit of including specific issues in the international political agenda and shedding light on the gaps surrounding migrant protection and responses that can be devised. Their recognition within the New York Declaration is a testament to the role they have played (UN General Assembly 2016). However, while they can be used as a springboard for the development of normative frameworks, including soft law instruments, they might not be regarded as an endpoint.

Conclusion

In the absence of a right to enter a foreign country, migrants do not hesitate to take incalculable risks to reach their destination at the expense of their physical and mental integrity and sometimes their life. The root cause of their plight lies mainly in the fact that the principles of international law guaranteeing their rights, dignity and well-being are largely scorned from the moment they leave their country of residence or origin and enter the territory of their final destination. In a context where migration has long been thought of in terms of sovereignty rather than humanity and dignity, placing the protection of migrants' human rights at the center of migration management activities was far from being a priority for governments. Global efforts to address migrants' vulnerabilities and tackle irregular migration through a human rights lens were lacking for quite some time.

Attempts to improve migrant protection and assistance have been undertaken at the policy and operational levels, but the fact that many are relatively

recent makes it challenging to measure their impact. Nevertheless, we have reasons to be cautiously optimistic since these efforts can herald a paradigm shift brought about by the willingness of states to deal with protection-related issues at the global level and to agree to put migrants' rights and safety at the center of migration management interventions. Along the way, the acknowledgment of the benefits of migration – including as a strategy of adaptation – is a recognition that can be harnessed to protect migrants from threatening social, economic and environmental change. However, the withdrawal of several states from the Global Compact for Migration under the pretext that the instrument undermines their sovereign rights is indicative that the fear that international commitments pertaining to migration encroach on states' prerogative to control entry and stay in their territory is still pervasive (Capone 2020, 713–730). In this context, adopting new instruments aimed at enhancing international cooperation in the field of migration to address the challenges of large movements of population does not suffice to remedy the gaps in the protection and assistance of vulnerable migrants. While the paradigm shift deserves to be acknowledged, the major challenge remains on improving negative public perceptions of migration and addressing xenophobia.

At the institutional level, the integration of IOM in the UN system can be a bearer of hope, if it means the agency is guided and bound by human rights and humanitarian principles, strengthening its ability to fulfill its mandate in the interest of not only its member states but also migrants. Despite competing interests, IOM has managed to progressively assert its legitimacy as a humanitarian organization that advocates and stands for the rights of vulnerable migrants, including by speaking about human rights violations. However, the extent to which IOM has fully integrated the protection of migrants' rights into its key priorities, organizational culture and operational management needs to be assessed over the long term.

In an ideal world, the ultimate protection that one can be afforded is freedom, which entails the possibility to come and go as one pleases. Migrants will not need protection from abuse, exploitation and violence during their perilous journey through irregular means if they are provided with the freedom to enter the territory of their country of choice and leave as they wish. While a universal right of entry will not be realistically guaranteed, facilitating the establishment of legal migration pathways allowing free circulation and addressing structural socio-economic, political and environmental vulnerabilities can contribute to protecting entire communities from the scourge of irregular migration.

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What UNRWA Tells Us about Refugees and the United Nations

Yasmeen Abu-Laban

Abstract

In September 2016, the United Nations General Assembly unanimously adopted the New York Declaration for Refugees and Migrants. This move made possible the affirmation in 2018 of two new global compacts: the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration. The Compacts, which are non-binding, have been variously analyzed and critiqued for the force of provisions aimed at enhancing protection of people on the move, and for what the embrace or rejection of the Compacts reflects about the state of multilateral cooperation in global migration and refugee governance. In marked contrast, far less attention has been paid to the implications of the uncertain fate of the United Nations Relief and Works Agency (UNRWA). Yet UNRWA was equally thrown into sharp relief in 2018 when the United States, the Agency's main donor, suddenly withdrew financial support, thereby jeopardizing the future of 5.5 million Palestine refugees registered with the organization.

The purpose of this chapter is to center UNRWA in relation to discussions of refugees and refugee governance. The chapter will trace how UNRWA's formation in 1949 – one year in advance of the United Nations High Commissioner for Refugees (UNHCR) in 1950 – led to the world's refugees coming to fall under two different UN agencies and mandates, with the consequence that both UNRWA and Palestine refugees are comparatively vulnerable, and subject to ideological attacks.

Keywords

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Today, UNRWA is on the brink of collapse ... I remain determined to do everything possible to sustain critical services to Palestine refugees, protect UNRWA staff jobs, preserve the investment of the international community in the human development of Palestine refugees and avoid adding an additional source of instability in the Middle East. But today, I find myself questioning whether this is possible.

PHILIPPE LAZZARINI, Commissioner General UNRWA (quoted in UNRWA 2021)

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In September 2016, the International Organization for Migration (IOM) became a related organization of the United Nations, and the United Nations General Assembly unanimously adopted the New York Declaration for Refugees and Migrants. This move made possible the affirmation in 2018 of two new global compacts: the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration. The Compacts, which are non-binding, have been variously analyzed and critiqued for the force of provisions aimed at enhancing protection of people on the move, as well as for what the embrace or rejection of the Compacts reflects about the state of multilateral cooperation in global migration and refugee governance, particularly in relation to the United Nations High Commissioner for Refugees (UNHCR) (Ferris and Donato 2020). We can expect in the years to come that such critiques and analyses will continue to be a matter of investigation within the UN system, as well as for stakeholders and academics, particularly in the field of migration studies (Guild and Grant 2017, 16). Standing in a stunning dramatic contrast, scholars and world leaders have paid far less attention to the implications of the uncertain fate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Yet, in the lead up to the United Nations' 75th anniversary and beyond, those overseeing the agency have rung the alarm bell, as noted in the 2021 dramatic statement of UNRWA's Commissioner General.

The purpose of this chapter is to center UNRWA in relation to scholarly discussions of refugees and refugee governance, as well as to the United Nations as the world's leading international organization. Article 1 of the 1945 United Nations Charter, the founding document of the UN, lists the following as the purposes of the organization: international peace and security; friendly relations based on respect for equal rights and self-determination of peoples;

international cooperation; and having the UN be a central point for harmonizing the actions of nations to achieve these goals (United Nations n.d.). In what follows, it will be argued that the protracted nature of the Palestinian refugee situation, coupled with the clear crisis and uncertain future of UNRWA, signals both a failure to respond to the humanitarian needs of refugees, and a looming failure to live up to the UN Charter itself.

In making this argument, this chapter takes a threefold approach. First, it situates the "Question of Palestine" within the UN system and traces how UNRWA's formation in 1949 – one year before that of the UNHCR in 1950 – led to the world's refugees falling under two different UN agencies and mandates. Second, consideration is given to how both UNRWA and Palestine refugees are comparatively vulnerable and subject to distinctive ideological attacks. Finally, the implications of the protracted nature and vulnerability of Palestinian refugees are addressed, a key one being that it speaks to a larger fault line around state power when it comes to the UN in its first 75 years of operation. This fault line, deriving from the Westphalian system, ought to compel greater attention from scholars and practitioners in the fields of migration and international relations alike in the years ahead.

UNRWA's Formation, the Bifurcation of Refugees and the "Question of Palestine"

It is a striking feature of migration studies and the field of international relations in political science that when the term "international refugee regime" is used, it has largely come to stand for the UNHCR as an organization reflecting the rules, norms or laws that guide states in their responses to refugees (Abu-Laban 2021). In point of fact, both UNHCR and UNRWA have refracted norms and the responses of states to refugees for almost as long as the UN has been in existence, and UNRWA, being a year older than UNHCR, has actually done so for longer. UNRWA focuses on what the organization terms "Palestine refugees." UNRWA was created in 1949 to provide services and relief to registered Palestine refugees and their descendants in Jordan, Lebanon, Syria, West Bank and Gaza. UNHCR, formed in 1950, has worked to support the protection of refugees as well as to find solutions to their plight, including through resettlement and return. While initially UNHCR was focused on European refugees displaced by the Second World War, over time it came to cover all parts of the world.

Most notably, when UNHCR was formed, it expressly excluded refugees covered by other UN agencies in its mandate (meaning UNRWA), setting up a bifurcation of refugees as a result of timing and organizational particularity

in the evolution of the UN system and, as will be discussed further, rendering Palestine refugees uniquely vulnerable (Irfan 2017, 18). In epistemic terms, this bifurcation has helped fortify the near invisibility of discussions of Palestinian refugees in the multidisciplinary field of migration studies, even as political scientists have come to do more work in this field over the course of the 21st century (Abu-Laban 2021).

The invisibility of Palestinian refugees is problematic from the standpoint of facts on the ground. Figures for the end of 2020 suggest that despite the COVID-19 pandemic (which resulted in border closures and travel restrictions across states) displacement actually grew to a new record level (UNHCR 2021, 6). In 2020, there were a total of 82.4 million people who were forcibly displaced worldwide, of which 26.4 million were refugees (UNHCR 2021, 2). Among the refugees, 20.7 million fell under the mandate of UNHCR and 5.7 million were Palestine refugees falling under the mandate of UNRWA (UNHCR 2021, 2). On numbers, it should be noted that the UN only counts as Palestine refugees those who are actually registered with UNRWA, and therefore in other counts the numbers of Palestinian refugees are higher (see, e.g., BADIL 2016–2018). Even so, based only on figures of the UN, well over one quarter of refugees in the world today are Palestinian. This fact alone should be indicative of the need to consider UNRWA and Palestinian refugees more systematically in migration studies.

Palestine refugees are also relevant to our understanding of the UN, a feature that can be overlooked in the overwhelmingly dominant framings that treat the issue in terms relating to the region of the Middle East, nationalism, or a conflict between "Jews" and "Arabs," as opposed to the outcome of a tacit international agreement of the world's powerful states that has been sustained through the United Nations in a paradoxical way, given the UN is also the site of the human rights revolution (Abu-Laban and Bakan 2020, 109–110). One way to begin to cut into this would be to recognize that the UN, and its predecessor the League of Nations, had an interest and played a direct role in the so-called Question of Palestine from the earliest moments of their organizational formations (UNISPAL 2021a).

Of course, neither the League members, nor the founding state members of the UN General Assembly, looked the same as the UN General Assembly looks now, given that large parts of the world were under colonial rule. In keeping with this colonial reality, between 1917 and 1947 Palestine, as a former territory under Ottoman rule, was entrusted by the League of Nations to British administration as part of its system of mandates. It has been observed that the mandate system worked less to dismantle colonialism than to reproduce it (Anghie 2006). In the case of Palestine, the British, with the support of the then self-governing powers that made up the world system, incorporated

the Balfour Declaration, calling for "the establishment in Palestine of a national home for the Jewish People" into the Mandate for Palestine. This allowed for Jewish immigration mostly from countries of Eastern Europe at the same time as the Palestinian Arab (Christian and Muslim) population in Palestine was demanding independence (UNISPAL 2021a). By 1947, amid growing tensions, the British turned the future of Palestine over to the newly formed UN, and the UN General Assembly in Resolution 181 (II) proposed partitioning Palestine into two independent states, Jewish and Arab, with Jerusalem as the capital (UNISPAL 2021a). Though this plan never came to be, it lingers on in relation to the idea of a "two-state solution" (Lustick 2019).

Summing up the decades preceding and following the partition plan, Columbia University-based historian Rashid Khalidi, a Palestinian-American, holds that

> the modern history of Palestine can best be understood in these terms: as a colonial war waged against the indigenous population, by a variety of parties, to force them to relinquish their homeland to another people against their will.
>
> 2020, 9

Indeed, Palestinian Arabs, who remained a demographic majority in the area until the late 1940s, viewed the UN partition plan as unacceptable and unfair, for it threatened the geographical integrity of Palestine and they disagreed with the manner in which Palestine was to be divided (Abu-Laban and Bakan 2020, 66). Hostility between Arabs and Jews mounted in Palestine, and civil war broke out. On May 15, 1948, an independent state of Israel was declared and the British Mandate came to an end. As a result, open warfare between the surrounding Arab states and Israel erupted (Abu-Laban and Bakan 2020, 66). By the end of the war, more land had been taken by Israel than had been allotted under the partition plan (UNISPAL 2021a). Nonetheless, Israel rapidly gained the recognition of both of world's superpowers: the United States and the Soviet Union. Israeli leaders immediately indicated that the new state belonged to all the Jewish people around the world and invited immigration with the promise of citizenship. This is codified as the Israeli state's "law of return" (Abu-Laban and Bakan 2020, 66).

The events of 1948 are subject to very different national narratives on the part of Palestinians and Israelis. For many Israelis, the years 1947 and 1948 are seen as a period in which the birth of a new state served as an implicit form of reparation for European Nazism and the genocidal horror of the Holocaust (Abu-Laban and Bakan 2020, 67). In contrast, for most Palestinians, the year

1948 represents a disaster (in Arabic the *Nakba*) characterized by well over half of the Arab population being violently uprooted, losing homes and property, and becoming stateless refugees within and outside of mandatory Palestine (Abu-Lughod and Sa'di 2007).

In coming to comprise now one of the world's largest and oldest refugee groups, Palestinian national identity has centered around the loss of homeland, the longing to return and the desire for self-determination. This is symbolized in the Palestinian quest for the "right of return" as recognized in UN General Assembly Resolution 194 (III) of 1949, which affirms the rights of Palestine refugees to return and to receive restitution (UNISPAL 2021b). In the same year, UNRWA, the Palestine refugee agency, came into being. UNRWA took as its focus Palestine refugees, "whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict" (UNRWA 2009).

As we know from the more than seven decades since, the situation of Palestine refugees became further entrenched through a series of wars in the region (in 1956, 1967, 1973 and 1982) that reconfigured greater control of the land in favor of the state of Israel. "Peace" has proven elusive, and notably, even high-profile efforts such as the 1993 Oslo Accords did not even deal with refugees. Successive Israeli leaders have portrayed Palestine refugees as the responsibility of the Arab states in which they reside, rather than of Israel (Masalha 2003, 1–2). Backed by powerful states including the USA, in the context of the UN Israel has faced no serious consequences for denying the right of return, making the UN a paradoxical space in which human rights are affirmed for some and denied for others (Abu-Laban and Bakan 2020, 109–128).

In such circumstances, the refugee situation became multigenerational. Hence, the descendants of 1948 refugees (notably along the male, not female line) came to be included as Palestine refugees by UNRWA, as did those forcibly displaced after 1967 (UNRWA 2009). This brings to the fore the need to consider the protracted nature of the situation of Palestine refugees, their comparative vulnerability and the increasingly evident weaknesses of UNRWA within the context of the UN.

The Comparative Vulnerability of Palestinian Refugees and UNRWA Limitations

The UNHCR defines a "protracted" refugee situation as "one in which 25,000 or more refugees from the same nationality have been in exile for five consecutive years or more in a given host country" (UNHCR 2019, 22). Key to a protracted

situation is that neither prospects for local integration (or resettlement) nor repatriation are likely (Costello 2017, 719). For Palestine refugees, access to citizenship and the rights associated with citizenship in other states has largely been denied, making it a protracted situation. However, even if such access were granted, it is not the easy fix that is sometimes portrayed.

For example, in the (now largely shelved) 2020 peace plan, dubbed by then US President Donald Trump as "the deal of the century," the Palestinian right of return is presented as unrealistic (Trump White House 2020, 31). In keeping with Israel's long-held position, the responsibility for refugee integration is portrayed as lying with the majority Arab states where Palestine refugees reside, and the only site of solution (Trump White House 2020, 31). However, the presumed dichotomy between citizenship and the right of return is overstated when considering the voices and long-held perspectives of Palestinian refugees themselves.

Qualitative research is instructive in this regard. Recent interviews conducted with Palestinians holding American citizenship, Jordanian citizenship as well as stateless Palestinians show across cases that they "do not see that the acquisition of formal citizenship elsewhere as meaning that they can no longer claim return or that they somehow lose it" (Bastaki 2020, 171). Moreover, as Bastaki more broadly argues, the understanding of Palestinians themselves

> challenges state-centric discourses about what citizenship means in the Palestinian case, and possibly for other refugee situations where the refugees still desire to return home after being resettled.
>
> 2020, 171

In point of fact, the vast majority of Palestinians are *de jure* stateless or hold ambiguous nationality status (Institute on Statelessness and Inclusion 2014, 132), making this kind of qualitative work useful for showing the serious gap between the discourses of state actors (represented in the UN) and the stateless people they may speak about (who were never intended to have representation in this intergovernmental organization).

That the United Nations itself is an organization that has largely been about the representation of states, and the will of powerful states, is also confirmed by the dynamics surrounding the 2011 bid of Palestine for statehood in the General Assembly, and the continued dominance of the Security Council. Additionally, for Palestine refugees coming under UNRWA specifically, there are three main ways that they have been rendered comparatively vulnerable in addition to the state-centric representational mechanisms in the UN. These relate to institutions, resources and ideology. Each will be discussed in turn.

First, a key way in which Palestine refugees have been rendered comparatively vulnerable has to do with the *institutional bifurcation of UNRWA and UNHCR*. Since its founding, UNHCR was conceptualized as an organization aimed at providing protection to refugees and seeking solutions worldwide; UNRWA does not engage in advocacy and protection but was rather founded as a services provider organization specifically for Palestinian refugees (Hanafi 2014, 3). In particular, UNRWA was designed to assume the emergency relief that had initially been carried out by the International Committee of the Red Cross, the League of the Red Cross Societies and the American Friends Service Committee (Bocco 2009, 231). In keeping with this role, UNRWA has never been at the forefront of pushing for the Palestinian right of return as contained in UN General Assembly Resolution 194, and it has not been a player in discussions of peace or the advancement of a just and durable solution to the situation of refugees (Bocco 2009, 231–232).

With time it has also become apparent that while UNRWA has benefited Palestinians in certain ways (such as in having more regularized access to education), it has been detrimental in other ways. A prime example is that in practice, Palestine refugees have been excluded from UNHCR's 1951 convention definition of a refugee and attendant protections (Irfan 2017, 18). A major contemporary issue indicating the problematic division between UNRWA and UNHCR concerns the situation facing Palestinian refugees in Syria since the start of the civil war in 2011. Dire conditions in camps have forced many to flee to other countries and/or become internally displaced. Of an estimated 570,000 Palestinian refugees in Syria in 2019, only 320,400 were registered with UNRWA (Al Rimmawi and Kittaneh 2021, 3). Of those 570,000 refugees, 450,000 have been internally displaced and are in need of emergency assistance, and some 120,000 fled Syria, some perishing en route or facing uneven reception and even exclusion in neighboring states or European countries, because Palestinian refugees from Syria are stateless (Al Rimmawi and Kittaneh 2021, 3–5).

A second way in which Palestine refugees are vulnerable has to do with *support and resources*. UNRWA from the start existed only through the support of the General Assembly and depended on state contributions, just as UNHCR did. Both UNRWA and UNHCR required renewal of their mandate every three years, although this requirement for renewal was abolished for UNHCR in 2003 (Irfan 2017, 16). Having to renew its mandate so frequently makes it difficult for UNRWA to engage in longer-term planning, even though the Palestine refugee situation shows no signs of resolution after more than seven decades. Additionally, garnering state contributions has become an ever more competitive field in which UNRWA, UNHCR and IOM, which as noted has been affiliated with the UN since 2016, all make cases (Thorvaldsdottir and Patz 2021).

The number of forcibly displaced people globally has been growing over the 2010s as well, reaching a new record level in 2020. As numbers have grown, UNHCR has also faced financial challenges (Abu-Laban 2021).

Moreover, it has been decades since UNRWA has had sufficient funding; the last time UNRWA had full funding for its programs was in 1986 (Irfan 2017, 16). More graphically, UNRWA's vulnerable financial situation was thrown into sharp relief in 2018 when the USA, the agency's main donor since 1949, suddenly withdrew financial support to the organization's budget of about one billion US dollars under President Trump. Given that the USA gave 350 million US dollars in 2017, the 2018 decision clearly placed in jeopardy the education, healthcare and social services of millions of Palestine refugees registered with the organization (Hindy 2018).

The US re-engagement in multilateralism and the corresponding restoration of funding to UNRWA under President Joe Biden has not alleviated matters, as clearly attested to by UNRWA's Commissioner General in November 2021. This is because in 2021, the United Kingdom, also historically a major donor, cut its contribution by half. The dwindling contribution reflected a decision to reduce its overall aid budget but was also echoed and amplified by an even larger reduction from Gulf states since 2019 (Wintour 2021). Needless to say, in addition to creating an existential crisis for UNRWA, such yearly shortfalls have also meant that teachers and healthcare workers (in the COVID-19 pandemic no less) – among them many refugees – are not getting paid, and the decline in services has contributed to a sense of hopelessness among refugees (Wintour 2021).

The dynamics around resources cannot, however, be fully understood without also considering the third and final factor relating to the comparative vulnerability of Palestinian refugees and of UNRWA, which has to do with some deeply rooted *ideological factors and even mythmaking*. In justifying cuts, a key argument made by the Trump administration was that UNRWA's "way of doing business" was flawed because the only Palestine refugees that should be counted are those that were there when the agency was created in 1949. In other words, descendants should not count (DeYoung, Eglash and Baloushha 2018). Instead, UNRWA was presented as bloated, and most Palestine refugees as some combination of "false" and, by extension, "undeserving." It can be noted that such charges have an eerie parallel in the dismissals of certain leaders and publics in Europe and North America leveled against refugees falling under the UN Convention definition for being "economic migrants," "bogus" or "asylum shoppers" (Smith 2019). Such discourses need to be continually debunked by refugee-serving organizations and scholars. However, the fact that in many countries both leaders and publics may have little knowledge of Palestinians or may hold negative and stereotyped views of this maligned group (Abu-Laban

and Bakan 2021b) makes it harder to foster a more clear-headed understanding of UNRWA and refugees.

In point of fact, the charges that were leveled against UNRWA by former President Trump fail to acknowledge that UNHCR also recognizes and counts refugees across generations in protracted situations. This is because in such conditions, a durable political solution is not found, thus making refugee-hood intergenerational. Moreover, in these situations, the impacted refugee group typically becomes largely dependent on international aid (Costello 2017, 719). This has also been stated by successive organizational heads of UNRWA, most recently in 2021 when UNRWA Commissioner General Philippe Lazzarini noted that:

> it is not UNRWA that is perpetuating refugee statehood. Refugee state-hood is perpetuated by the absence of a political solution, and there is no Palestinian, I promise you, that wants to remain a refugee after such a long time.
>
> Quoted in WINTOUR 2021

In addition to the problematic assertion of perpetuating refugeehood, UNRWA has also been uniquely attacked with charges that it employs or benefits "ter-rorists" or promotes hatred (in particular of Israel or Jews) through school textbook choice (see Lindsay 2009). Such accusations were given credibility by the Trump administration and are echoed by right-wing politicians in Israel, Republican members of the US Congress and pro-Israel groups such as UN Watch. When combined, such a chorus effectively creates an ongoing atmos-phere in which the work of the organization is constantly delegitimized (Berg and Jensehaugen 2021). Again in the words of UNRWA's Lazzarini:

> Every year we have tens of schools that are rewarded by the British Council for the quality of their education. By investing in the education of more than 500,000 boys and girls in the region, we are not only invest-ing in the future but in the stability of the region.... We are subject some-times to vicious political attacks normally through the lens of the school curriculum, but in reality it is because there is a naive view that if the agency is weakened or eliminated then an obstacle to lasting stability will have been addressed.
>
> Quoted in WINTOUR, 2021

It can be observed that Palestine refugees continue to wait for a just response to their plight. But weakening, defunding or dismantling UNRWA will not make Palestinian refugees disappear, nor will their claim to the right of return, which

is grounded in international law, disappear (Berg and Jensehaugen 2021). However, the fact that this "naive view" carries weight at this moment raises profound questions about the UN as it moves beyond its 75th year.

UNRWA and the Implications and Lessons for the UN@75 and Beyond

There are practical, political and ethical implications and lessons that flow from a consideration of UNRWA and the United Nations since 1945 and from the lack of resolution to the so-called Question of Palestine and the Palestine refugee issue. When brought together, these considerations raise compelling questions for both researchers and practitioners of migration who are concerned about refugees, as well as those concerned about the future of the UN and international governance.

At a practical level, the case of UNRWA raises some profound questions concerning the gap between a UN agency that is repeatedly given a mandate by the UN General Assembly (because the UN has neither resolved the so-called Question of Palestine nor found a just and durable solution for Palestine refugees) and what individual member states do in relation to funding. The 2010s have proven to be inauspicious for the refugee agency concerned with Palestine refugees, and the responses from traditional donors have created a situation in which the long-standing problem of being unable to plan beyond a limited time horizon has combined with dramatic financial shortfalls for the agency. This is also in a very immediate sense a humanitarian issue, and the failure to sufficiently support UNRWA is in effect a decision of the international community not to provide for the humanitarian needs of refugees.

It is true there may possibly be reforms – for example to the funding model – that could improve the situation (UNRWA 2021). However, the last few years have shown us that funding to UNRWA, even among long-time large donors, is now making a "jack-in-the-box" appearance and disappearance. That this financial instability has put UNRWA, in the words of its Commissioner General, on the "brink of collapse" (UNRWA 2021) raises a serious question that needs to be asked: What would happen if there was no UNRWA? Here, it can be noted that refugees falling under UNRWA's mandate are in five areas: Jordan, Lebanon, Syria, West Bank and Gaza. The combined impacts of Israeli occupation in the West Bank and Gaza, as well as growing numbers of displaced people and refugees in the region as a result of the Syrian civil war and growing numbers of refugees in Jordan and Lebanon, make it unlikely that the function UNRWA performs, however insufficient for existing needs, can be replaced.

When combined with the situation of Yemen, and the fallout from the US-led wars in Iraq and Afghanistan, the humanitarian implications of letting UNRWA collapse would be staggering for the entire region. It is striking that in the litany of attacks on UNRWA we see today, there is no attention to this, nor to the historically unsupported understanding that somehow UNRWA has created the Palestine refugees.

There are also political implications in what is happening to UNRWA that pertain to the United Nations as a whole. In this sense, the case of UNRWA, which at first glance might seem trivial, should actually be treated as a "canary in the coal mine" for the UN at 75 and beyond. At one level, the traditional support given to UNRWA was reflective of a consensus among powerful actors to support multilateralism and the postwar international architecture including human rights and dignity. This is clear from what the 1945 UN Charter envisions as the purpose of the organization, which depends in turn on international cooperation and support for the UN and its various agencies and bodies to harmonize goals. Dramatic changes such as we are seeing with UNRWA coming to the point of collapse raise even larger questions about the viability of the refugee regime, the viability of being able to deal with international problems amicably and with success, and even about the viability of the UN itself.

The attack and withdrawal from UNRWA by former US President Trump signaled a larger retreat from multilateralism as well as US leadership in relation to the vision of the UN Charter, and it also clearly opened doors for other countries to do the same, even if under President Biden US support for UNRWA has shifted back to the *status quo ante*. It is true that in even reaching its 50th anniversary back in 1995, the United Nations accomplished something that was not achieved by its predecessor the League of Nations, but even then seasoned analysts highlighted that reforms were needed (Knight 1995). The case of UNRWA in many ways signals the uneasy place nonstate actors (Palestinians, Indigenous peoples, stateless people) face in an organization that was built on the supremacy of the Westphalian state. Does responding to this require reform or a more radical re-envisioning of international governance?

The answer to this may lie in how one responds to the profound ethical implications that the case of UNRWA carries as a window on some of the most disadvantaged groups in the world system, and how they can be left even further behind. The existence of the Question of Palestine, as well as of Palestine refugees, is intimately connected to powerful states and international institutions designed in their image. Critical scholars in the field of migration studies have made the important point that few analysts addressing refugees have connected the flows and massive displacement we are witnessing today with a wider temporal context that takes into account the institutions and power

dynamics of colonial legacies (Nyers 2019). This understanding is also relevant in addressing the unresolved Question of Palestine as well as the status of Palestinian refugees today. The UN (like the League of Nations before it) is an institution shaped by colonial realities and their legacies. Powerful states of the United Nations have played and continue to play a part in creating this world in which Palestinians are among the oldest and largest groups of refugees. There is then an ethical case for continuing to support their human needs, even if there has never been more than a modicum of support for the most desperate. There is also a case for not continuing to place discussions of just resolutions to their plight "on the back burner."

We know that the member states of the UN have been unable or unwilling to actually resolve the plight of Palestine refugees, and increasingly they are leaving UNRWA to simply languish. Imagining a UN that could productively support and justly respond to Palestine refugees is an exercise worthy of collective consideration by scholars and practitioners alike. This could provide real clues about what would need to change to enable a form of international governance that might work better with civil society actors as well as those who have been denied a state, who flee states or who are stateless. Whether that envisioning takes the track of reform or radical change, the case of UNRWA carries much relevance for the UN and its future.

Conclusion

It is clear that in reaching and going beyond its 75th year, the United Nations has passed a milestone never accomplished by its predecessor. At a time when there are many other international organizations – from the European Union to the G20 – it remains the case that the United Nations is also seen by many in civil society as representative of the "international community" (see Shepherd 2015) and that it has garnered at least some degree of legitimacy (Dellmuth and Tallberg 2015). To put it differently, given its wide degree of representation from world states, and its longevity, the United Nations serves as a symbol of the promise and possibility of international cooperation.

As this chapter has shown, coterminous with the founding years of the UN has been the Question of Palestine, proposals for partition, Palestine refugees and the formation of UNRWA. By centering UNRWA in relation to discussions of refugees and refugee governance, this chapter has shown how UNRWA's formation a year in advance of the UNHCR led to the world's refugees falling under two different UN agencies and mandates. The consequence has been that both UNRWA and Palestine refugees are comparatively vulnerable and

subject to ideological attacks. The lessons learned from this discussion – in practical, political and ethical terms – are thus put to the international community, practitioners and scholars. So too are the imperatives of fairness, justice and multilateralism.

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The Value of Re-socializing Boys and Men for Positive Gender Relations to Curb Gender-Based Violence and Femicide in South Africa

Christopher Isike

Abstract

Recognizing the gravity of gender inequality and gender-based violence phenomena that date back to the apartheid era, successive post-1994 governments in South Africa have enacted several legislative and policy frameworks to address these challenges. From the 1996 Constitution, which calls for equality of all persons before the law, to several policy and development frameworks such as the Policy for Women Empowerment and Gender Equality and the National Development Plan (NDP 2030), there is no shortage of state interventions rooted in human rights aimed at a non-sexist and gender-equal South Africa. These rights affirm the democratic values of human dignity, equality and freedom from gender-based violence. In spite of these, women and girls in South Africa continue to suffer from male violence at alarming rates, prompting President Cyril Ramaphosa to declare gender-based violence and femicide a national disaster in 2020. This resulted in the National Gender-Based Violence and Femicide Strategic Plan 2020–2030, which provides a coherent national framework to support South Africa in meeting the UN's Sustainable Development Goal targets 5.1–5.3 and 16.1–16.2.

However, beyond gender equality policy and legislative provisions, and the usual challenges of implementing them effectively, there has been very little engagement with male mindsets and perceptions of the female gender, which actually fuels gender-based violence and femicide (GBVF) in South Africa. What men think of women informs their behavior toward women. These thoughts include a world view based on African patriarchy, which is also used as a cultural/philosophical basis for resisting the notion of gender equality as a Western imposition that goes against the African patriarchal world view and gender relations. This chapter used secondary and primary data from South Africa to engage with these concerns with a view to making a case for re-socializing boys and young men in the country to change their mental image of girls and women. The overarching goal is to lay the cultural basis for reimagining gender relations to enable positive masculine behavior in ways that will help tackle the scourge of GBVF in South Africa. This is the missing link in the disconnect between policy and practice on gender inequality and gender-based violence in Africa.

Keywords

boys – femicide – gender-based violence – gender inequality – men – South Africa

Introduction

Gender-based violence and femicide (GBVF)[1] is violence that is directed against a person on the basis of their sex or gender, and it includes acts that inflict emotional, physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. It is psychological, physical and/or sexual violence perpetrated or condoned within the family, the general community or by the state and its institutions. GBV occurs in all societies, social classes and cultural groups, and it is a global pandemic that affected one in three women in their lifetime in the pre-COVID-19 period (Dlamini 2020). It is prevalent throughout the life cycle stages for women – infancy, girlhood, adolescence, adulthood and old age. The impact of GBV goes beyond the suffering of survivors and their families, and it is estimated that the cost to the economy can amount to 3.7 percent of some countries' GDP. According to a UN Women 2020 study, the Global cost of violence against women and girls prior to the pandemic stood at 1.5 trillion US dollars, approximately 2 percent of global domestic product (UN Women 2020a; 2020b). The social and economic stress brought by the COVID-19 pandemic has exacerbated pre-existing toxic social norms and gender inequality. For example, by July 2020, the number of women and girls between the ages of fifteen and 49 who had been subjected to sexual and/or physical violence perpetrated by an intimate partner (GBV) was no less than 243 million (UN Women 2020a; 2020b).

Africa is not spared the scourge of GBVF. Using rape as an example, Botswana (1st), Lesotho (3rd) and South Africa (4th) are in the top four spots of the global rape statistics by country in 2021 (World Population Review 2021). This is particularly concerning for South Africa given its superior level of women's political representation in government, parliament and cabinet compared with Botswana and Lesotho.[2] Across the country, the problem of GBVF, which takes many forms, is structural and fueled by inequalities that transect

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1   The killing of a woman by her intimate partner.

2   South Africa has 46 percent female representation in parliament, compared with Botswana at 11 percent and Lesotho at 23 percent. In cabinet, the female representation is 50 percent in South Africa, 22 percent in Lesotho and 18 percent in Botswana. Clearly, if numbers alone were to translate to qualitative differences for women's fortunes, South Africa should be faring better than the other two countries on rape and other forms of GBVF.

race, class, gender, sexuality and age, and the economic costs for the country have been huge.[3] With increasing levels of male violence against females in the country, the government has responded by enacting a number of legislative policy interventions including awareness programs and initiatives to curb GBVF in the country. However, instead of abating, male violence against females appears to be getting worse, which indicates a failure of government and society interventions.

On the research front, several studies have sought to explain the structural causes of GBV in South Africa. Many of these fall under four broad categories of inequalities: socio-cultural, economic, legal and political. On the socio-cultural front, patriarchy and the gender inequality it produces stand out as root causes of male violence against women. For instance, studies show that rape is mainly caused by ideas of masculinity that fuel male sexual entitlement to female bodies (Wood 2005). Others highlight how particular understandings of masculinity define and legitimate unequal and often violent relationships with women (Jewkes et al. 2011). Moreover, a number of empirical studies on the causes and nature of GBV in South Africa have shown that culture is indeed a recurring factor (Bhana 2005; Ouzgane and Morrell 2005; Vetten and Bhana 2001; Cock 1993; Kaufman 2001; Leclerc-Madladla 1997). On the economic side, poverty and unemployment are disproportionately borne by females, which makes them vulnerable and susceptible to abuse by male providers (Jewkes, Morrell and Christofides 2009; Isike and Okeke-Uzodike 2011a). Furthermore, women in South Africa struggle to secure livelihoods through employment and even when they manage to do so, they earn less than men. Furthermore, women also struggle to succeed in entrepreneurship (Mtengwane and Khumalo 2020).

In terms of law, there is a difference between the public and the private spaces that gender equality legislation and policies do not cover (Isike and Okeke-Uzodike 2011a). For example, the Domestic Violence Act (South African Government 1998) has not deterred male violence against women, which occurs in the informal and personal spaces of gender relations (Jewkes 2009). Additionally, there is the difficulty of women extracting justice from the law in divorce, maintenance and GBVF cases. Lastly, although there is a political will to create gender equality legislation and policies, there is little or no desire, especially at lower levels of government (provinces and municipalities), to implement them. For instance, male political leaders themselves commit GBV with support from their political parties, sometimes including the women's

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3 According to a KPMG report, GBVF costs South Africa between R28.4 billion and R42.4 billion per year, and individuals and families continue to bear the greatest proportion of costs linked to the problem (KPMG Human and Social Services 2017).

wings.[4] A fifth driver of male violence against women in South Africa is the national lockdown occasioned by the COVID-19 pandemic (Farber 2020).[5] An important point to note, however, is that no single factor can explain male violence against women in South Africa – or any society for that matter. A myriad of factors contributes to the phenomenon, and their interplay lies at the root of the problem.

However, these studies, some of which inform government policy interventions that are failing to address the scourge of GBVF given its increasing prevalence, also indicate a gap in the literature on the causes of the scourge. They show that little or no attention has been paid to its psychosocial causes – the interrelation of social factors and individual thought and behavior. In this case, they are the thought patterns that explain how men and boys see women and girls, and how these perceptions turn into violent masculine behavior toward women and girls. Neglecting these causes has implications for addressing the problem by all stakeholders of society. For example, this gap in the literature is also reflected in the responses by government, activists and civil society, which have failed to arrest the problem in spite of the efforts and resources put into it since democracy in 1994.

This chapter therefore argues that if the aim of all government, civil society and private sector efforts to address GBVF is to change the violent behavior of men and boys toward women and girls, then the ideational factors that drive GBVF should also be addressed. South Africans wish for men and boys to change their violent behavior toward women and girls to stem the worsening tide of male violence against females in the country, which itself indicates that government and societal interventions are not working. One reason for this is the failure to identify and address the thought patterns that inform male conceptions of females, and how these perceptions in turn inform violent masculine behavior toward females. The chapter uses secondary and primary data from South Africa to engage with these concerns with a view to making a case for re-socializing boys and young men in the country in order to change their mental image of girls and women. Therefore, the main argument is that changing what men think of women is critical to stopping male violent behavior against women. The overarching goal is to lay the cultural basis for reimagining gender relations to enable positive masculine behavior in ways that will help

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4   On the women's wing of the ruling African National Congress, see Polity (2020).

5   The UN SDG Report 2021 also indicated that the pandemic is adding to the burden of unpaid domestic and care work and squeezing women out of the labor force (UN Department of Economic and Social Affairs 2021). The resulting frustrations impact gender relations at home in ways that exacerbate GBV, which disproportionately affects women.

tackle the scourge of GBVF in South Africa. This is the missing link in the disconnect between policy and practice on gender inequality and gender-based violence in Africa.

The next section provides an overview of GBVF in South Africa and an appraisal of the government's responses through legislation and policy aligned with international law and resolutions on women's rights and gender equality. The third section uses empirical findings from previous studies on KwaZulu-Natal to make a case for why what men think of women matters in the fight to curb GBVF in South Africa. Based on that analysis, the fourth section offers some suggestions for re-socializing boys and men to see and treat girls and women differently. While these suggestions are particular to South Africa in the context of this chapter, they are also applicable to countries elsewhere in the world with high levels of GBVF, and some multilateral action are useful in this regard.

Overview of Gender-Based Violence and Femicide in South Africa

Gender-based violence and femicide, which manifests itself mainly as male violence against females in South Africa, has reached epidemic proportions. This violence comes in many forms, including sexual violence, domestic violence and intimate partner killings, harmful traditional practices (such as forced/early marriage), hate crimes against sexual and gender minorities, trafficking, physical and verbal harassment including sexual harassment, and violence against vulnerable women groups including sex workers, migrants and refugees. In June 2020, President Cyril Ramaphosa declared male violence against women a second pandemic in South Africa (Ellis 2020), adding that one woman is killed every three hours in the country. The country has one of the highest rates of rape in the world, with 72.10 incidents per 100,000 people (World Population Review 2021). This is not a new phenomenon: a 2011 cross-sectional study in three South African districts in the Eastern Cape and KwaZulu-Natal found that 27.6 percent of all men had raped a woman or girl. Of all the men who were interviewed, almost half (42.4 percent) had been physically violent to an intimate partner (Jewkes et al. 2011). Almost ten years later, between 2019 and 2020, there was an average increase of 146 sexual offenses and 116 specifically rape cases per day, compared with the same period between 2018 and 2019 across the country (Mail & Guardian 2020).

Likewise, a comparative study of female homicide and intimate partner violence rates between 1999 and 2009 showed that although female homicide per 100,000 people in South Africa had decreased from 24.7 to 12.9, this figure was

still five times the global average, and rates of intimate partner femicide had not significantly decreased; researchers highlighted the urgency of these figures for policy-driven prevention (Abrahams et al. 2013). However, in 2020, the government's Gender-Based Violence Command Centre, a call center to support victims of GBV, recorded more than 120,000 victims in the first three weeks of the lockdown alone (Farber 2020). Just weeks later in Pretoria, a similar call center was receiving up to 1,000 calls a day from women and children who were confined to abusive homes seeking urgent help (Lebogang Ramafoko, quoted in Mail & Guardian 2020). Lebogang Ramafoko, a gender equality activist and Chief Executive Officer at Atlantic Fellows for Health Equity, aptly summarizes the "pandemic" of GBVF and its effect on women in South Africa:

> The truth is, women live in fear all the time. We are afraid in our homes, we fear walking in our neighborhoods, we fear exercising alone, taking public transport, expressing our views on social media and speaking against injustice in schools, places of worship and workplaces. Simply put, women live in fear.
> MAIL & GUARDIAN 2020

Violence as a reinforcement of dominant norms of manhood and patriarchal social power has an impact on all South Africans, irrespective of gender or sexual orientation. For example, boys and men also suffer from rape by other boys and men, and the violent punishment of people who transgress heteronormative gender roles and identities is an increasing concern in South Africa. For lesbian, gay, bisexual, transsexual, queer and intersex (LGBTQI) persons, this translates into the very real experience of homophobic violence, including homicide and rape as a form of persecution (Lewin, Williams and Thomas 2013; Wells and Polders 2006). Men, women and people that transit genders in South Africa are impacted by violence in multiple and intersecting ways.

Schools are not spared either, as school-related GBV (violence perpetrated against girls in particular) is pervasive across South Africa, and it occurs in and around schools (de Lange and Mitchell 2014). Cases include harassment and inappropriate touching, as well as forced sexual relationships with teachers, which often lead to teenage pregnancies and school dropouts. Both boys and girls can be perpetrators or victims of school-related GBV, which suggests that programming to address the problem should include both boys and girls (Khuzwayo, Taylor and Connolly 2018; UNESCO n.d). According to Khuzwayo, Taylor and Connolly (2018), students are also vulnerable to other forms of violence, which they experience while commuting to and from school.

How has the South African government responded to the structural challenge of gender inequality that is at the root of male violence against women in the country?

National Government Responses

Given the socio-cultural, economic, legal and political inequalities that drive GBVF in South Africa, successive post-1994 governments have put several legislative and policy frameworks in place to address the issue. The rights of everyone who lives in South Africa are enshrined in the Constitution (Act No. 108 of 1996), particularly in Chapter 2 (the Bill of Rights). These rights affirm the democratic values of human dignity, equality and freedom from GBV. In addition, the state and all its organs are required to respect, protect, promote and fulfill the rights mentioned in the Bill of Rights, which also protects the rights of women and other gender-nonconforming persons. Some specific legislative and policy frameworks that underscore the government's response to the GBV that is rooted in gender inequality in South Africa include:

– Establishment of the National Gender Machinery and existence of a National Gender Policy Framework
– Establishment of the Department of Women in the Presidency
– Women Empowerment and Gender Equality (WEGE) Bill of 2013
– Criminal Law (Sexual Offenses and related matters) and Amendment Act 32/2007
– Older Persons Act, No. 13 of 2006 (Chapter 3)
– Children's Act No. 38 of 2005
– Prevention of and Treatment for Substance Abuse Act No. 70 of 2008
– Child Justice Act No. 75 of 2008
– Protection from Harassment Act No. 17 of 2011
– Domestic Violence Act No. 116 of 1998
– Prevention and Combating of Trafficking in Persons Act No. 7 of 2013
– Victim Support Services Bill 2018
– Combating and Prevention of Hate Crime and Hate Speech Bill 2018
– Gender-Based Violence and Femicide National Strategic Plan 2020–2030.

The most recent of these policy interventions, the GBVF National Strategic Plan (NSP) 2020–2030, sets out to provide a cohesive strategic framework to guide the national response to male violence against females. This was a direct national response to the call by activists for the government and all stakeholders in South Africa to make the country a safe place for women, children and gender-nonconforming individuals. This resulted in a national summit on gender-based violence, convened by President Ramaphosa in November 2018, which produced the National Summit Resolutions of the Gender-Based Violence Summit. And, in September 2019, President Ramaphosa addressed a

joint sitting of parliament on the crisis of GBVF in South Africa. These processes inspired the GBVF NSP 2020–2030, which also gives impetus to Outcome 3 of the National Development Plan, that is, that "all people in South Africa are and feel safe." The GBVF NSP also provides a coherent national framework to support South Africa in meeting Sustainable Development Goals (SDGs) 5.1–5.3 (eliminating all forms of violence against women and girls) and 16.1–16.2 (ending abuse, exploitation, trafficking and all forms of violence against and torture of children). Indeed, the legislative and policy frameworks put in place by the national government build on and reinforce global multilateral instruments such as the Beijing P4A, which comprises a set of twelve critical areas for achieving women's empowerment, including a commitment to combat violence, as well as General Recommendations 12, 19 and 30 of the Committee on the Elimination of Discrimination against Women (CEDAW) of 1989, 1993 and 2013.[6] Some regional multilateral initiatives with which the South African responses are aligned include the African Union Protocol on the Rights of Women in Africa and the Southern African Development Community (SADC) Protocol on Women Empowerment and Gender Equality. Both protocols advocate equal access to work and to economic opportunities for women in Africa to address the socio-cultural and economic basis of GBVF.

In spite of these policy and legislative interventions borne from international and regional multilateral efforts, women and girls in South Africa continue to suffer from male violence at alarming rates, which prompted President Ramaphosa to declare that GBVF represented a "second pandemic" in 2020. Why is this so? Beyond policy and legislative provisions, and the usual challenges of implementing them effectively, there has been very little engagement with male mindsets and perceptions of the female gender that fuel GBVF in South Africa. What men think of women informs their behavior toward women. These thoughts include a world view of African patriarchy, which is also used as a cultural/philosophical basis for resisting the notion of gender equality as a Western imposition that goes against the African patriarchal world view and gender relations. The neglect of the ideation that drives GBVF in both research and policy is a gap that accounts for why the issue remains unresolved. For example, the GBVF NSP 2020–2030, which has significant activist and civil society inputs, reflects this gap as its six pillars focus on leadership accountability, prevention, enforcing justice, victim support, economic

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6   Articles 2, 5, 11, 12 and 16 of CEDAW require parties (such as South Africa) to act to protect women against violence of any kind occurring within the family, the workplace, or in any other area of social life. Furthermore, General Recommendation No. 30 obliges states to prevent, investigate, punish and ensure redress for crimes against women by nonstate actors (Strachan and Haider 2015).

empowerment and research. As argued elsewhere, "these are useful priorities, but none of these six pillars and their intended outcomes reflect a psychosocial priority" (Isike 2021). To reiterate the proposition of this chapter: the bottom line of all government, civil society and private sector efforts at addressing GBVF is to change the violent behavior of men and boys towards women and girls. In this regard, changing what men think of women becomes critical. This has formed part of intervention efforts to address and curb the scourge of male violence against females in South Africa.

What Men Think of Women and Why It Matters

The relationship between self-perception and violence is well documented in the literature. Much earlier, Thucydides, Machiavelli and Clausewitz variously detailed the nexus between self-perceptions of national interests/capabilities and peace in international politics. The seminal study of Rudolph Rummel (1975), which discussed the interrelationships between perception, personality and behavior, has theoretical relevance to male violence against women. This is because people are products of their cultural environments, which define their behavior. Rummel (1975) argues that perception and behavior are mediated by a cultural schema that gives meanings and values to human actions. In other words, our cultural learning largely determines what we are consciously aware of and how we conceptually structure that awareness into behavior. Behavior, here, is defined in relation to the subjective perceptions, expectations, occasions and dispositions of the actor, which are mediated by culture and environment at different points. In the context of this chapter, explaining violent behavior, and possibly controlling or eradicating it, requires uncovering the linkage between our perception of situations and our behavior. Since cultural meanings and the values ascribed to them frame our cognition and perception of reality, perceptions therefore influence our responses (behavior), and these can be violent or nonviolent depending on our perceptual reading of the situation. This implies that a perceptual distortion of a cultural reality can lead to a distorted or aggressive behavior (Baumeister 1989). Chinweizu highlights this by using a quote from Lerone Bennett that draws the connection between perception and behavior. According to Bennett:

> Men act out of their images, they respond, not to the situation, but to the situation transformed by the images they carry in their minds. In short, they respond … to the ideas they have of themselves in the situation. The image sees … the image feels … the image acts, and if you want to change

a situation you have to change the image men have of themselves and of their situation.

<div style="text-align: right"></div>
CHINWEIZU 1987, 211

This is profoundly relevant to understanding and addressing GBV at two levels. First, culture shapes perception, which in turn shapes behavior. Second, it tells us that to change bad behavior, we must first change the wrong perceptions that produce the bad behavior in the first place. How do South African men perceive women? And how do these perceptions lead to violent male behavior against females?

Findings from focus group discussions (FGDs) with working-class men (average age 45 years) and university students (average age twenty years) in KwaZulu-Natal show what males think of females. The analysis of the findings also shows how male perceptions of the female influence dangerous masculine behavior (Isike 2012). Both groups of men were interviewed in five FGDs that took place between 2006 and 2015 in Pietermaritzburg (University of KwaZulu-Natal 2006),[7] KwaDlangezwa (University of Zululand 2009)[8] and Richards Bay (working-class men in 2011).[9] The last two FGDs, for young boys between nine and seventeen years old, were done in Ladysmith (2015)[10] and Durban (2015).[11] All five groups were asked the same question: How do you perceive women/girls? The responses were categorized into themes, and of the many that emerged, two themes that relate to the analysis of GBVF in this chapter are the perception of females in oppositional terms and the perception

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7   FGD (Focus Group Discussion) on Perceptions of Women and Girls among South African Males. 2006. Discussion conducted with fifteen male students at the University of KwaZulu-Natal, Pietermaritzburg, South Africa.

8   FGD (Focus Group Discussion) on Perceptions of Women and Girls among South African Males. 2009. Discussion conducted with 22 undergraduate students in the Department of Political Science and Public Administration, held in faculty board room, D block, KwaDlangezwa, University of Zululand, South Africa.

9   FGD (Focus Group Discussion) on Perceptions of Women and Girls among South African Males. 2011. Discussion conducted with twelve working-class adult males randomly drawn from rural and urban settlements in Umhlathuze Municipality, held in lecture room A10, Richards Bay Campus, University of Zululand, South Africa.

10   FGD (Focus Group Discussion) on Perceptions of Women and Girls among South African Males. 2015a. Discussion conducted with fourteen teenagers/young boys (nine – seventeen years old) organized by the Department of Social Development, KwaZulu-Natal Provincial Government in a community hall in Ladysmith, South Africa.

11   FGD (Focus Group Discussion) on Perceptions of Women and Girls among South African Males. 2015b. Discussion conducted with fourteen teenagers/young boys (nine – seventeen years old) organized by the Department of Social Development, KwaZulu-Natal Provincial Government in a community hall in Durban, South Africa.

of females as male property. At the end, they were also asked to suggest how their perceptions of women/girls could be changed to engender more positive gender relations, and some of their views feature in the suggestions made for re-socializing males accordingly.

Perception of Females in Oppositional Terms

Across all the groups, the boys and men saw girls and women in oppositional terms to them. According to one of the older men, "I see women (and my wife) as public enemy number one who must be curtailed always."

Another saw his wife as "a necessary evil that must be kept at arm's length at all times and tolerated when needed."

The younger men (on average twenty years old) also expressed similar views of women. For one of them, "a girl is tricky and deceptive, and must always be handled with caution." For another, "a girl can never be trusted to be faithful, so she needs to be policed all the time."

Another voiced a similar sentiment, claiming that "girls can never be loyal to one guy"; this view of females was widespread among both younger and older males that participated in the FGDs. Clearly, even though males also engage in multiple partner relationships with females, they conveniently use culture to problematize females having similar rights or needs as humans. Other oppositional perceptions of females that were common among the responses include females as "snakes," "gold diggers," "control freaks" and "untrustworthy."

An important theme to highlight from these perceptions is how males think about gender equality measures, such as affirmative action policies that empower women economically and embolden women to challenge male authority within the home. Many of the married males in the working-class group talked of how their wives changed after being empowered either through employment equity measures or affirmative action schemes that give special consideration to women who do business with the government.[12] According to one of them:

> I knew I could not trust her if she had her own money and I was proved right when she got a better job than me. She started dictating how things should happen in the family and kept her money away from me. She had a secret account.
>
> FGD, 2011

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12   Some also complained of female colleagues in the workplace, as they felt that they were less qualified for positions but were nonetheless employed as their bosses. They also underlined how these female bosses undermined their masculinity.

The men agreed that this was a common challenge that caused friction, which often resulted in them beating up their wives. One of them said, "what gets to me is not the money really, but how she comes home anytime she likes and says it's work." Another, however, told the group that these issues depended on "how you treated your wife before she got employed and how much respect you give her to have some say on how she spends her money for herself and the family." This view was further discussed and the men agreed they may also have contributed to their wives' behavior changing toward them after they were empowered economically. This culpability includes how they treated their wives before in terms of providing for her personal needs and how the family purse was managed by the men. The question of fragile egos and personal insecurities, which lead to mistrust and jealousy, was also acknowledged by some of the men as a failing on their part, which may have caused or worsened violence at home. What these narratives show is that even when she is economically empowered, a woman is still subject to violent abuse by her husband because of his thought patterns about her or about women generally. This stems from the inability of some of the men to recognize and accept women's agency as capable thinkers, actors and leaders.

Perception of Females as Male Property

Across all five groups, an overwhelming perception was that of females as male property. Boys and men across the age ranges of respondents conceived girls and women as things men own and control. University boys saw their female counterparts as sex objects for their use. According to one view: "Girls exist for my pleasure only and my girl must submit whenever and however I want her." For another, "[a] woman belongs to a man and she must always obey her man."

Other such perceptions of male "ownership" of females include women as "little children," "irrational beings" and "dependent on males." These perceptions fuel the use of violence as a tool to "keep females in their place (subordinate to men)," and they were echoed very strongly by all five groups of respondents over the ten-year period of the different group discussions. It emerged that these perceptions drive the use of violence to regulate and restrict women's sexuality and ensure that women are confined by and subordinated to patriarchal gender roles in society. This violence is also used to maintain the status quo of female subordination to males and to resist women's empowerment and gender equality initiatives put in place by the government.

At the end of the FGDs, when asked to suggest how their perceptions of women/girls could be changed to produce more positive gender relations, all five groups were in agreement that men/boys need to talk with each other more to share experiences and knowledge. According to one of the men:

Anger management is one benefit of such men-to-men talk as talking will help provide an outlet for letting anger out instead of suppressing until we explode one day in a very terrible way for all involved (see also Isike 2012, 31).

Apart from using it to learn from each other, such men's/boys' forums can be a platform for working with them to advocate for positive masculinities across South Africa.

How Male Perceptions Foster Violent Behavior against Females

Given the link between perception and behavior, it is understandable how oppositional and essentialist perceptions that men hold of women can foster violent masculinist behavior. For example, having an oppositional stance toward females even before engaging with them at any level already conditions males for conflictual gender relations with females. Similarly, seeing females as "property" can produce an entitlement mentality among males that makes it difficult for them to let females go when they end romantic or marital relationships. It is this feeling of "ownership" that gives males the audacity to want to keep controlling and brutalizing females they are no longer involved with. Such perceptions of ownership and the entitlement it gives males evoke a feeling of power and dominance that males routinely exercise over females. Frequently, when such power is challenged, even in the most unintended and subtle ways, males respond with physical and other forms of violence. Therefore, how males see females matters if society seeks behavioral change from males toward females. In this sense, to change and possibly eradicate male violence against women in South Africa, intervention efforts must be targeted at changing how males see females.

However, another important question to answer in this regard is: Where do these oppositional and essentialist perceptions of women come from? The majority of respondents in each of the five focus groups referred to "our African culture," which defines gender roles and subordinate females to males. In essence, their conceptions of women in relation to them are defined by patriarchy. However, in the older men's group (whose average was 35 years), the six men who were above 50 indicated a consciousness of the fluid nature of patriarchies that enables a distinction between patriarchies "as they knew it" 50 years ago and now. This was an acknowledgment of the dichotomy between patriarchies in precolonial and colonial/postcolonial eras in Africa. Although both are oppressive of women, they are vastly different (Isike 2012). In some of these precolonial societies, gender was defined in flexible terms in ways that allowed men and women to straddle socially constructed male and female spaces interchangeably (Isike 2012).

In terms of how women were perceived and therefore treated, the patriarchies of many precolonial African societies considered women as communal humans, whereas in capitalist patriarchies introduced by colonialism, women were regarded as property and commodities. All of the men aged 50 and over reminisced about positive gender relations between men and women, where it was "unfathomable for a man to strike a woman as women were largely regarded as sacred beings" (FGD Perceptions of Women and Girls among South African Males 2011).[13] According to them, women were seen as "custodians of culture" through their role as primary teachers and nurturers. They were perceived as "peace mediators" through their conflict intervention roles within families, clans and communities, and as an "embodiment of love, care and compassion." These conceptions of women enabled positive gender relations, where women were respected both as humans and as unequal partners working toward a communal goal of the common good, which is supported in the literature on precolonial gender relations. For instance, Diop (1989) describes gender relations during this time as "harmonious dualism" between men and women, which Amadiume (1997, 93) refers to as "fluid demarcation." According to her, this "embodied two oppositional or contesting systems, the balance tilting and changing all the time" in ways that enabled community stability and order based on justice, equity and fairness (Amadiume 1997, 93–94). It is in this light that Isike and Okeke-Uzodike (2011b, 50) reports on the sanctity women carried, such that if a woman fell between two fighting Zulu men, they would stop fighting immediately out of respect for the intervening woman, whoever she was. If this were to happen in 2021, such a woman would become the object of both men's fury, and it is an indicator of how perceptions of women have changed over time based on the evolution of patriarchies in Africa.

Re-socializing Males to Perceive and Treat Females Differently

How males perceive females generally matters, and if the essence of policy interventions to curb male violence against females in South Africa is to change violent male behavior, then males need to be re-socialized to start seeing females differently. When males are socialized to start seeing females as equal humans with rights, they will start treating females with the decency, due regard and respect that they deserve. This is a preventive approach that

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13   FGD (Focus Group Discussion) on Perceptions of Women and Girls among South African Males. 2011. Discussion conducted with twelve working-class adult males randomly drawn from rural and urban settlements in Umhlathuze Municipality, held in lecture room A10, Richards Bay Campus, University of Zululand, South Africa.

will help to curb and eventually eradicate the problem, as opposed to the reactive approach of containment, which is not working.

Changing perceptions cannot be legislated. This also explains why a legalistic or policy approach alone will not cut it. Changing perceptions to change behavior, which usually occurs at the private and personal levels of gender relations, will require specific interventions aimed at re-socializing boys and men. A number of doable suggestions on how to re-socialize males to have more positive gender relations with females that eschew violence are discussed below. These short- and long-term suggestions can be implemented alongside other interventions to combat male violence against females in South Africa.

Engaging Traditional Institutions on Cultural Re-socialization in African Patriarchies

Boys and young men in South Africa, like their African counterparts elsewhere in the continent, have little or no knowledge of what manhood means in the precolonial African sense. Their view of African patriarchy and manhood is rooted in postcolonial capitalist patriarchies that regarded women as reproductive objects and commodities without their own agency. This misconception of patriarchies, which they use to justify dominance over females, makes them unable to imagine and see females in ways that foster positive gender relations. It is also used as a basis for resisting women's rights, women's empowerment and gender equality, which they consider "Western." It would therefore help to enlighten and re-socialize boys and young men using their own traditional institutions. Such institutions have the *locus standi* to make them understand that perceiving females positively and respecting their rights is not alien or un-African. This enlightenment can be done through community conversations that teach positive masculinities rooted in precolonial African culture without romanticizing it.

Furthermore, other socialization institutions such as churches, mosques and the media can be useful in cultural re-enlightenment dialogues and advocacy to make boys and young men start embracing gender equality as African. In this way, they will see that by identifying and promoting progressive virtues of masculinity, African men are returning to their roots while also laying the foundation for safer, more peaceful and productive African communities (Isike 2012, 30). These require concerted efforts from all stakeholders in society, but the push needs to come from the national, provincial and municipal governments, given that government is still the primary mode of organization in much of the developing world. Furthermore, different levels of government should implement gender equality policies and programs through coordinated intergovernmental relations to ensure uniformity in the engagement with relevant socialization agents.

Changing Basic Education Curricula

The social studies and history subjects in primary and high schools can be redesigned with a gender-sensitivity focus that places male and female political heroes of the past side by side. As argued by Isike (2012), apart from pedagogy, curricula content that equally carries stories and images of female heroines in history can influence the way both boys and girls think about women in society. This intentionality in nurturing the boy child into adulthood is essential, because if young boys and girls grow up already used to the idea of women and men complementing each other in society, the kinds of oppositional and essentialist perceptions of women that were expressed by university students in this study will be significantly reduced. Similarly, universities across Africa should look toward having university-wide general studies courses on Africa that will instill positive gender consciousness in students. The national government, education institutions and academics need to collaborate to make these curricula changes: this is a low-hanging fruit that can be implemented in the short term if the political will is there.

Formalizing Support for Co-parenting

At the basic family and community levels, childrearing has a bearing on gender relations, as children are socialized from childhood through differentiated childrearing practices on how to perceive and relate across sexes (Isike 2012, 31). In this way, patriarchy becomes firmly entrenched, which shapes the perceptions that define male behavior. Balbus (1987, 110) argues that the pre-Oedipal experience of a male child in "mother-dominated" childrearing prepares him to assume oppositional stances and withdrawal attitudes toward his mother in the absence of a parent of his gender (father) with whom he can identify. Co-parenting therefore becomes

> [the] key that can unlock the possibility of a society in which the nurturance and caring that have thus far been largely restricted to the arena of the family come to inform the entire field of human interaction.
>
> BALBUS 1987, 119

In this light, to break the societal backbone of patriarchy, co-parenting should be encouraged within families in South Africa. This is a possible long-term strategy but may already be happening in varying ways as gender role norms on parenting are changing fast, with more women also working to bring in income for the family. However, this needs to be supported by government-mandated public and private institutions that grant a minimum of four weeks' paternity leave for all new fathers. Enforcement needs to be monitored through an incentive system that provides avenues for verification as well. Paternity leave

does not lead directly to co-parenting, but it is a good starting point to socialize fathers to be involved in their young children's lives, which could also spark the beginning of new forms of gender relationships.

Establish New Men's/Boys' Clubs and Support Existing Ones

One of the findings from the focus group discussions was that men don't have networking platforms where they can engage gender relations challenges and learn from each other. Across the country, there are cases of men's forums in workplaces that have worked well in enlightening men on the imperatives of gender mainstreaming in the workplace. These can be replicated at various societal levels including places of worship; community-based organizations; universities; colleges; vocational, primary and high schools across South Africa; and so forth. Men's and boys' clubs already exist, but they also need to be supported by the government and their model should be replicated across the country.

One club already working effectively in this regard is the Men Care + program in KwaZulu-Natal, which aims to increase parents' confidence and caregiving skills by providing a platform for answering critical question on issues around gender roles, reproductive decision-making, fatherhood and nonviolence, and the promotion of communication between couples and their children. It provides opportunities for members to support each other as they reflect on their own experience, attitudes, values and behavior regarding their roles as parents and caregivers. There is also the Isibaya Samadoda group, which is a platform that promotes a behavior change approach aimed at influencing the attitude of men toward women, diseases and lifestyle. In this context, it should be pivotal in preventing GBV. It is also a platform where young boys are engaged and taught about good behavior. It is a safe space for men to talk about their own challenges and be taught positive masculine behavior. Although run by the KwaZulu-Natal government, these should be studied and used as benchmarks by civil society and private sector stakeholders to replicate them across the country, to revive positive indigenous cultural values that would make men more responsible partners of societal progress.

Concluding Thoughts

As perpetrators of violence against females, males are critical to curbing and eventually eradicating this scourge. Hence, as several studies have suggested, they need to be involved in the process. To put a stop to violent male behavior against females in South Africa, the battle needs to be taken to the minds

of males, where the negative perceptions that foster violence against women form. This will, however, require a context-specific and holistic approach to prevention that targets boys and men to change the thought patterns that stereotype women in oppositional and essentialist terms.

However, gender-based violence and femicide is not a South African problem alone. It is prevalent in different parts of the world where stagnant patriarchies produce dangerous masculinities. Therefore, changing male perceptions of females to reduce violent male behavior against females is an approach that can be applied not only in South Africa, but also globally. For instance, Africa has a common colonial history, and the distortion of patriarchies brought by colonialism and similarities in cultural world views within African states makes focusing on the psychosocial causes of GBVF a viable solution. This is where multilateral actions by the African Union and subregional organizations in the continent would be required, not only in terms of including a preventive approach in their gender equality and women empowerment policies, but also in championing the reinvention of patriarchies in Africa. Gender-based violence and femicide is an albatross to the African Union's Agenda 2063 of "the Africa we want" as the continent will be unable to realize its pan-African Renaissance drive for unity, self-determination, freedom, progress and collective prosperity if it remains sexist and unsafe for more than half of its population – women and girls.

Similarly, while global multilateral intervention frameworks such as the Beijing P4A and Goal 5 of the SDGs with its nine targets have correctly focused on protecting and empowering women and girls structurally, multilateral efforts now need to target men and boys with a focus on re-socializing them. Perhaps it is not too late for an SDG 18 in this regard before 2030, since men and boys are critical change agents in arresting and reversing the increasing trend of male violence against women globally.

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Special Contribution

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The UN at 75: A Political Declaration and a Global Conversation

Cecilia Cannon

Abstract

The United Nations commemorated its 75th anniversary at a time of great challenges. COVID-19 has deepened inequalities and widened the digital divide, freedom of expression has been attacked and disinformation is rampant; unemployment has spiked, and violence and human rights abuses have risen. Hard-won development gains have faced major setbacks, and the climate crisis looms. The working methods of diplomacy and multilateralism were disrupted, geopolitical tensions intensified and the United Nations' financial woes continued.

Amid the turmoil, hope was found in two important outcomes of the official commemoration of the UN's 75th anniversary held at the General Assembly in 2020. Member states adopted the Declaration on the commemoration of the seventy-fifth anniversary of the United Nations. Working under the theme "The future we want, the UN we need," member states recognized our interconnectedness in the face of global challenges and committed to reinvigorate multilateralism to build a more equal, resilient and sustainable world through twelve commitments: leave no one behind, protect the planet, promote peace, abide by international law, place women and girls at the center, improve digital cooperation, upgrade the United Nations, ensure sustainable financing, boost partnerships, build trust, work with youth and be prepared for future crises.

In parallel, the UN Secretary-General launched a global conversation inviting people around the world to discuss how we can work together to better address our shared global challenges. Through dialogues and surveys, more than 1.5 million people in 193 countries shared their short- and long-term priorities, and their ideas for action. Findings show that as COVID-19 reversed progress in human development, respondents prioritized access to basic services, tackling inequalities and global solidarity. Respondents in all regions identified climate change and environmental issues as the top long-term global threat; after that, they prioritized less conflict, more respect for human rights and more employment opportunities. Optimistic about the future,

respondents voiced support for increased international cooperation, looking to the United Nations to lead, though also calling for the organization to innovate and to be more inclusive, engaged, transparent, accountable and effective.

Keywords

UN's 75th anniversary – UN75 Declaration – COVID-19 – UN Development Programme – human rights – inequalities – environmental protection – international cooperation – UN financing – UN reform

The commemoration of the United Nations' 75th anniversary came at a time of great challenge. The COVID-19 pandemic sent health and socio-economic shock waves across the globe in 2020 and exacerbated several existing challenges within the multilateral system. Inequalities have widened during the global pandemic, freedom of expression has been attacked around the world and disinformation is rampant. Unemployment has spiked, and violence and human rights abuses have risen. The development progress made across the past 30 years has hit major setbacks, and the effects of the climate crisis are being felt around the world. Geopolitical tensions also intensified, while the working methods of diplomacy and multilateralism were abruptly disrupted, and the United Nations' financial situation worsened.

Amid the turmoil and disruptions, there were two important outcomes of the official commemoration of the UN's 75th anniversary that provide opportunities for the United Nations, its member states and all actors to re-engage with, and work toward reinvigorating, the multilateral system: (1) United Nations member states adopted the Declaration on the commemoration of the seventy-fifth anniversary of the United Nations; and (2) the Secretary-General presented the results of the UN75 initiative – a global conversation launched in January 2020 about immediate and long-term global challenges, and how international cooperation, including the United Nations, can evolve to better address these challenges.

In this chapter, I first present the unstable context in which the United Nations commemorated its 75th anniversary. I then provide an overview of the major commitments presented in the UN75 Declaration, as well as the key results of the UN75 public engagement initiative. I conclude by offering some reflections on current challenges the United Nations faces, and possible ways forward for better addressing our most pressing global challenges.

Commemorating the UN's 75th Anniversary at a Time of Great Challenge

The global COVID-19 pandemic has spared no region or country from its adverse health effects, as well as subsequent socio-economic effects. COVID-19 has widened the digital divide and has deepened inequalities. Lower and middle human development countries and lower income and minority groups have felt the effects of the pandemic harder than others. In May 2020, the UN Development Programme (UNDP) expressed concern that human development, measured according to education, health and living standards, has spiraled to levels not seen since UNDP introduced the human development index in 1990 (UNDP 2020a).

Healthcare systems around the world buckled under the pressure caused by the COVID-19 pandemic, with indirect health impacts also expected to rise, as many non-critical surgeries were put on hold while intensive care units filled up with COVID-19 patients (UNDP 2020b, 15). The UN Sustainable Development Group (UNSDG) reported in April 2020 that at least half of the world's population did not have access to full coverage of essential health services, with 100 million people pushed into extreme poverty due to health costs in 2020 (2020, 11). At the same time, 785 million people lacked access to basic sources of clean water, while around 3 billion people lacked a basic hand-washing facility with soap and water at home (UN 2019, 34). During a global pandemic, where one of our best defenses against spreading the virus was washing hands with soap and water, the health-related outcome inequalities generated by a lack of access to such basic services have been dire.

Yet the inequalities exacerbated by the pandemic have extended far beyond health and hygiene. In May 2020, UNDP reported that the "effective out-of-school rate" – the adjusted percentage of primary school-age children facing school closures that takes into account households with internet access that provides students the chance to continue structured education at home – was far higher in lower human development countries (86 percent of children were out of school, an increase of 59 percentage points), followed by medium human development countries (74 percent, an increase of 67 percentage points) and high human development countries (47 percent, an increase of 41 percentage points). The majority of school-age children in very high human development countries could continue structured learning, with an effective out-of-school rate of 20 percent (still an increase of 19 percentage points) (UNDP 2020b, 15).

UNDP has suggested that the potential for communities to implement "non-pharmaceutical COVID-19 restrictions," such as stay-at-home orders,

together with what they refer to as "enhanced capabilities," such as access to digital technology, safe living spaces with balanced care work, remote work or government subsidies, reduced human development losses because they allowed for the continuation of access to goods and services, income-generating activities, education and social and recreational opportunities. The COVID-19 pandemic has turbocharged disparities in the access to these "enhanced capabilities" (UNDP 2019).

In its 2020 Human Development Report, UNDP stressed that planetary imbalances and social imbalances are exacerbating one another, with already entrenched inequalities expected to continue to worsen due to climate change, environmental degradation and related pandemics. Low human development countries, for example, are projected to have an additional 50–100 extreme temperature days by the year 2100 (UNDP 2020c).

Unemployment also spiked during 2020, with vulnerable groups such as migrant workers hit particularly hard as they often had no access to social protection or economic support (ILO 2020a). Workplace closures disrupted labor markets globally, leading to an estimated 17.3 percent of total working-hour losses in the second quarter of 2020 – the equivalent of 495 million full-time jobs (ILO 2020b, 1). The high working-hour losses have translated into substantial losses in labor income, with the International Labour Organization (ILO) estimating a global decline of 10.7 percent during the first three quarters of 2020 compared with the same period in 2019. This amounts to 3.5 trillion US dollars, or 5.5 percent of global gross domestic product. Fiscal stimulus was unevenly distributed worldwide when compared with the scale of labor market disruptions, with the estimated fiscal stimulus gap at around 982 billion US dollars between low-income and lower-middle-income countries (45 billion and 937 billion US dollars respectively) (ILO 2020b, 14–15).

Violence and violations of human rights were also on the rise in 2020. At times, these were exacerbated as a direct result of COVID-19 containment policies, such as higher incidences of domestic violence during stay-at-home orders, or increased state surveillance. In October 2020, the UN High Commissioner for Human Rights warned that the politicization of the COVID-19 pandemic was further undermining economic, social and cultural, and civil and political rights. She stated:

> What the pandemic has done is deepened and worsened preexisting human rights problems, particularly for the most vulnerable ... We have seen a whole lot of excesses. We have seen States that have strengthened their surveillance power, threatening privacy, exceeding what is required

> for public health … harassing journalists and human rights defenders or restricting freedom of expression, freedom of press.[1]

As was evident in the 75th General Assembly debate, geopolitical tensions continued to rise, while the working methods of diplomacy and multilateralism as we knew them were disrupted, rendering the UN's work even more difficult. At a time when diplomacy and international cooperation were most needed, its working methods, which are so dependent on in-person relationship building and dialogue, were forced to suddenly switch online. For the first time in the UN General Assembly's history, heads of state and government sent pre-recorded video statements, or spoke through their missions to the UN, rather than gathering in person in the United Nations General Assembly Hall.

Secretary-General António Guterres went so far as to warn that the current state of intergovernmental relations risks deteriorating into a cold war. The international cooperation desperately needed to address COVID-19 was strikingly absent, compounded by gridlock between major powers, increasing trade disputes, a continued rise of isolationism and a return to nationalism.

Stakeholder participation in multilateral processes was also significantly restricted for many international negotiations and policy meetings. Many NGOs feared COVID-19-related restrictions on their attendance at the Human Rights Council would further shrink the space for NGOs and civil society in multilateral processes (Langrand 2021). Yet switching online has also opened up the possibility for more participation from NGOs based in the Global South, who increasingly face difficulties in obtaining travel visas, as well as exorbitant travel costs that often prohibit them from attending international meetings in person.

Perhaps the most under-discussed crisis the UN faces relates to the incredibly fragile financial grounds on which the United Nations stands. Liquidity levels are currently so low that the organization risks defaulting on staff payments (UN Meetings Coverage and Press Releases 2020). And as has occurred after previous global financial crises, the UN's financial situation is expected to worsen as the full economic effects of COVID-19 come into play. Unlike previous crises, this time, there is no financial room for the UN's finances to dip any lower.

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1   See https://www.devex.com/news/covid-19-is-not-an-excuse-for-human-rights-violations-un-human-rights-chief-says-98192.

Negotiating Multilateralism in a Changing World

Amid the turmoil exacerbated by the pandemic, and during the High-level Commemoration of the 75th Anniversary of the United Nations, UN member states adopted the Declaration on the commemoration of the seventy-fifth anniversary of the United Nations. One hundred and eleven heads of state and government and fourteen ministers attended the official commemoration virtually, putting their weight behind multilateralism and committing to work together to address the pandemic and other global challenges.

The UN75 Declaration was negotiated and finalized while New York was in the throes of a COVID-19 lockdown, early in 2020. It was no small feat that the women-led process – co-chaired by the Permanent Representatives of Qatar and Sweden to the UN, Alya Ahmed bin Saif Al Thani and Anna Karin Enestrom – reached consensus in July 2020 amid such a tough negotiating environment. Working under the theme "The future we want, the UN we need: Reaffirming our collective commitment to multilateralism," member states recognized our interconnectedness in the face of global challenges, and the need to reinvigorate multilateralism and to make it more inclusive so as to create a more sustainable, equal and resilient world.

The UN75 Declaration contains twelve commitments aimed at strengthening multilateralism and reaffirming the central role of the UN. Six commitments focus on current global trends and challenges: leave no one behind; protect the planet; promote peace; abide by international law; place women and girls at the center; and improve digital cooperation. The remaining six commitments are focused on strengthening the UN and improving its work: building trust; upgrading the UN; ensuring sustainable financing; boosting partnerships; working with youth; and being prepared for future crises.

Some terminology in early drafts of the UN75 Declaration created stumbling blocks during the negotiations, such as reference to the sovereign equality of all states and the right to self-determination of peoples, as well as reference to the rules governing the use of force, and the seriousness of terrorism and violent extremism as threats to peace and security. Questions were also raised by some member states as to whether they were really working toward the "common good of present and future generations," with member states settling on working toward strengthening multilateralism for the "common future of present and future generations." References to curbing greenhouse gas emissions and achieving sustainable consumption and production patterns were also watered down to simply align with "applicable State commitments to the Paris Agreement and in line with the 2030 Agenda" (International Institute for Sustainable Development 2020).

In the UN75 Declaration, member states called on the Secretary-General to present recommendations on how the United Nations will address these twelve commitments to "advance our common agenda" before the end of the 75th session of the General Assembly. To do so, the Secretary-General launched a process of reflection on the future of multilateralism to inform his report and recommendations, and he consulted thought leaders from around the world, young thinkers, "we the peoples," civil society, the private sector, subnational leaders and other nongovernmental partners with expertise across the Declaration themes and UN member states. The focus has been to make multilateralism more inclusive, networked and effective, and the Secretary-General proposed recommendations for global action to address shared problems, deliver on critical global public goods and prepare for future threats and opportunities. The report was made available at the end of the 75th session of the UN General Assembly in September 2021.[2]

The UN75 Global Conversation – Peoples' Priorities and Their Ideas for Upgrading the United Nations

In parallel to the political UN75 Declaration process, the UN Secretary-General launched a global conversation in January 2020, inviting people around the world to discuss how we can work better together in order to address shared global challenges. Through dialogues and surveys, more than 1.5 million people in 193 countries shared their short- and long-term priorities, their ideas for action and their calls for a more inclusive, transparent UN to lead the response to pressing global challenges.

Data was collected through five channels: 1.3 million UN75 survey responses were received from 193 countries; 1,141 UN75 dialogue summaries were received from participants in 94 countries; a research mapping was conducted in six languages; two independent polls were carried out in 50 countries, by Edelman Intelligence and Pew Research Center; and media analysis was conducted in 70 countries by Edelman Intelligence. The data was analyzed in collaboration with the Graduate Institute of International and Development Studies.[3] Working together with UNDP's Human Development Index team and the Institute for Economics and Peace, the Graduate Institute of International and Development Studies cross-analyzed the UN75 survey data with the Human Development Index and the Global Peace Index, uncovering some further

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2   For more details, see UN Foundation (2021) and UN (2021).
3   For full results, analysis and methodology, see UN75 Office (2021).

regional trends and trends based on level of human development and levels of peacefulness in the countries where respondents reside.

The full results of the analysis can be viewed in the January 2021 final UN75 report, "Shaping Our Future Together." The raw data, all analyses and interactive data visualizations are also available on UNDP's Data Futures Platform, under "Data and insights from UN75" (UNDP 2020d). It is striking to see that across regions, sectors and age groups, several patterns and recurrent themes emerged in the data in terms of respondents' short- and long-term priorities.

As COVID-19 reversed progress in human development and widened inequalities, many respondents prioritized access to basic services, tackling inequalities and international solidarity (UN75 Office 2021, 20). The shortfall in healthcare to address the pandemic saw universal access to healthcare as the top immediate priority of all respondents. As COVID-19 forced children out of schools, investment in education and youth also ranked high, especially in sub-Saharan Africa and Central and Southern Asia. While 3 billion people lack access to a basic hand-washing facility with soap and water, access to safe water and sanitation was a key priority across all human development levels.

Following universal access to healthcare, second and third immediate priorities among respondents varied across regions. Many, and especially respondents in low- and middle-income countries, prioritized global solidarity, support for the hardest-hit places and addressing inequalities as priorities for pandemic recovery efforts. Fewer respondents in very high human development countries viewed support for the hardest-hit places as a high priority (UN75 Office 2021, 28).

Globally, more respondents believe we will be better off in 2045 than today (49 percent) than believe we will be worse off (32 percent). Respondents in sub-Saharan Africa were most optimistic (with 59 percent stating we will be better off), followed by Central and South Asia (52 percent) and East and Southeast Asia (51 percent), while respondents in North America, Europe, Latin America and the Caribbean and Oceania were more pessimistic. Respondents living in lower human development countries and those living in conflict situations were more optimistic about the future than those living in higher human development countries and countries not experiencing conflict (UN75 Office 2021, 33–35).

Respondents in all regions identified climate change and environmental issues as the number one long-term global challenge. The highest percentage of respondents who chose climate change and the environment as a top threat were in Latin America and the Caribbean (73 percent), followed by respondents in Europe and North America (71 percent each) and Oceania (64 percent). This is not surprising given the high rates of natural disasters, such as

hurricanes, wildfires and rising sea levels, that respondents in these regions face (UN75 Office 2021, 37–38).

More environmental protection was the number one long-term priority for respondents globally, ranking in the top three priorities across all regions. Other long-term priorities vary according to income levels and include employment opportunities, respect for human rights and reducing conflict. While respondents in higher human development countries prioritized the environment and human rights, those in lower human development countries prioritized less conflict and meeting basic needs, including employment, healthcare and education (UN75 Office 2021, 46–48). A correlation was also observed between individuals who selected climate change and environmental issues as a priority and respondents with greater pessimism about the future.

While respondents in four of eight regions (Northern Africa and Western Asia, Latin America and the Caribbean, sub-Saharan Africa and North America) registered "Armed conflict and politically motivated violence" as the third top future threat, Europe registered "Forced migration and displacement," Oceania and Antarctica "Risks related to health," Central and South Asia "Nuclear weapons and other weapons of mass destruction" and East and Southeast Asia "Breakdown in relations between countries" (UN75 Office 2021, 49).

"More respect for human rights" ranked as the third long-term priority globally, and it ranked number one in Northern Africa and Western Asia and number two in North America and Europe. "More employment opportunity" rose from respondents' tenth long-term priority in April 2020 to their sixth long-term priority in December 2020, reflecting COVID-19-related workplace closures, reduced working hours and income losses (UN75 Office 2021, 50–51).

Reducing conflict registered as a high priority among respondents in East and Southeast Asia, Northern Africa and Western Asia and sub-Saharan Africa. Those respondents in countries that are not experiencing conflict are more concerned about tensions between countries, while those in conflict situations are more concerned about violence within their borders.

Ninety-seven percent of respondents believe that international cooperation is important for addressing global challenges, with the majority of respondents (52 percent) believing international cooperation is essential, 34 percent that it is very important and 11 percent that it is fairly important (UN75 Office 2021, 55–56). Only 3 percent of respondents viewed international cooperation as not important or not important at all. The degree of importance registered among respondents varies across regions, with the highest support among respondents in North America.

The majority of respondents globally said that COVID-19 has increased their assessment of the importance of international cooperation. Yet those in higher

human development countries perceive the need for international cooperation as greater than those in lower human development countries (UN75 Office 2021, 58–59).

In Pew Research Center's survey of respondents, in fourteen higher human development countries, 81 percent of respondents agree that countries around the world should act as part of a global community that works together to solve problems (Bell et al. 2020). Pew Research Center's survey indicated that the UN must do more to ensure ordinary people are aware that the UN cares about their needs.

Edelman, who conducted a scientifically sampled survey in 36 predominantly lower human development countries, found that 74 percent of respondents agree that the UN is an essential organization for helping tackle the biggest issues the world faces today (quoted in UN75 Office 2021, 64). Six in ten respondents in Edelman's survey believe the UN has made the world a better place.

Many respondents look to the United Nations to lead in international cooperation to address immediate and longer-term global challenges, but they also call on the organization to innovate, and particularly to be more inclusive, engaged, transparent, accountable and effective. Participants in UN75 dialogues held in 94 countries called on the United Nations to take up its role as global moral leader. They discussed the need for a reformed, more representative and more agile UN Security Council; a revised United Nations Charter that includes today's most pressing global challenges, such as climate change; continued management and leadership reforms and more inclusive hiring practices, more accountability and more transparency; an inclusive and participatory UN system, with improved understanding of the work of the UN among citizens around the world, and which shows more care for the needs of ordinary people; more engagement with women and youth; and improved implementation of internationally negotiated agreements, as well as monitoring and evaluation of UN programs globally.[4]

This unique twelve-month UN initiative of engaging with publics globally appears to have improved perceptions of the UN in a number of countries. Pew Research Center's annual survey on public perceptions of the UN shows that in 2021, publics in all but two of the seventeen advanced economies surveyed increased their positive perception of the UN compared with 2020, by as much as 11 and 12 percentage points in some countries (Fagan and Moncus 2021). At a time when commitment to and trust in multilateral processes is waning, this is encouraging, and it highlights the need for more regular dialogue and engagement with publics globally about the UN's work.

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4   See UNDP (2021).

The Future of Multilateralism and the United Nations

Born amid the ashes of a conflict that decimated nearly 3 percent of the world's population, the UN was formally established as the organization we know today when the UN Charter was adopted in 1945, "to save succeeding generations from the scourge of war." Recognizing from the failings of the League of Nations that the UN could only survive as long as the major powers were at the table, the UN's founding members endowed the major powers with privileges – permanent membership on the Security Council with veto rights. While the veto is lamented today for blocking the Security Council from finding solutions to conflicts such as that in Syria, it has succeeded in keeping the major powers in some level of dialogue at the UN.

Seventy-five years after it was created, the UN barely survives. Even before the effects of the COVID-19 pandemic were felt, UN Secretary-General António Guterres made a desperate plea for member states to pay their outstanding dues – some 1.3 billion US dollars in the year 2019 alone, with liquidity levels so low that the UN risked defaulting on staff payments (UN News 2019a). This was at a time when the world faced rapidly evolving challenges that require cooperative problem-solving.

Now, as Secretary-General Guterres embarks on his second term at the helm of the United Nations, observers are watching with interest to see if he will provide the bold leadership required to quell geopolitical tensions and to mobilize collective action to tackle some of the biggest global challenges of our time.

Two seeming solutions introduced to temper the UN's woes in recent decades may be undermining the capacity for UN member states to solve problems cooperatively. First, facing ever increasing budget shortfalls, the UN and many of its agencies have diversified their financing. They now widely rely on earmarked voluntary contributions from states and private donors and, increasingly, on private-individual donations made in response to public appeals, as well as fees paid for the provision of services and goods. While this fills a short-term financing gap, it favors bilateral and unilateral decision-making over collective problem-solving by introducing new lines of accountability that steer UN agencies toward fulfilling the demands of individual states, private donors and/or UN secretariats.

Research conducted at the Graduate Institute of International and Development Studies shows that the proportion of UN agencies' outputs/activities that focus on collective member state-given mandates is subsequently diminishing. For example, member states mandated the UN Refugee Agency to provide refugees with (1) protection, (2) humanitarian assistance and (3) permanent solutions. Yet, as the UN Refugee Agency increasingly relies on voluntary contributions and private-individual giving, its work focuses more on humanitarian

assistance, leaving permanent solutions – the part of its mandate that requires collective member state problem-solving and burden-sharing – lacking. While the 770 pledges and approximately 10 billion US dollars in financial commitments made during the 2019 Global Refugee Forum will support protection, employment and education of refugees and host communities, they won't produce the desperately needed resettlement visas for the 99 percent of refugees requiring them (UN News 2019b).

Second, in times of waning support for multilateralism, reaching consensus swiftly is often prioritized over meaningful debate. Former Secretary-General Kofi Annan raised this concern in his 2005 report "In Larger Freedom," stating that

> [c]onsensus (often interpreted as requiring unanimity) has become an end in itself.... It prompts the Assembly to retreat into generalities, abandoning any serious effort to take action. Such real debates as there are tend to focus on process rather than substance and many so-called decisions simply reflect the lowest common denominator of widely different opinions.
>
> UN GENERAL ASSEMBLY 2005

Today, disagreement among member states is too swiftly discredited as a failure of, or a retreat from, multilateralism, rather than being seen as a necessary component of it, from which innovative, brave and meaningful solutions can be crafted. Remaining "resolved to combine our efforts" while balancing power disparities is perhaps the UN's most daunting task.[5] But, as Dag Hammarskjöld passionately articulated in his 1960 speech, it is also the UN's *raison d'être* to defend the principles of the UN Charter, while balancing the interests of large states and small states, of the South and the North, the East and the West, the faithful of one creed and the faithful of another, and the ever evolving differences within and between regions.[6]

Some progress has been made to foster healthy debate, such as the inclusive pre-negotiation consultative processes that led to the Sustainable Development Goals and the UN global compacts on migration and refugees, and the Open-ended Working Group on cyber-security. But additional procedural modifications, such as redesigning the three-minute intervention format to UN proceedings utilizing digital technologies, could go a long way toward

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5 "Resolved to combine our efforts" is quoted from the preamble of the United Nations Charter (UN [1945] n.d.).

6 See Dag Hammarskjöld's 1960 speech where he explains "I shall remain in my post."

fostering an environment of healthy debate and dialogue on tough, inherently political issues.

Amid the despondency there are reasons to hope. First, we know that UN reform is possible, from the large-scale overhauling of the Human Rights Commission in 2006 (replaced by the Human Rights Council with innovative mechanisms and procedures) to procedural reforms, such as increasing the transparency of Security Council processes. Even the tabooed Security Council membership underwent reform back in 1965, expanding the number of rotating members from six to ten. It has been done before, and it can be done again.

Second, Secretary-General Guterres is now engaging in the process of deep reflection on the future of the United Nations and multilateralism, after having held a global conversation about the current and future state of global cooperation. Reform is front and center on the UN political and administrative agenda.

Third, the global destruction from which the UN was born should remind us that it is precisely for times like these that the UN was created.

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Index