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Book

Global Governance and International Cooperation: Managing Global Catastrophic Risks in the 21st Century

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Global Governance and International Cooperation

Managing Global Catastrophic Risks in the 21st Century

Edited by Richard Falk and Augusto Lopez-Claros



‘In this book, more than a score of highly regarded scholars from around the world take major strides toward raising readers’ consciousness about the catastrophic consequences that await every nation for as long as international relations continue to be governed mainly through the militarily competitive balance of power system made up of irresponsibly independent states. They show that although governments pretend to be separate and sovereign, they are in fact deeply interdependent and unable to solve any major global problem while acting separately. These authors jump start the overdue conversation required for reforming international institutions and expanding global governance enough to avert rolling catastrophes for humanity. Filled with profound normative wisdom, astute theoretical analysis of structural problems, and penetrating empirical evidence of what is required for human security and dignity, this collection is must reading for every person hoping to stand effectively against global injustice and for human survival’.

Robert C. Johansen, *Senior Fellow, Kroc Institute for International Peace Studies; Professor Emeritus of Political Science and Peace Studies; Keough School of Global Affairs, University of Notre Dame*

‘Amid the many books diagnosing the extent and severity of looming global threats and the inadequacy of current global institutions to meet them, *Global Governance and International Cooperation* stands out for the quality of its contributors, the depth of knowledge they bring to bear on their subjects, and a welcome focus on practical solutions’.

Anne-Marie Slaughter, *CEO, New America, Professor Emerita of Politics and International Affairs, Princeton University*

‘Humanity finds itself at a pivotal crossroads. The trajectory we choose to follow will determine either a future marred by violence and catastrophic disintegration, or one characterized by global peace and prosperity. The authors’ vision, far from being a distant and unrealistic aspiration, emerges as an urgent imperative given the present landscape of global affairs and insufficiency of the current global governance architecture to effectively manage it. The critical need to overhaul this flawed architecture must be recognized and addressed by all who are invested in the well-being and survival of our shared global community. Within this context, the significance of this book becomes even more pronounced, offering a commendable and essential addition to this important dialogue. The ideas presented throughout illuminate the possibility of a more secure and prosperous future for all—one that is well within reach if only we have the courage and will to attain it’.

Payam Akhavan LL.M. S.J.D. (Harvard) OOnt FRSC, *Massey Chair in Human Rights; Massey College, University of Toronto; Member of the Permanent Court of Arbitration*

‘Identifying climate change and nuclear war as the biggest threats to human survival isn’t exactly new. But Richard Falk and Augusto Lopez-Claros have recast parts of that canon in their remarkable new book. They include poverty and inequality within the global crisis, and their focus is less on the problems than on international

solutions. Drawing on a wide-ranging gallery of activists and experts, their far-reaching collection critically interrogates existing transnational structures both in and outside the United Nations and proposes a host of innovative ideas. They survey methods of worldwide democratic engagement, link global disarmament with both people's security and environmental sustainability, imagine planetary systems that instrumentalize human rights. A huge contribution to today's urgent search for global answers'.

Phyllis Bennis, *Respected author and journalist; Director of the New Internationalism Project at the Institute for Policy Studies*

'The peace of the world is more imperiled today than at any time in the last forty years. Fortunately, Richard Falk and Augusto Lopez-Claros have assembled talented contributors to analyze how international institutions and instruments may now be refashioned to meet the very real challenges of our troubled era: Richard Goldstone on the ICC, Thomas Weiss on R2P, Philippa Webb on the ICJ, Joshua Lincoln on Global Warming, and Hilal Elver on Global Food Systems are but a few of the telling essays in this timely and valuable volume'.

Robert I. Rotberg, *Harvard Kennedy School; Founding Director of the Harvard Kennedy School's Program on Intrastate Conflict; President Emeritus of the World Peace Foundation*

'*Global Governance and International Cooperation*, coedited by Richard Falk and Augusto Lopez-Claros, brings together contributions by some of the most eminent scholars about the major crises facing the world in the 21st century. Proliferation of weapons of mass destruction, wars, climate change, pandemics, and fragility of the global economic system threaten our existence. As such, the book is an unambiguous reminder to all who care for the future of humanity that the system of global governance since the Second World War has proved weak in important respects. It requires a higher, more enlightened level of international cooperation instead of overemphasis on the exercise of power by some. Contributors to this exceptional work have an unmistakable message that, unless both major and minor entities start a new era of cooperation and reform international institutions, the world faces catastrophic risks'.

Deepak Tripathi, *Fellow of the Royal Historical Society, author of Afghanistan and the Vietnam Syndrome: Comparing US and Soviet Wars (Springer Nature, 2023)*

'How to save the world? Start by reading this book. The world is dying and we have been killing it. If we don't change, the world will die of the cumulation of its crises. Its death is as yet avoidable. A fatal lunacy is that vastly more wealth and effort are spent on things that would kill the world and humanity with it, than on what might save both. This book is a modest yet ambitious corrective. It is a book of heart and head. The heart drives the search for solutions, the head creates them. Think globally, act locally, is a cliché. What is it to think globally? How does one think globally? How does one 'think through' globally? How does one think and feel at the same time? It is part manifesto of ideas, part policy dossier covering almost every aspect of the world order in crisis. It is critical and constructive. It not merely diagnoses and

prognosticates, it prescribes. This book presents a total strategy to save the world in the twin senses of the planet and humanity. It should be read by every head of state and foreign minister of the member states of the United Nations’.

Dr. Dayan Jayatilleka, *Prominent Sri Lanka diplomat and journalist*

‘This book is a collection of the very best attempts to build a world order based on peace, cooperation, and respect for human rights. Each essay inspires a daring, but realistic, transformation in our thinking. No doubt, some will say that the proposals are far ahead of current international relations, but the contributors should be congratulated for successfully showing that there are, in fact, workable alternatives to current geopolitical thinking and practice’.

Daniele Archibugi, *Director, Italian National Research Council, Rome; Prof. University of London, Birkbeck College*



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Global Governance and International Cooperation

The Global Governance Forum and the Global Challenges Foundation collaborate in this collection in their concern that the UN Charter and the contemporary infrastructure for international cooperation are no longer fit for purpose and lack the instruments, resources and legitimacy to address the catastrophic risks threatening our future.

Twenty-eight contributors offer thoughtful proposals for reforming existing international institutions and creating new ones to build a more peaceful, prosperous and just world, covering themes such as the management of weapons of mass destruction, collective security arrangements, justice and equity in economics, human rights, migration and refugees, climate mitigation, and food security, all bearing on the health of both people and planet.

The vital project of this century is building institutions that will underpin global governance in coming decades, requiring imagination, persistence, empathy, and confidence that we will find a path to enhanced mechanisms of binding international law and the resources to make that happen. The volume is essential reading for scholars and researchers on international politics and public policy and indispensable for diplomats and government agencies.

Richard Falk is Princeton University's Albert G. Milbank Professor Emeritus of International Law, Chair of Global Law in the Faculty of Law, Queen Mary University London, Co-director of its Centre of Climate Crime and Climate Justice. He is Research Associate at Orfalea Center of Global Studies at the University of California, Santa Barbara, and Fellow of the Tellus Institute, author of *This Endangered Planet* (1971) and a memoir, *Public Intellectual: The Life of a Citizen Pilgrim* (2021). He was nominated for the Nobel Peace Prize in 2023.

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Managing Global Catastrophic Risks in the
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Edited by Richard Falk and Augusto Lopez-Claros



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Preface

This edited collection is the child of a set of conversations between two like-minded organisations, the Global Governance Forum and the Global Challenges Foundation. Both organisations share a strong interest in examining and assessing the continuing effectiveness of the global order that came into being in 1945 with the adoption of the UN Charter and the various institutions and practices that today make up the contemporary infrastructure for international cooperation. Both organisations are concerned that this institutional framework for cooperation, despite many achievements, is no longer fit for purpose and that it lacks the instruments, the resources and the legitimacy that are needed to address the multiple catastrophic risks that threaten our future.

That growing sense of alarm about accumulating crises and catastrophic risks at the global level is shared within the United Nations and other multilateral organisations. In a briefing to the United Nations General Assembly in early 2023, UN Secretary-General António Guterres (2023) warned of

a confluence of challenges unlike any other in our lifetimes. Wars grind on. The climate crisis burns on. Extreme wealth and extreme poverty rage on. The gulf between the haves and have nots is cleaving societies, countries and our wider world. Epic geo-political divisions are undermining global solidarity and trust.

The evidence for this sobering assessment comes from multiple quarters. The Intergovernmental Panel on Climate Change's *Sixth Assessment Report* (Masson-Delmotte *et al.* 2021) has now served up scientific confirmation of the grim daily headlines reporting on the destructive power and increasing frequency of climate catastrophes globally. It is now also confirmed that such crises do not recognise national borders, and thus no country is safe. Climate change is a threat to human and planetary health everywhere. There is no longer any doubt that human activities have caused global warming, with weather and climate extremes causing adverse impacts, losses and damage to nature and people. Climatic and non-climatic risks will increasingly interact, creating compound and cascading risks. These crises are only aggravated by economic vulnerability, political mismanagement and social instability stemming from poverty, poor governance, corruption, corporate plunder and greed, and conflict.

Recent decades have also witnessed an unravelling of the nuclear order. In contrast to climate change, disarmament and arms control have been central to the mission of the United Nations from the outset. However, global governance has failed to effectively address the threat posed by nuclear weapons over the past 80 years. The result has been the erosion of three key components of the global nuclear architecture: strategic stability,

the taboo underpinning the use of such weapons and nonproliferation. This erosion has raised concerns about the increased risks associated with nuclear weapons at a time when we know a great deal more than ever before about the widespread, deeply destabilising and utterly destructive human and environmental consequences of their possible use. The wasteful expenditures on modernising nuclear weapons, coupled with the motivation for other states to seek nuclear capabilities, have further complicated efforts towards disarmament. Urgent and concerted efforts are needed at the global level to restore and strengthen these components and prevent the escalation of nuclear risks in the future.

The UN Charter attempted for the first time to draw a formal connection between ‘economic and social progress and development’ and ‘peaceful and friendly relations among nations’. Following the decolonisation process which quadrupled the number of states, significant progress was made in improving living conditions for vast segments of the world’s population. But major challenges remain. High levels of poverty and its concomitant by-products persist, including hundreds of millions of malnourished people and hundreds of millions more without access to essential infrastructures, such as shelter, clean water and electricity. Widening income disparities are already undermining social and political stability in many parts of the world. Indeed, social systems are significantly strained—not least because of rapidly shrinking fiscal spaces resulting from the destabilising effects of the COVID-19 pandemic and responses to it. According to the World Bank, the world has seen the largest increase in global inequality since the end of World War II. Such inequalities pose increasing risks to the resilience of democratic institutions and to the global economy.

As the 2008–09 global financial crisis revealed, weaknesses in the underlying architecture of our global financial system are yet another source of systemic risk, with the potential to disrupt the global economy and greatly undermine human prosperity. Our fully integrated and interdependent global financial system has contributed to wealth creation, but its benefits are not equitably shared, and its regulation is internationally balkanised, reflecting the tensions between nation states with limited jurisdiction and the free mobility of global capital.

One could list more such risks, products of complex factors, many of them ultimately a function of vulnerability and resilience. A catastrophe comes from more than a triggering event, and its impact can be multiplied by both a failure to recognise the issue quickly, let alone pre-emptively, and an inability to respond effectively. But that is not the purpose here.

Prior works, including some of our own, have presented the kinds of reforms that would significantly enhance the capacity of the United Nations to evolve into a next-generation, problem-solving organisation, one that is more capable of effectively identifying, understanding and addressing the global risks the world now faces. These proposals include reforming the Security Council to ensure that the United Nations doesn’t increasingly become a helpless bystander to conflict, strengthening the legitimacy of the United Nations General Assembly through a system of weighted voting, enhancing the role and effectiveness of the International Court of Justice (ICJ), establishing a World Parliamentary Assembly to serve as an important citizen-based advisory body, and improving UN funding mechanisms to ensure reliable and more politically independent revenue sources (Lopez-Claros, Dahl and Groff 2020). Much of this work continues to offer a starting point for the contributions in this volume.

But the dramatic developments of the last three years alone—a global pandemic, the documented acceleration of the climate catastrophe and the resurgence of a war in Europe

that threatens to go nuclear—prompt further and more urgent consideration. With the support of the Global Challenges Foundation, a number of leading experts, the authors of the papers included in this volume, were initially invited to work on several parallel tracks.

A weapons governance track focused on the goal of producing guiding principles towards a strategy around systemic and sensible international weapons governance. They sought to devise concrete proposals around both existing and future weapons, and to develop a paradigm-shifting approach to arms control, disarmament, nonproliferation, and other related efforts at the international level, using the current UN Charter and other key international texts as inspiration. A second track focused on the peaceful resolution of international disputes. Again, they set about developing a proposal for a significant strengthening of the mechanisms for the peaceful resolution of international disputes, a general modernisation of existing international institutions and reforms to international judicial institutions, including the ICJ, among others. A third track was added, focused on other sources of global catastrophic risk, particularly those emanating from climate change, pandemics, corruption, poverty and inequality, among others, areas of work supported by the Wayfarer Foundation.

The contributions to this volume thus take up specific themes of interest or concern and offer additional proposals for reforming existing international institutions and creating new ones to build a more peaceful, prosperous and just world. The number, breadth and depth of the different contributions in this volume are an indication of the extraordinary complexity that now characterises global governance, a complexity that would stagger the 51 signatories in San Francisco in 1945. The book is therefore divided into three sections and includes recommendations for better management of weapons of mass destruction, proposed improvements to peacemaking and peace enforcement—including more effective collective security arrangements—and recommended courses of action for improving the health of both people and planet.

It will not surprise the reader that the theme of power runs through the book from cover to cover. The shift towards multipolarity in recent decades has accentuated the salience of great power geopolitics and affects even the remotest and most technocratic corners of global governance. But what is perhaps more surprising is the persistent resurgence of the theme of justice—and its close cousin, equity—in these pages. Beyond significant issues of international law and justice and their related institutions, it is interesting to note the recurrence of this theme in very different areas, from economics to development and prosperity, peace and security, human rights, weapons and disarmament, migration and refugees, climate mitigation, and adaptation.

Building the institutions that will underpin the next iteration of our system of global governance in the coming decades could well be the most important project of this century. It will require imagination, persistence, empathy, and confidence that, sooner rather than later, we will need to find a path to vastly enhanced mechanisms of binding international law and to put the resources in place to make that happen. The alternative—continuing adherence to a status quo based largely on narrow national self-interest and geopolitical primacy—looks increasingly like a path that leads to untold human suffering and catastrophe.

While not every country may today support multilateral reform efforts, some will privately confess to a consternation that verges on paralysis or opt for extremism and denialism when facing accumulating catastrophic risks. A trickle of governments—particularly in middle-income countries—are beginning to talk about major changes to the system of

multilateral cooperation and even the UN Charter. Whether they can band together in a ‘coalition of the willing’ has yet to be seen. Some elements of a shared vision are necessary first, but political space needs to be available to take into benevolent account the lessons of experience. And a shared vision can only begin to emerge dialogically from spirited conversation. We think of this book as a contribution to that increasingly urgent conversation.

Richard Falk and Augusto Lopez-Claros

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Abbreviations and Acronyms

<i>ABM</i>	Anti-ballistic missile
<i>ACCORD</i>	African Centre for the Constructive Resolution of Disputes
<i>ACSC</i>	ASEAN Civil Society Conference
<i>AI</i>	Artificial intelligence
<i>AIPR</i>	ASEAN Institute for Peace and Reconciliation
<i>AOSIS</i>	Alliance of Small Island States
<i>APRC</i>	Asian Peace and Reconciliation Council
<i>ASCM</i>	Agreement on Subsidies and Countervailing Measures
<i>ASEAN</i>	Association of Southeast Asian Nations
<i>ASF</i>	African Standby Force
<i>ASP</i>	Assembly of States Parties
<i>AU</i>	African Union
<i>AUKUS</i>	Australia, the United Kingdom and the United States
<i>BIICL</i>	British Institute of International and Comparative Law
<i>BRI</i>	Belt and Road Initiative
<i>BWC</i>	Biological Weapons Convention
<i>CCM</i>	Convention on Cluster Munitions
<i>CCW</i>	Convention on Conventional Weapons
<i>CD</i>	Conference on Disarmament
<i>CELAC</i>	Community of Latin American and Caribbean
<i>CEPI</i>	Coalition for Epidemic Preparedness Innovations
<i>CEWS</i>	Continental Early Warning System
<i>CFE</i>	Contingency Fund for Emergencies
<i>CIHA</i>	Critical Investigations into Humanitarianism in Africa
<i>CISDL</i>	Centre for International Sustainable Development Law
<i>CMC</i>	Cluster Munition Coalition
<i>COP</i>	Conference of the Parties
<i>CPCS</i>	Center for Peace and Conflict Studies
<i>CSDN</i>	Civil Society Dialogue Network
<i>CSO</i>	Civil society organisations
<i>CWC</i>	Chemical Weapons Convention
<i>DDR</i>	Disarmament, demobilisation and reintegration
<i>DESA</i>	Department of Economic and Social Affairs
<i>DPJ</i>	Democratic Party of Japan
<i>DRC</i>	Democratic Republic of the Congo

<i>DRGR</i>	Debt Relief and Green and Inclusive Recovery
<i>DW</i>	Deutsche Welle
<i>ECOSOC</i>	Economic and Social Council
<i>ECtHR</i>	European Court of Human Rights
<i>EPLO</i>	European Peacebuilding Liaison Office
<i>EU</i>	European Union
<i>EWIPA</i>	Explosive weapons in populated areas
<i>FCS</i>	Fragile and conflict-affected situations
<i>FCV</i>	Fragility, conflict and violence
<i>FFP</i>	Feminist foreign policy
<i>FIF</i>	Financial Intermediary Fund
<i>FMCT</i>	Fissile Material Cut-Off Treaty
<i>FRSC</i>	Forum Regional Security Committee
<i>FRSC</i>	Forum Regional Security Committee
<i>GAVI</i>	Global Alliance for Vaccines and Immunizations
<i>GCR</i>	Global Compact on Refugees
<i>GEF</i>	Global Environmental Facility
<i>GHG</i>	Greenhouse gas
<i>GPE</i>	Global Pact for the Environment
<i>GPMB</i>	Global Programme Monitoring Board
<i>HEPR</i>	Health emergency preparedness and response
<i>HIC</i>	High-income countries
<i>HIPC</i>	Heavily indebted poor countries
<i>IACtHR</i>	Inter-American Court of Human Rights
<i>IAEA</i>	International Atomic Energy Agency
<i>ICAN</i>	International Campaign to Abolish Nuclear Weapons
<i>ICAO</i>	International Civil Aviation Organization
<i>ICBL</i>	International Campaign to Ban Landmines
<i>ICBM</i>	Intercontinental ballistic missile
<i>ICC</i>	International Criminal Court
<i>ICISS</i>	International Commission on Intervention and State Sovereignty
<i>ICJ</i>	International Court of Justice
<i>ICRC</i>	International Committee of the Red Cross
<i>ICTR</i>	International Criminal Tribunal for Rwanda
<i>IDEA</i>	Institute for Democracy and Electoral Assistance
<i>IEA</i>	International Energy Agency
<i>IFOR</i>	Implementation Force
<i>IHL</i>	International Humanitarian Law
<i>IHR</i>	International Health Regulations
<i>IISD</i>	International Institute for Sustainable Development
<i>ILC</i>	International Law Commission
<i>ILO</i>	International Labour Organization
<i>IMF</i>	International Monetary Fund
<i>IMO</i>	International Maritime Organization
<i>INB</i>	Intergovernmental Negotiating Body
<i>INC</i>	Intergovernmental Negotiating Committee
<i>INEW</i>	International Network on Explosive Weapons
<i>INGO</i>	International non-governmental organisations

<i>INTERFET</i>	International Force East Timor
<i>IO</i>	International organisations
<i>IOAC</i>	Independent Oversight and Advisory Committee
<i>IOM</i>	Independent Oversight Mechanism
<i>IPCC</i>	Intergovernmental Panel on Climate Change
<i>IPPNW</i>	International Physicians for the Prevention of Nuclear War
<i>IPPR</i>	Independent Panel for Pandemic Preparedness and Response
<i>IR</i>	International relations
<i>ISAF</i>	International Security Assistance Force
<i>ISCPs</i>	International Standing Civilian Protection Service
<i>ISR</i>	Intelligence, surveillance and reconnaissance
<i>ITLOS</i>	International Tribunal for the Law of the Sea
<i>JCPOA</i>	Joint Comprehensive Plan of Action
<i>JETP</i>	Just Energy Transition Partnership
<i>JTM</i>	Just Transition Mechanism
<i>KFOR</i>	Kosovo Force
<i>LAS</i>	League of Arab States
<i>LAWS</i>	Lethal Autonomous Weapons System
<i>LDC</i>	Least developed countries
<i>LDP</i>	Liberal Democratic Party
<i>LIC</i>	Low-income countries
<i>LMIC</i>	Lower middle-income countries
<i>MAD</i>	Mutually Assured Destruction
<i>MBT</i>	Mine Ban Treaty
<i>MDB</i>	Multilateral development bank
<i>MEA</i>	Multilateral environmental agreement
<i>MENA</i>	Middle East and North Africa
<i>MOFA</i>	Ministry of Foreign Affairs
<i>NATO</i>	North Atlantic Treaty Organization
<i>NCD</i>	Non-communicable disease
<i>NDC</i>	Nationally determined contribution
<i>NGO</i>	Non-governmental organisation
<i>NIEO</i>	New International Economic Order
<i>NNSA</i>	National Nuclear Security Administration
<i>NOW</i>	Nuclear one-worldism
<i>NPQ</i>	Nuclear political question
<i>NPT</i>	Non-Proliferation Treaty
<i>NRC</i>	Norwegian Refugee Council
<i>NRPAc</i>	Northern Regional Peace Advocacy Council
<i>NWFZ</i>	Nuclear-weapon-free zone
<i>OAS</i>	Organization of American States
<i>OAU</i>	Organisation of African Unity
<i>OCHA</i>	Office for the Coordination of Humanitarian Affairs
<i>ODA</i>	Overseas Development Assistance
<i>ODS</i>	Ozone-depleting substances
<i>OECD</i>	Organisation for Economic Co-operation and Development
<i>OEEC</i>	Organisation for European Economic Co-operation
<i>OPCW</i>	Organisation for the Prohibition of Chemical Weapons

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<i>OTP</i>	Office of the Prosecutor
<i>PCRS</i>	Peacekeeping Capability Readiness System
<i>PE</i>	Preparatory examinations
<i>PEF</i>	Pandemic emergency financing
<i>PHEIC</i>	Public health emergency of international concern
<i>PHSM</i>	Public health and social measures
<i>PIF</i>	Pacific Islands Forum
<i>PIOS</i>	Public Information and Outreach Section
<i>PRC</i>	People's Republic of China
<i>RCW</i>	Reaching Critical Will
<i>RIGO</i>	Regional intergovernmental organisations
<i>SAARC</i>	South Asian Association for Regional Cooperation
<i>SAD</i>	Self-Assured Destruction
<i>SALT</i>	Strategic Arms Limitation Talks
<i>SAPA</i>	Solidarity for Asia Peoples' Advocacies
<i>SARS</i>	Severe acute respiratory syndrome
<i>SC</i>	Security Council
<i>SCSL</i>	Special Court for Sierra Leone
<i>SDG</i>	Sustainable development goal
<i>SEEA</i>	System of Environmental-Economic Accounting
<i>SFPT</i>	San Francisco Peace Treaty
<i>SIPRI</i>	Stockholm International Peace Research Institute
<i>SSR</i>	Security sector reform
<i>START</i>	Strategic arms reduction talks
<i>TPNW</i>	Treaty on the Prohibition of Nuclear Weapons
<i>U.S.</i>	United States
<i>UAV</i>	Unmanned aerial vehicles
<i>UDHR</i>	Universal Declaration of Human Rights
<i>UMIC</i>	Upper-middle-income countries
<i>UN</i>	United Nations
<i>UNCHE</i>	United Nations Conference on the Human Environment
<i>UNCTAD</i>	UN Conference on Trade and Development
<i>UNDP</i>	United Nations Development Programme
<i>UNDRR</i>	UN Office for Disaster Risk Reduction
<i>UNEF</i>	UN Emergency Force
<i>UNEP</i>	UN Environment Programme
<i>UNFCCC</i>	United Nations Framework Convention on Climate Change
<i>UNGA</i>	United Nations General Assembly
<i>UNHCR</i>	United Nations High Commissioner for Refugees
<i>UNHRC</i>	UN Human Rights Council
<i>UNIDIR</i>	United Nations Institute for Disarmament Research
<i>UNIDO</i>	UN Industrial Development Organization
<i>UNODA</i>	United Nations Office for Disarmament Affairs
<i>UNOG</i>	UN Office in Geneva
<i>UNSAS</i>	UN Standby Arrangements System
<i>UNSCOM</i>	UN Special Commission
<i>UNTC</i>	United Nations Treaty Collection
<i>USCCM</i>	Convention on Cluster Munitions

<i>UUV</i>	Unmanned underwater vehicle
<i>WANEP</i>	West African Network for Peacebuilding
<i>WES</i>	Whole earth security
<i>WFP</i>	World Food Programme
<i>WHA</i>	World Health Assembly
<i>WHO</i>	World Health Organization
<i>WMD</i>	Weapon of mass destruction
<i>WPA</i>	World Parliamentary Assembly
<i>WPS</i>	Women, Peace and Security
<i>WPWL</i>	World Peace through World Law
<i>ZBM</i>	Zero ballistic missiles



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Introduction

Managing Global Catastrophic Risks in the 21st Century: A Global Governance Perspective

Augusto Lopez-Claros

Facing a Multiplicity of Global Risks

In late October of 2022, the UN Environment Programme (2022) published its annual emissions gap report, entitled ‘The Closing Window’, a reference to the report’s main conclusion, namely that there is ‘no credible pathway to 1.5°C in place’. The failure to reduce carbon emissions suggested that the only way to limit the most catastrophic impacts of the climate crisis was a ‘rapid transformation of societies’. The report’s stark conclusion was based on an analysis of CO₂ cuts pledged by countries and the reductions needed to limit the rise in global temperatures to 1.5°C, the agreed target set in Paris in 2015. Pointing out that progress had been ‘woefully inadequate’ and that even if current pledges were delivered fully by 2030, global temperatures would still rise by about 2.5°C, the report noted that a rise of 1°C had already been associated with a range of climate calamities across the planet.

More recently, the March 2023 UN Intergovernmental Panel on Climate Change (IPCC 2023) ‘Synthesis Report’ made similar points: climate change is a threat to human well-being and planetary health. Human activities have unequivocally caused global warming, with weather and climate extremes causing adverse impacts, losses and damages to nature and people. Climatic and non-climatic risks will increasingly interact, creating compound and cascading risks. Some future changes are unavoidable but can be limited by deep, rapid and sustained global greenhouse gas emissions reduction in this decade. There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all. These reports are part of a well-established pattern in recent years where different teams of experts issue increasingly alarming reports on the lack of progress made in establishing a viable path to zero emissions by 2050 and the corresponding catastrophic outcomes that this failure is likely to entail, politicians express concern about such outcomes and no substantive actions are taken to confront the climate emergency until the next report is published.¹

In a February 6, 2023, briefing to the General Assembly on priorities for 2023, UN Secretary-General António Guterres warned about

a confluence of challenges unlike any other in our lifetimes. Wars grind on. The climate crisis burns on. Extreme wealth and extreme poverty rage on. The gulf between the haves and have nots is cleaving societies, countries and our wider world. Epic geopolitical divisions are undermining global solidarity and trust. This path is a dead end.

Indeed, climate change is not the only global risk we face. The last several decades have witnessed an unravelling of our nuclear order. Considerable progress was made by the United States and Russia at the end of the Cold War in nuclear arms reductions. However, in late 2021, the United States decided to withdraw from the Anti-Ballistic Missile (ABM) Treaty, and this was soon followed by the announcement in February of 2023 that Russia would suspend participation in the New Start Treaty, the last remaining nuclear arms control agreement in effect. Furthermore, contrary to the letter and the spirit of Article VI in the Non-Proliferation Treaty (NPT), not only are countries not pursuing ‘negotiations in good faith’ aimed at the ‘cessation of the arms race’ leading to ultimate nuclear disarmament but, instead, the nuclear powers are modernising and expanding their nuclear arsenals, spending some \$82.4 billion in 2021 alone (ICAN 2022) in doing so, at a time of rising geopolitical tensions among the global nuclear powers.

In 2020–21, COVID-19 delivered the largest shock to the global economy since the Great Depression of the early 1930s. The impact was highly destabilising and global in scope, and beyond the nearly 7 million fatalities worldwide, perhaps no statistic captured more eloquently its welfare costs than that for the first time in three decades, in 2020, we saw a sharp increase in the number of people classified by World Bank as ‘extremely poor’—about 100 million people joined the ranks of the very poor, a reversal which, in conjunction with the multiple ramifications of the war in Ukraine, has placed out of reach achievement of the first Sustainable Development Goal, the elimination of extreme poverty by 2030.

The pandemic, according to World Bank (The World Bank Group 2022), also caused the largest increase in global inequality since the end of World War II, with the bottom 40 per cent of the income distribution suffering a larger shock and recovering more slowly than the top 60 per cent. This is a major concern because of the negative connection between increases in income inequality on the one hand and political stability and the resilience of democratic institutions of governance on the other. Income inequality has ceased to be merely an economic problem amenable to be corrected by better public policies but has mutated into a social and political problem which risks undermining the stability of our social and political order and the very basis of democracy. These crises have raised multiple questions about our economic system, its resilience to shocks and, more generally, whether it is on a sustainable path.

Against the chaos and destruction of World War II—the nations of the world came together in 1945 and adopted the UN Charter (United Nations 1945), a noble set of principles that was supposed to inaugurate a new era in international cooperation, to bring about peace and security, thereby creating a solid foundation for economic and social development. The world entered a period of rapid economic growth in the following decades which contributed to a remarkable improvement in various social and economic indicators—a 38 per cent increase in average life expectancy since 1960, a sharp reduction in infant mortality and illiteracy and the incidence of extreme poverty (despite the recent setbacks noted earlier). But the very economic growth which made these achievements possible, and which was accompanied by a remarkable process of integration and growing interdependence, also contributed to the emergence of environmental constraints on the scale of human activity, rising income inequality and persistent poverty and conflict. COVID-19 was a manifestation of one aspect of a whole range of global catastrophic risks which we now confront and which we need to address in a more proactive way, starting with the implications of accelerating climate change. We have to give serious thought to the kinds of global institutional arrangements which we need to

have in place to empower us to deal with the looming crises that are ahead of us and which have the potential to destabilise not only the global economy but our social and political order.

No attempt is made here to provide a comprehensive list of the various global catastrophic risks we currently face. Some are the direct result of human actions, such as climate change and the development of weapons of mass destruction (WMD) and other malignant uses of technology and know-how; others are associated with natural catastrophes which, in some cases (e.g., pandemics), may reflect some element of human action and/or priorities, such as the economic growth imperative in our economic system which demands the constant expansion of human habitats to provide for food, housing, energy, water, and other infrastructures to a rapidly expanding human population, exposing humanity to previously sheltered animal species that carry viruses against which we have no natural immunity. In a highly integrated world, these risks and their manifestations will have spillover effects and interact, sometimes in dangerous ways, with other elements of our complex systems.

Two examples will suffice. In 2008–09, inadequate regulation of the ‘shadow’ banking system in the United States precipitated a massive global financial crisis, with widespread repercussions across the world for output and employment. Governments responded in multiple ways to mitigate the effects of the crisis and to prevent another Great Depression. While many of these interventions were ultimately successful, they involved a substantial accumulation of public debt. This process would be repeated a decade later following the onset of COVID-19, drastically reducing the ‘fiscal space’ available to governments during the next crisis. Along the way, we discovered that we have a fully integrated global financial system but no global rule of law.

The war in Ukraine led to sharply higher food and fertiliser prices, reflecting the importance of Russia and Ukraine as producers of cereals, seed oils and energy. In conjunction with supply chain disruptions and the gradual return of economic activity after the pandemic-induced lockdowns, the global economy entered a period of high inflation with the associated deleterious effect on incomes and standards of living, particularly for the more vulnerable groups in society across the world.

The point here is rather that we are facing numerous crises across multiple fronts, and these are sharply straining our human institutions and raising fundamental questions about our increasing inability to find effective ways to cooperate in multilateral settings at a time when the crises that we confront are global in nature and do not admit solutions outside of a framework of much stronger international cooperation.

Historical Parallels

The last time that there was a serious global effort to rethink the institutional underpinnings of international cooperation was during World War II. The chaos and destruction which resulted in the death of millions led to the birth of the United Nations and the adoption of the UN Charter at the San Francisco conference in 1945. The previous three-year period had witnessed an intense debate within the Allied nations pursuing the war against Nazi Germany and its allies as to the nature and scope of the organisation being created. Some leading intellectuals—Grenville Clark, Albert Einstein, Bertrand Russell, and many others—thought that the huge human toll associated with the war created a unique opportunity to bring into being a supranational organisation that would be empowered not only to deliver peace and security but also to promote social and

economic development at a time when vast segments of the world's population lived in abject poverty and in appalling conditions. In this ambitious conception of the organisation, the idea was to create a legislative body that would have the ability to pass certain laws that would be binding on its members. Those working on the early stages of the draft UN Charter sought inspiration in the 1787 U.S. Constitutional Convention, which created the United States of America, a federal republic in which the central government would be granted the monopoly on the use of force and other supporting institutions were created to establish a framework for effective and peaceful governance.

But that vision did not gain the support of the major powers that led the effort to establish the United Nations. Instead, to prevent creating an organisation with the same flaws as the League of Nations, an effort was made to embed within the UN Charter clauses that would allow, at least in theory, for the future strengthening of mechanisms of international cooperation as circumstances evolved.

We will come back later in this chapter to the role of the United Nations in coming years in helping us address many of the global challenges that we currently face. Although the UN Charter was an important step forward against the background of the disruptions and slaughter brought about by global war, for a variety of reasons, the organisation today is greatly challenged in its efforts to become a problem-solving organisation. Inadequately resourced, saddled with an increasingly dysfunctional Security Council because of the veto power granted to its permanent members, operating in an environment of increasing tensions (not to say contradictions) between the demands of national sovereignty on the one hand and the growing recognition that solutions to global problems will require concerted action at the international level on the other, we are nevertheless of the view that the United Nations could play a vital role in the future in catalysing a quantum leap in a major strengthening of the institutions and mechanisms which currently are at the basis of how nation states cooperate across international borders.

Whatever flaws the United Nations may have been born with in the 1940s, the fact remains that rapid scientific and technological change, the expansion of international trade and investment and the economy, major improvements in economic and social indicators—as noted earlier—have radically changed the context in which international cooperation takes place. In the section that follows, we will argue that in a number of areas, it is possible, within our existing institutional framework for global cooperation, to do more and to do so more effectively to address in meaningful ways the global catastrophic risks that cast a shadow over humankind's future. This is a vast subject; we will focus on a handful of areas, including climate change mitigation, poverty and inequality and issues of peace and security.

Managing Key Risks

Climate Change

A frustrating feature of the debate about what to do about accelerating climate change is that we are not hampered by the lack of knowledge.² We have known for several decades, as recently noted by William Nordhaus (2020), that although there is broad recognition that climate change is the most important environmental challenge facing the world today, governments have continued to tackle the problem with a deeply flawed architecture that relies on uncoordinated, voluntary arrangements which encourage free-riding under international climate change agreements such as the (lapsed) Kyoto Protocol and

the more recent 2015 Paris agreement. With a perverse incentive structure embedded in such treaties, ‘the global effort to curb climate change is sure to fail’, Nordhaus suggested. Using a baseline of 2019, various studies have shown that global emissions would need to drop by about 3–3.5 per cent annually through 2030 to limit warming to the 1.5-degree threshold. There is thus growing recognition that without major mitigation of greenhouse gas (GHG) emissions, global temperatures will be on a rapidly ascending trajectory and rise above 3°C above preindustrial levels by the end of this century.

Given the associated damage to the global economy and its supporting ecosystems and to the natural world more generally as a result of rising sea levels, biodiversity loss and extreme weather events, there has been increasing focus in recent years on identifying the most effective policies that might facilitate climate change mitigation. There is broad consensus among climate scientists and economists that there is a mixture of fiscal tools and regulatory policies that will make it costlier to emit GHGs and thus provide the types of incentives for businesses and individuals to choose to conserve energy and/or to switch to more environmentally friendly (greener) sources. Additionally, such tools could also raise enough revenues which could be deployed to offset the impact of any undesirable distributional side effects and to fund other efforts aimed at mitigation and adaptation.

It is beyond the scope of this chapter to lay out in detail the elements of such a policy package; our point here is that its components are well known and amenable to concerted international action. It involves a far more aggressive use of carbon taxes, about which the IMF (2019) says that they are ‘the most powerful and efficient’ tool among the ‘mitigation strategies to reduce fossil fuel CO₂ emissions’. It also entails phasing out energy subsidies which are astronomical in scale. The latest IMF estimates (for coal, oil, electricity, natural gas in 2021, reflecting also the environmental damage associated with global warming, pollution, traffic congestion, premature mortality) puts them at US\$5.9 trillion (about 6 per cent of world GDP), a full 85 per cent of which are accounted for by coal and oil.

Anchored in the operations of the price system, carbon taxes tend to have an immediate impact on energy use; as the price of coal and other fossil fuels rises, the burden of the tax is largely passed on to energy users. Furthermore, carbon taxes create the opportunity for a more predictable energy pricing regime, which is important for creating a more stable system of incentives for the development of alternative non-fossil fuel sources of energy. Carbon taxes also tend to be relatively easy to implement since they can be integrated into existing fossil fuel taxation systems or other fiscal regimes for extractive industries.

Beyond the immediate effects of discouraging excessive fossil fuel use and incentivising the transition to cleaner energy alternatives, the IMF (2019) estimates that the revenue collected from such a tax would be substantial, some 1.6 per cent of GDP on an annual basis by 2030, on average, for the G20 countries. In some countries—Russia, Saudi Arabia, South Africa, India, China—the revenue impact would be much larger, ranging between 2.5 to 4.5 per cent of GDP, thereby releasing potentially vast resources for promoting other socially and economically desirable objectives.

The substantial revenues collected through a carbon tax could be redeployed to improve economic efficiency, enhance political acceptability of mitigation measures and promote other socially and economically desirable objectives. Revenue resources could be deployed to accelerate environmental investments in clean energy infrastructure, with potentially important job-creation implications—a crucial consideration given the concern about the job implications of AI (artificial intelligence) and other technological

innovations. In his recent contribution to the climate change debate *How to Avoid a Climate Disaster*, Bill Gates (2021) highlights the role of technological and scientific innovation as a vital component of climate change mitigation and hence the need to substantially boost investment in R&D (research and development) on energy, to match levels seen in other industries, such as the electronics and pharmaceutical industries. Financing the transition to a renewable energy economy will also require the development of imaginative mechanisms to raise the necessary resources, such as, for instance, taxes on financial sector transactions which, given the rapid size of the global financial system in recent decades, have the potential to raise large sums at even extremely low levels of taxation (Lopez-Claros, Dahl and Groff 2020: ch. 12).

These policies require broad-based international cooperation. There are already well-established fora within the UN system to deliberate on vital questions of implementation. The IMF and World Bank, the two organisations established at the United Nations Monetary and Financial Conference in 1944—otherwise known as the Bretton Woods Conference—have nearly universal membership, with 189 of the UN’s 193 member countries having a voice in its deliberations. True, the Bretton Woods institutions face governance challenges of their own—linked to underrepresentation in the distribution of power within its decision-making bodies of rapidly growing economies such as China and other emerging market giants, and there are questions about the adequacy of their resources to fully fulfil their mandates in times of crises—but these weaknesses are not crippling and a great deal could be accomplished to empower them to play a more central role in helping to manage the transition to a low-carbon global economy. The challenge, as noted earlier, is not lack of knowledge or expertise or a limited understanding of the instruments needed to tackle climate change in an effective manner, but it is one of political will and leadership, particularly among the dozen or so countries in the world that today account for the lion’s share of global emissions.

The aforementioned is not to suggest that there is no place to substantially improve global environmental governance, and the chapter by Dahl in this volume argues in favour and presents a coherent set of proposals to precisely do that. Given the scale of the climate emergency, there is a great deal that can be done, as noted earlier, to mitigate the worst aspects of the looming calamities coming our way, all of them involving strengthening aspects of international cooperation.

Poverty and Inequality

In assessing the risk factors that threaten our future, it is customary to conjure images of WMDs and other man-made catastrophes. In *The Fate of the Earth*, Jonathan Schell (1982) titled the first chapter of this highly influential book ‘A Republic of Insects and Grass’ because that would be likely the legacy of an exchange of nuclear weapons between the two reigning global nuclear powers in the early 1980s. It is not customary to think of extreme poverty and inequality as potentially catastrophic phenomena, but we will here argue otherwise.

One narrative that is often put forward by development economists is that great progress has been made in recent decades in reducing the incidence of extreme poverty, and the data indeed show this. Using World Bank’s poverty line of \$2.15 income per day, the number of extremely poor people has been reduced from close to 2 billion in 1990 to something like 700 million people in 2022. However, these data require two important qualifications. The first is that much of this reduction is accounted for by high economic

growth rates in China and, to a lesser extent, India. Considerably less progress has been made in sub-Saharan Africa, which remains the largest pocket of extreme poverty in the world.

The second is that the extreme poverty line used by World Bank is exceptionally austere, with people in this group characterised by a very precarious existence, high incidence of malnutrition, illiteracy, lack of access to basic infrastructures such as running water and electricity, to say nothing of other social protections, such as health care. Indeed, it is not at all an exaggeration to characterise this level of poverty as being degrading and demoralising for those affected. Using a poverty line of \$6.85 income per day—which the American economist Nancy Birdsall (2014) suggests still leaves people ‘struggling’ to make ends meet—a full 47 per cent of the world’s population is poor today. Widespread poverty and lack of access to nutrition and basic services and widening income disparities are not only detrimental to the well-being of a large segment of the world’s population, but they are also a threat to the security and stability of the world. The reasons why are many, and we take up some now.

One important lesson to come out of the COVID-19 pandemic is to highlight the extent to which coronaviruses and similar pathogens pose risks to the entire human species. Closing borders during the pandemic did not in general guarantee the elimination of the risk of contagion, in addition to being an inefficient measure, given the high degrees of integration of the world’s economies. A more realistic solution was to expand access to health and basic social protections to a much larger percentage of the world’s population, including the very poor. Not only would this demonstrate solidarity but also minimise the systemic risk from unprotected populations: vulnerable people must be protected to protect everyone.

There is a moral case for better social protection, even if this means a fundamental rethinking of the structure of national budgets. There is no need to appeal here to a universal ethic as an end in itself. We live in a world in which a completely accidental event—the nationality of our parents—plays a fundamental role in the prospects we face as human beings. If our parents are Norwegian, we will have enormous opportunities to develop our inherent capabilities. For in Norway, it is highly probable not only that we will safely reach the age of 5, be well fed and educated, and have access to modern medical and health facilities, but a benevolent state will also provide for us in our old age since in Norway economic policies have incorporated the concept of sustainability in their design, including in management of public finances and the responsibilities of the state to future generations.

If, however, we are born in any of the dozens of low-income countries, we may not survive to the age of 5, and if we do, we are more likely to become part of the 800 million people in the world who suffer from malnutrition and the development of whose talents may be stunted not only by the lack of good nutrition during the early stages of the development of our brains but also by the absence of quality education. And, of course, on average, we may live to the age of 59, rather than the 79–80 seen in some of the more successful high-income countries. Even if one characterises this situation as ‘a fact of life’, it is a sad commentary on the current state of our world, increasingly under strain from the impact of various forms of inequality. The fact is that this is profoundly unfair; there is no ethical framework in which this state of affairs could be characterised as being consistent with elemental notions of justice.

Strengthening the underpinnings of our systems of social protection—whether through the gradual introduction of something like a universal basic income or by other schemes

that are seen to be affordable, particularly in those countries with large poor populations—would go a long way to helping erase extreme poverty, malnutrition, illiteracy, and gender discrimination in an age of plenty. In the age of COVID-19 and future pandemics, it could actually be the socially optimal path, affording greater protection everywhere. This may well be one of the more enduring lessons from the calamities of COVID-19.

This also raises the question of whether our notions of national security should not be reexamined in a fundamental way. In the minds of the majority, the concept of national security evokes images of well-equipped military establishments ready to defend national interests against possible real or imaginary attacks by potential adversaries while absorbing a significant share of national budgets. But COVID-19 has shown us that, in the midst of a pandemic, the most sophisticated and destructive weapons are totally useless. Perhaps national security will now have to be seen from the perspective of human well-being, from the ability of governments to have well-prepared health infrastructures, a clean environment, a social safety net, and the resources to continue to educate children and young people in preparation for an increasingly complex world. These questions are addressed more fully in the chapters by Kaldor and Williams included in this volume.

Economists have known at least since the 1980s about the connection between income inequality and political stability. A particularly persuasive study is Muller (1988), which established two important results. First, democracies with highly inegalitarian distributions of income had a much higher probability of breakdown than those with a more egalitarian income distribution. Second, the longer democratic institutions are in place, the higher the likelihood that there will be a gradual reduction in income inequality.

There are several problems with widening income gaps. A first obvious one, to paraphrase David Landes (1990), is that the larger the gap, the more difficult it is to make the jump. Taiwan, Singapore and Korea did it, and Chile was admitted to the OECD in 2010—but these cases of upward mobility are few and far between. Landes thinks that an important constraint is knowledge and know-how, which cannot be easily acquired. In other countries, the story of training and higher education has often been, as noted by Landes (1990: 9), ‘the permanent loss of talent’ or ‘brain drain’.

Being far behind creates a difficult context for the implementation of sound policies. The populations of poor countries can readily and accurately estimate—because of the power of communications technologies—how far back they are vis-à-vis the rest of the world, particularly the rich economies of the industrial world. This is likely to create unrealistic expectations of catchup and, in turn, force governments to favour a populist path instead of the deliberate, gradual and, at times, difficult path chosen by the few successful cases of upward mobility. When the gap is so wide that the possibility of catching up within a generation or two is no more than a pipe dream, governments may find it difficult to engage the public in the pursuit of cautious, coherent policies.

‘Lateness is the parent of bad government’ is how Landes (1990: 9) puts it, where he uses the noun ‘late’ to mean late entry into the development process, captured by a low per capita income. In his book, *The Bottom Billion*, Paul Collier (2007) highlights some of the difficulties associated with a segmentation of the world into two broad regions, one characterised by either high income or at least positive economic growth and another where some 60 countries with a combined population in excess of 1 billion are not only falling behind but falling apart, becoming exporters of ‘violence and people instead of goods and services’ (p. 12), thereby beginning to pose a security threat to the rest of the world. According to Collier,

development is about giving hope to ordinary people that their children will live in a society that has caught up with the rest of the world. Take that hope away and the smart people will use their energies not to develop their society but to escape from it.
(p. 12)

Widening income gaps between countries have, therefore, also played a role in the recent evolution of migratory flows. According to Clemens, Montenegro and Pritchett (2016), workers migrating to the United States from a country in the 80th percentile in income levels can raise their real earnings by over six times, equivalent to an absolute gain in excess of \$15,000 per year. Beyond the inevitable pressures on resources, continued population growth in the next couple of decades will lead to a broad range of challenges for governments, businesses and civil society. For instance, in the Middle East and North Africa, high fertility rates and one of the highest rates of population growth in the world will put enormous strains on labour markets. These countries already suffer from the highest rates of unemployment in the world. Simply to prevent these rates from rising further, it will be necessary to create dozens of millions of new jobs within the next decade and a half. The failure to do so has led to major political and social instability in the region.³

Powerful demonstration effects are clearly at work: the spread of instant communication and the Internet have led billions of people in China, India, Latin America, Africa and other parts of the developing world to aspire to lifestyles and patterns of consumption similar to those prevailing in the industrial world. Where conditions are not in place in countries to deliver on such aspirations within a reasonable time span, people will surely seek opportunities elsewhere, and taking their skills (such as they are) to a richer country will continue to be seen as a way to escape poverty. Furthermore, these populations are often unwilling to postpone such aspirations and increasingly expect their governments to deliver rising levels of prosperity, implicitly pushing for a more equitable distribution of the world's resources.

Peace, Security and the Role of the United Nations

United Nations Secretary-General António Guterres (2021), at the very end of the Summary of his 'Our Common Agenda' report, states that he

will ask a High-Level Advisory Board, led by former Heads of State and Government, to identify global public goods and other areas of common interest where governance improvements are most needed, and to propose options for how this could be achieved.

Recently, his proposed Summit of the Future, 'to forge a new global consensus on what our future should look like, and what we can do today to secure it', has been announced for 2024.

While there may be differences of emphasis, most surveys of public opinion suggest that there is already a broadly held international consensus on what kind of future we want. It is a future in which ours and future generations will be free from the calamities and dislocations associated with accelerating climate change, in which we will have found enduring ways to reduce the tensions and geopolitical risks associated with destructive nationalisms which have caused so much suffering and conflict over the past century. Indeed, to put behind us forever the fear of a nuclear holocaust. It is a future in which the

economic advancements we have made are shared more equitably across all populations; in which social cohesion is strengthened, human rights are fulfilled; and in which we have finally eradicated the degrading poverty that blights the lives of hundreds of millions. And it is perhaps a future in which our concepts of security will have evolved from an undue focus on military preparedness and the buildup of weapons to one in which we conceive of security as being fundamentally about human welfare and the need to formulate public policies in ways that contribute to improving human well-being. Indeed, the UN 2030 Agenda and supporting Sustainable Development Goals already provide a comprehensive vision of what that future should look like.

In *Global Governance and the Emergence of Global Institutions for the 21st Century* (Lopez-Claros, Dahl and Groff 2020), the authors present a fairly comprehensive overview of the kinds of reforms which would significantly enhance the capacity of the United Nations to evolve into a problem-solving organisation at the centre of multilateral efforts to identify, understand and address more effectively the myriad transboundary challenges that we currently confront. The reform agenda laid out is extensive, and here we will address four issues that, in some form or other, are vital to improving the organisation's effectiveness and putting it at the centre of improved international cooperation. These pertain to Security Council reform, strengthening the legitimacy of the General Assembly, the creation of a World Parliamentary Assembly, and improving the United Nations's funding mechanisms.

Security Council Reform

In an earlier article, some of the history of the UN veto was reviewed and why it was so poorly received by many of the delegations assembled at the San Francisco conference in 1945 when the UN Charter was adopted (Lopez-Claros 2022). Earlier that year, at the Yalta conference, the Dutch delegation had warned that giving the veto power in the Security Council to a select few countries would make the organisation largely useless in disputes between great powers or in conflicts involving a close ally of a great power. There was something unwholesome about giving the veto power to countries which were themselves parties to a dispute. Cord Meyer (1945), a member of the U.S. delegation in San Francisco, would later comment on the weak moral grounds implicit in the inclusion in the Charter of a principle which would create a situation where 'a major power can violate every principle and purpose set forth in the Charter and yet remain a member of the Organization by the lawful use of the veto power expressly granted to it'.

Mexico and eight other Latin American countries assembled in Chapultepec at the Inter-American Conference on Problems of War and Peace held in February/March of 1945 strongly objected to the veto. Australian Judge Herbert Evatt—later president of the General Assembly in 1948—and New Zealand Prime Minister Peter Fraser likewise expressed dismay at the inclusion of the veto and led a group of 17 nations in their opposition to it during the San Francisco conference.

It was in response to their strongly voiced opposition that the delegates assembled in San Francisco agreed to include in the Charter Article 109, stating that

[a] General Conference of the Members of the United Nations for the purposes of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council.

While the Article's second paragraph went on to state that any proposed amendments to the Charter coming out of that Conference to be subsequently ratified by members would still require the consent of the veto-wielding countries, the Article opened the door for a future consideration of the appropriateness of the Charter in light of changes which might have taken place since its adoption and ratification as agreed in San Francisco.

Against this background, in his own assessment of the importance of Article 109, Georg Witschel, a renowned German diplomat, commented that 'it was a major factor in overcoming the resistance of many small and medium-sized States to the "Yalta formula" stating the right to veto in San Francisco. The prospect of a review conference in the foreseeable future, when the cards could be reshuffled, gave them consolation and hope'.

Article 109 was not only a way to placate the many members who were upset at being presented with a *fait accompli*, with the key elements of the Charter having been earlier agreed to by Roosevelt, Churchill and Stalin. It was also a way to address the sense, widespread among those who had followed closely the debate in the period 1942–45 about the kind of UN which should be created, namely that the UN Charter, as conceived, was an inadequate response to the devastation of World War II and its 60 million casualties. In the view of many, the organisation would fail to live up to the noble ideals in the areas of peace and security identified in the Charter's Preamble and spelled out in its numerous articles. In the final vote, once the United States and the Soviet Union made it clear that without the inclusion of the veto there would be no United Nations Charter, 15 nations abstained, and two (Colombia and Cuba) voted against it, out of 51 signatories.

The Article 109 conference, expected to take place within a decade from the time of ratification of the Charter has never taken place. As with other elements of the Charter, it remains a dead letter, a victim of the onset of the Cold War and the general sense of inertia and paralysis that has been a permanent feature of UN reform efforts, to say nothing of decision-making within the Security Council, which remains largely ineffective at a time when a range of global catastrophic risks threaten our future, risks which reflect problems the solutions to which are not possible outside a framework of much stronger international cooperation.

It is often argued that the permanent members of the Security Council would never willingly give up the veto, no matter that it has turned the body into a fully dysfunctional institution within the UN system and led to a gradual transfer of the locus of power and influence onto the General Assembly. In our view, the veto in recent decades has become a greatly devalued privilege, more an ancient symbol of power and the political arrangements that were put in place at the end of World War II rather than an instrument to wield real positive power. In the aftermath of Russia's invasion of Ukraine on February 24, 2022, Russia vetoed a Security Council resolution condemning it. This did not prevent the General Assembly from taking up a resolution of its own and on March 2, 2022, by a vote of 141 to 5, issued a resolution in which it deplored 'in the strongest terms the aggression by (Russia) against Ukraine' and demanded it 'immediately cease its use of force against Ukraine'. The five countries that opposed the resolution were Russia, Belarus, North Korea, Syria, and Eritrea. But, rather more importantly, Russia's veto did not protect it from NATO members and other countries providing military and economic assistance to Ukraine to allow the country to defend itself against Russian aggression. So, its veto was not worth very much beyond the symbolism of saying, 'Nyet!' The UN Charter (1945) gives the Security Council the ability to pass binding resolutions with the power of international law. But since the UN never got around to operationalising Article 43, its resolutions are often ignored. So, one can expect that with the value of the veto greatly diminished in effective terms, we will see the UN increasingly sidelined in times of

conflict, with real power and influence moving to other centres and the UN performing the role of helpless bystander, which was definitely not the intentions of its founders.

There is no reason why the Security Council could not be reorganised in a manner similar to the governance structures that were adopted by the Bretton Woods institutions in 1944. Within their governing councils (or Executive Boards, as they are called) member countries operate under a system of weighted voting in which every member has a vote and a voice, and no member enjoys a veto. This system has served them well. Particularly important decisions may require a higher than 50 per cent voting share; in practice, members have opted for consensual decision-making, rather than the paralysing obstructionism that characterises the Security Council.⁴

Strengthening the Legitimacy of the General Assembly

One issue that was intensely debated in the period leading to the adoption of the UN Charter was the particular governance mechanisms that would underpin the operations of the General Assembly. While the United States, the United Kingdom and the Soviet Union had no problems the previous year in establishing a system of weighted voting for the Bretton Woods organisations linked to objective metrics of economic size, trade flows and the like, they were not ready to apply the same principle in respect of the General Assembly in 1945, which was established under the principle of one country-one vote, suggesting an explicit desire on the part of the larger powers to place the locus of power within the Security Council, where they enjoyed the veto.

Also debated was the issue of how the Assembly's members would be chosen. In an open letter to the General Assembly, Albert Einstein (1947) said, '[T]he method of representation at the UN should be considerably modified ... the moral authority of the UN would be considerably enhanced if the delegates were elected directly by the people', instead of being diplomats in most cases representing the party in power. Einstein thought that the democratic legitimacy of the UN was a vital principle and that it was necessary to have a firmer linkage between the organisation and the peoples it was meant to serve. In this respect, he was strongly supportive of Clark's call to give the United Nations General Assembly, under a system of weighted voting, narrowly defined powers on matters pertaining to peace and security, the heart of the UN Charter.

Bertrand Russell (1946) was another active participant in those debates. Not only did he collaborate closely with Einstein, but with his logician's mind, had said that 'wars will cease when, and only when, it becomes evident beyond reasonable doubt that in any war the aggressor will be defeated'. This was his way of suggesting that Article 43 of the Charter which calls for 'armed forces, assistance and facilities to be made available to the Security Council for the purpose of maintaining international peace and security' would need to be given operational meaning on the ground, by creating the instrumentality to allow the United Nations to deliver on its peace and security mandate.

So, as currently constituted, India, with a population of close to 1.4 billion people, has the same voting power as Nauru, with a population of about 13,000. Switzerland's contribution to the UN budget (1.134 per cent of the total and itself the result of some fiendishly complicated internal formulas) exceeds the cumulative contributions of the 120 countries with the smallest contributions. In *World Peace Through World Law*, Grenville Clark and Louis Sohn (1966) argued for a system linking voting power to population shares and a gradual shift to direct election of General Assembly members by popular vote in their respective countries.

Lopez-Claros, Dahl and Groff (2020) put forward a proposal which allocates voting power within the General Assembly on the basis of three factors all weighted equally: a country's world population share, its share of world GDP and a membership share which would be equal for all 193 UN members, and which has the effect of boosting the power and voice of the smaller countries. Using 2021 data, one can see in Table 0.1 the results of this exercise for a group of 30 countries, including the five permanent members of the

Table 0.1 Updated United Nations General Assembly voting shares under a modified Schwartzberg proposal using 2021 data

Country	Baseline weights ^b	GDP share in per cent: C	Population in per cent: P	Membership share in per cent: M	W: Share ^c in per cent:
Top 20 contributors^a					
United States of America	8.283	20.405	4.229	0.518	8.384
China	11.993	18.571	17.859	0.518	12.316
Japan	2.483	4.022	1.578	0.518	2.040
Germany	1.871	3.640	1.056	0.518	1.738
United Kingdom	1.406	2.832	0.859	0.518	1.403
France	1.393	2.500	0.834	0.518	1.284
Italy	1.156	1.893	0.749	0.518	1.053
Canada	0.919	1.808	0.498	0.518	0.941
Republic of Korea	0.993	1.721	0.653	0.518	0.964
Spain	0.891	1.362	0.605	0.518	0.829
Australia	0.726	1.352	0.333	0.518	0.734
Brazil	1.967	2.170	2.725	0.518	1.804
Russian Federation	1.680	2.574	1.840	0.518	1.644
Netherlands	0.545	0.865	0.224	0.518	0.536
Mexico	1.316	1.628	1.662	0.518	1.269
Saudi Arabia	0.698	1.081	0.467	0.518	0.689
Switzerland	0.423	0.632	0.111	0.518	0.421
India	7.936	5.360	17.986	0.518	7.955
Sweden	0.399	0.524	0.137	0.518	0.393
Turkey	1.001	1.468	1.098	0.518	1.028
Other countries					
Argentina	0.626	0.681	0.592	0.518	0.597
Indonesia	1.992	1.898	3.514	0.518	1.977
Iran	0.844	1.466	1.096	0.518	1.027
South Africa	0.600	0.501	0.785	0.518	0.601
Nigeria	1.250	0.673	2.814	0.518	1.335
Egypt	0.816	0.706	1.346	0.518	0.856
Pakistan	1.254	0.627	2.933	0.518	1.359
Ghana	0.329	0.101	0.404	0.518	0.341
Lesotho	0.184	0.003	0.027	0.518	0.183

Notes

a Based on assessed contributions to the UN regular budget for the period 2022–24.

b Weights published in *Global Governance and the Emergence of Global Institutions for the 21st Century*, using 2017 data.

c $W = (C + P + M)/3$, using 2021 data.

Security Council. China, the United States and India would emerge as the countries with the largest voting power, at 12.316, 8.384, and 7.955 per cent, respectively, for a combined weight among them of 28.655 per cent. An interesting result is that Russia, the United Kingdom and France—the three veto-wielding powers other than the United States and China—all have less than 2 per cent voting power, with Russia the highest among them at 1.644 per cent. So, a sensible allocation of power within a reformed General Assembly, using plausible metrics to determine each country's relative share, allocates a relatively small share for Russia, a country able, through the veto, to derail and paralyse the organisation as it attempts to enforce its mandate to maintain peace and security.

The Role of a World Parliamentary Assembly

The democratic legitimacy of the United Nations matters a great deal for its effectiveness, credibility, and ability to become a problem-solving organisation. Until such time as the community of nations is ready to reform the UN Charter and give the General Assembly the legislative powers and proportional representation necessary, a World Parliamentary Assembly (WPA) could serve as an important advisory body. It could act as a 'second chamber' of sorts to the United Nations General Assembly and would represent the voices of citizens. This approach would ensure more popular representation in UN decision-making and in selecting those to speak on behalf of 'we the peoples' at the United Nations. The WPA would help bridge the democratic legitimacy gap that arises when an organisation's actions can affect people's welfare in tangible ways, but those affected by these decisions have little input in how they are formulated, arrived at, and implemented.

The idea of having a second legislative chamber at the United Nations has existed since the organisation's inception but is, perhaps, even more relevant now given an explosion of international non-governmental organisations that are working on cross-cutting global issues. As an advisory body, the WPA could bring in a fresh perspective on a broad array of unresolved global problems. It would be in a stronger position to promote higher levels of international cooperation because its members would be called upon to see such problems through the lens of humanity's better interests rather than narrow national considerations.

There are multiple paths to the creation of the WPA. Article 22 of the UN Charter permits the General Assembly to create subsidiary organisations as necessary, which could include the WPA. Another approach is creating the WPA via international treaty, a successful method which was most recently used with the 2017 Treaty on the Prohibition of Nuclear Weapons.

The creation of the WPA will require certain initial steps, the first of which must be the engagement of public and governmental stakeholders, many of which have grown disillusioned with the United Nations's effectiveness. Those dissatisfied with the United Nations could be convinced to support the WPA's creation as a step toward increasing the United Nations's transparency and legitimacy. Several international groups have already endorsed such a vision, including the European Parliament and the Pan-African Parliament. Larger states that are generally content with the United Nations's current political order might fear the creation of a second chamber, such as the WPA. To assuage these concerns, the WPA could be initially established as a consultative body to make recommendations without concrete political power.

The WPA could also champion key priority reform items. For example, ensuring that the International Court of Justice and the International Criminal Court are obligatory courts with compulsory jurisdiction for all UN members, advocating for reformed UN financing, designing ambitious and consolidated new disarmament proposals, and so on.

The creation of a WPA and its evolution over time would build more support for a new-and-improved United Nations, make it possible to experiment with different processes and approaches to reform and accumulate valuable experience to eventually support the formal consultations leading to Charter revision. The paper by Strauss and Falk in this volume expands on many of these ideas.

Improving UN Funding Mechanisms

The United Nations has a regular budget which funds the UN Secretariat and its multiple activities, a peacekeeping budget, and a budget that finances the activities of its specialised agencies. These budgets are financed by assessed contributions from members. In the latest assessment, corresponding to the period 2022–24, the United States remains the largest contributor, contributing 22 per cent of the UN budget, followed by China, at 15.254 per cent and Japan at 8.003 per cent as the next two largest contributors.

In addition, there is a separate budget that is funded by voluntary earmarked contributions from some of its wealthier members in support of particular agencies, projects and programmes. Contributions to the UN budget are heavily asymmetric. The top 10 contributors account for 70 per cent of the budget; the top 20 account for 84 per cent of the budget. A number of different proposals for a better funding mechanism for the United Nations have been put forward over the years. We support a proposal based on a fixed proportion of gross national income (GNI). The United Nations would simply assess member contributions at a fixed per cent of their respective GNIs. Total world GNI at market prices in 2021 was US\$ 105 trillion. A relatively modest 0.1 per cent of GNI contribution to the UN budget would generate US\$ 105 billion, a sizeable sum to start with, several times larger than the current regular budget and also much higher than the budget if one uses the most comprehensive measure, including all earmarked contributions and peacekeeping operations.

The main advantage of this system is simplicity and transparency. Every country gets assessed at the same rate; the criteria for burden sharing is crystal clear. Contributions are linked to economic size—as in the current system—but without the need for carveouts, exceptions, floors and ceilings, and discounts and the need to develop ‘formulas’, often vulnerable to political machinations. Of course, it will remain the case that the lion’s share of the resources *spent* by the United Nations will be to the benefit of low-income countries which, on a net basis, would continue to be the direct beneficiaries of UN funding.

Longer term, as already happens within the European Union (EU), the United Nations should be given a reliable source of funding that allows it to plan strategically, contrary to the current system where member countries do not see assessed contributions as a binding obligation of membership and have often used their contributions for coercion and blackmail. EU institutions are funded through formulas that automatically channel to the EU budget, for example, a fixed proportion of VAT and import duty collections in each member country. At a time when it is desirable for the United Nations to play a more central role in mitigating global catastrophic risks, it is essential to give the organisation a reliable revenue source.

Next Steps and the Promise of a Better World

Having a series of world conferences on global institutions is one way to expand the debate on global governance. The aim would be to take up the reforms that need to be urgently implemented to adapt our system of global governance to the needs and the challenges that we now face and which, if unaddressed, could well plunge the world into unprecedented crises and be hugely costly in economic and human terms.

One upcoming opportunity may be the ‘Summit of the Future: Multilateral Solutions for a Better Tomorrow’ proposed by UN Secretary-General António Guterres to take place in September 2024. He characterised the summit as a ‘once-in-a-lifetime opportunity to reinvigorate global action, recommit to fundamental principles, and further develop the frameworks of multilateralism so they are fit for the future’ (IISD 2023). Building off the Secretary-General’s (2021) report, ‘Our Common Agenda’, this summit would address more investments in peace and security, support for regional conflict prevention and reduction of strategic risks like nuclear weapons proliferation and cyberwarfare.

Any global conference(s) should include wide participation from civil society stakeholders. In 2015, for example, the United Nations General Assembly adopted a series of Sustainable Development Goals to be reached by 2030, but this achievement reflected an intergovernmental process supported by extensive consultation with, and contributions from, civil society.

A conference is not an end in itself but can serve as a rallying point for both policymakers and citizens alike and the start of a staged process intended to build momentum and consensus around the sorts of reforms that are needed. Building the institutions that will underpin our system of global governance in the coming decades could well be the most important project of this century. It will require imagination, persistence and confidence that, sooner rather than later, we will need to make the transition to vastly enhanced mechanisms of binding international cooperation if we are to avoid and address untold human suffering and catastrophe.

While not every country may come on board with these efforts, there are an increasing number of governments that are convinced of the need for major changes and reinforcement in multilateral cooperation, largely in the middle range of countries, neither ‘great powers’ with hegemonic ambitions, nor those struggling to meet basic needs. They can assemble into a like-minded ‘coalition of the willing’ and not wait for universal acceptance.

A major effort should be directed to bring as many of these governments as possible around to serious consideration of Charter reform. The threat of blockage by veto should not be allowed to stymie informed debate. The aim should be to assemble, gradually, if necessary, the majority of governments around the world with a common vision, ready to take a comprehensive reform agenda forward. The possibility of creating a new organisation to replace the United Nations, if necessary, as a last resort should not be excluded as a viable option in a scenario involving multiple crises across a range of fronts.

Notes

- 1 In 2020, Bill McKibben (2020: 8) asked, ‘Didn’t the world leaders who signed the Paris climate accords commit to holding temperature increases to “well below” two degrees Celsius, and as close as possible to 1.5 degrees? They did—in the preamble to the agreement. But then they appended their actual pledges, country by country. When scientists added up all those promises—to cut emissions, to build renewable energy, to save forests—and fed them to a computer,

it spit out the news that we are headed for about 3.5-degree rise this century’. He then added, ‘A three-degree rise in temperatures takes us to a level of global heat no human has ever experienced—you have to wind time back at least to the Pleistocene, three million years ago, before the Ice Ages’.

- 2 This section draws in part from Lopez-Claros (2021).
- 3 In sharp contrast, the populations of countries such as Italy, Japan and others in the industrial world will continue to shrink, a demographic trend which, in turn, will put huge pressures on public finances, as states attempt to cope with growing numbers of pensioners claiming a growing share of budgetary resources.
- 4 See Lopez-Claros, Dahl and Groff (2020: ch. 7) for reform proposals that would turn the Security Council into an Executive Council and give voice to all 193 UN members.

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Part I

**Governance for Nuclear, Biological
and Chemical Weapons of
Mass Destruction**



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1 Nuclear One-Worldisms, Planetary Vulnerability and Whole Earth Security

*Daniel Deudney**

Creating the Armageddon Gadget

Since arriving on the world scene in the waning days of the greatest global war in history, nuclear weapons have occupied a central role in both world political affairs and thinking about the overall human prospect. Because of the immense destructive potential of nuclear weapons, the consequences of a nuclear war would be a civilisational catastrophe. Even more alarmingly, a large nuclear war might render humanity extinct, a consequence of human activity without any historical precedent. With nuclear weapons, humanity has created the means of committing species suicide, of potentially consigning itself to the ultimate ash heap of history (Calder 1979; Office of Technology Assessment 1979; Schell 1982).

Despite these facts, the international system of sovereign states, or more precisely a handful of the ‘great powers’, in a giant spurt of rapid mobilisation, reacted to this perilous possibility by quickly bringing into existence a planet-spanning megamachine of violence, prepared for immediate use (Cirincione 2007; Rhodes, 2007). Over the course of their global Cold War struggle, the United States and the Soviet Union, known as ‘the superpowers’, amassed staggeringly immense arsenals of ever more powerful and versatile nuclear weapons. Tens of thousands of nuclear weapons were fabricated and deployed, with several tonnes of TNT equivalent for every person on the planet. By coupling these weapons with delivery vehicles of progressively greater range, speed, and accuracy, and deploying them on a planet-spanning network of bases and mobile delivery platforms, the United States and the Soviet Union set in place the capacity to wreck historically unimaginable levels of destruction nearly instantaneously (Arkin and Fieldhouse 1985).

In a very basic way, the construction and persistence of this staggeringly hypertrophic violence supply system call into question the entirety of modern civilisational progress and the scientific/technological world view animating it. The last several centuries, particularly the 20th, have produced enormous improvements in the human estate. The combination of rapidly growing knowledge about nature and new engineering techniques has empowered humanity to build vast, planet-spanning complexes of machines and infrastructures, an *anthroplex*, a fabricated ‘second nature’. The vast bulk of the anthroplex is configured to better serve human needs, wants and desires. But since the beginning of the nuclear era, another machine-infrastructure complex, a nuclear violence supply machine, has also been built by a subset of humanity. While gargantuan in

* Thanks to Richard Falk, Augusto Lopez-Claros and Benoît Pelopidas for helpful comments on earlier versions of this chapter.

absolute size, it is much smaller than the civil-servicing anthroplex and much less visible. It also spans the planet and helped create and exploit a cascade of extraordinarily powerful new technologies. In basic practical material terms, this nuclear violence complex of things amounts to a giant self-demolition device, an Armageddon gadget, a planetary suicide vest, enabling the practical negation of modernity's progress and perhaps humanity (Anders 1962; Lifton and Falk 1982; Mian and Pelopidas 2023; Thompson 1980).

As this giant destruction apparatus was being constructed, a great debate raged over the choices posed by the new technology and the features of a world order needed for security in the nuclear age. While this debate remains unresolved, civilisational and human survival hinge upon getting, and implementing, the right answers to these questions. In this debate, views on the implications of nuclear weapons for security and world order have varied widely, and prospects for fully resolving the debate are dim (Connelly *et al.* 2012). One cluster of views, 'nuclear one-worldism' (NOW), is the focus of this chapter.

NOW holds that the development of nuclear weapons, and ancillary technologies, is nothing short of a revolutionary transformation in the human relationship with nature. Achieving security requires significant, and cumulatively revolutionary, changes in security politics and world political order. In the revolutionary school understanding of nuclear weapons, the vast deployments of instantly useable megaviolence is essentially a giant and insane mistake, a vast folly, an avoidable danger that humanity has created needlessly for itself. This view has been widely voiced by many, from the leaders of the nuclear states themselves to many leading scientists, political thinkers, commentators and religious leaders, as well as the leaders, organic intellectuals and members of mass public movements (van Munster and Casper Sylvest 2015). NOW thinking has been part of the Great Debate from its inception, has evolved and developed in important ways and has had some real and significant influence on politics and policy. But NOW is not the dominant view among nuclear thinkers, especially those most closely affiliated with militaries and states.

Nuclear revolutionary thinking is exceedingly immodest, addressing nothing short of the fate of civilisation and humanity. But the aims of this chapter are modest: to simply and fully summarise the main ideas of the revolutionary school and NOW, to convey 'what nuclear one-worlders think'. As such, the objective here is not to extend NOW thinking or demonstrate its superiority to other answers offered by other schools of nuclear theory and practice. This modest step is valuable because such ideas, while abundant, often quite sophisticated, widely held and sometimes influential, are almost invisible in many accounts of the nuclear question and are also quite fragmented. It also points towards a larger effort, beyond the scope of this short chapter, to demonstrate the superiority of these ideas and their underlying assumptions about material change and world political and security orders.

Progress, Reversal and Ominous Global Trends

NOW and related ideas provide the theories justifying and guiding a second great experiment in denuclearisation order building, unfolding across the nuclear era. Alongside and against the great and fateful experiment in nuclear weaponisation and in building the nuclear anthroplex, there has been an alternative nuclear experiment in new political world order building. A large menu of arms control and disarmament measures have been developed by nuclear thinkers and sometimes vigorously promoted by popular movements. International negotiations on arms became a standard, often central, part of

interstate diplomacy and politics. And, slowly but surely, partial denuclearisation and control measures have been negotiated and implemented. Nuclear weapons test bans, prohibitions on nuclear weapons based in orbital space, Antarctica and the seabed were established. Then came bilateral U.S.-Soviet arms control regime-building (SALT I & II, START I & II, INF, New START), climaxing in the unexpected and peaceful end of the Cold War and its great nuclear settlement, which produced substantial reductions in nuclear forces (George, Farley and Dallin 1988). Former rivals became partial nuclear security allies, taking a myriad of steps towards political reconciliation, conflict avoidance and peacemaking, as well as democratisation. As a result, reciprocal international arms control and disarmament, previously rare in world history, became a significant feature of the interstate system. With these hopeful developments, the nuclear peril, and hence concern over the nuclear question, seemed to recede in importance.

Unfortunately, since roughly the turn of the 21st century, these important successes in new world order building have started to unravel, and a range of new nuclear dangers have emerged. The 9/11 terrorist attacks, followed by the anthrax letter attacks, highlighted the potential for a variety of revisionist and radical non-state actors, potentially the size of gangs or cults, to acquire and use nuclear or other weapons of mass destruction (Cronin 2020; Cronin and Ludes 2004; Smith, 2006; Witte and Blum 2015). The collapse of the Soviet Union also raised the spectre of its vast trove of nuclear weapons and fissile material ‘leaking’ into the hands of other actors. The diffusion of nuclear capability, dubbed ‘proliferation’, a secondary concern during the Cold War, seemed to take on new urgency, especially for the United States, as several small and relatively weak states acquired, or took steps to acquire, nuclear arsenals.

More disastrously, the great power accommodation between Russia and the United States marking the end of the Cold War has slowly soured, and its arms control accomplishments have steadily unravelled (Deudney and Ikenberry 2010). The United States, a leader through much of the Cold War in supporting strategic arms control, withdrew from several landmark treaties at the same time as its offensive nuclear forces—under the rubric of various ‘modernisations’—became increasingly capable. With the recent outbreak of the Russia-Ukraine war, Russia and the members of NATO, led by the United States, are engaged in an extremely violent proxy war in Ukraine, which some observers liken to the Cuban Missile Crisis of 1962. Overall relations between the two nuclear superpower states are at a low not seen since the worst days of the Cold War. Critics of the arms control project view this unravelling as the failure of arms control, but it is more accurately viewed as a failure by states to persist in maintaining and extending the measures which had appreciably reduced the nuclear peril (Krepon 2021).

Further dangers and uncertainties are growing. Rapid weaponisation of new technological capabilities is occurring in orbital space and the oceans, as well as in cyberspace, which increasingly envelops everything. China’s growing economic and military power, its regional hegemonic aspirations, and its hardening autocratic regime have converted its late Cold War and post-war quasi-alliance with America into a growing, global, great power rivalry. China and India are making their nuclear forces larger and more capable. A handful of smaller states with deeply troubled relations with their neighbours, most notably North Korea, Iran, Israel, and Pakistan are pushing ahead with nuclear programmes.

These nuclear trends are occurring alongside multiple other major emerging problems with ominous implications for the human prospect and world order. Most notably, climate change is underway, and efforts to moderate it are falling short of what is needed, and so the world is increasingly locked into a world of increasing droughts, floods, severe

storms, mass extinction, rising sea levels, and mass migrations. Also, the world capitalist system, which has spread powerfully everywhere, appears to have fundamental internal instabilities which portend further crises, inflations, recessions, and even collapses. And the COVID-19 pandemic, killing millions and costing trillions, reminds us of the high probability of even greater pandemics to come.

Given these developments, the current prospects for the revival and extension of significant nuclear arms control and disarmament appear dim. While the need for such measures is arguably greater than ever, the prospects for more progress seem to be steadily dimming.

The Nuclear-Political Question

A first step in understanding the views of the revolution school is to return to the matrix of arguments in the Great Debate. The possibility of nuclear destruction has triggered a practical, high-stakes, widespread, and extended debate, at the core of which is a very simple question, the *nuclear-political question* (NPQ): what political arrangements are needed to preserve security (and liberty) in the nuclear era (Aron 1965; Baylis and O'Neill 2000; Boyer 1985; Deudney 2018; Nye, Allison and Albert 1988; Walker 2012)? This question poses the dark puzzles upon whose successful resolution the fate of states and civilisation, and perhaps humanity, now depend. This seemingly simple question unfolds into a series of questions about actual and possible alternative political arrangements. Unfortunately, beyond the recognition that nuclear explosive technology affords quantities of destructive energy so prodigious as to dwarf all previous instrumentalities of warfare, virtually nothing is agreed upon.

Because the state and state-system have been so predominant in security politics, both before and during the nuclear age, and because states and their rivalries have played such an outsized role in calling nuclear weapons into existence and widely deploying them, much of the debate over the NPQ has focused on the adequacies and limitations of state policies, and more general questions about the adequacy of the state-centric world order, thus marginalising non-state actors and non-state alternatives.

Repair, Reform or Revolution?

Across the Great Debate, answers to the NPQ have tended to largely fall into three rough clusters along a simple spectrum: repair, reform and revolution. All these ways of answering the NPQ have evolved across the nuclear era, and there are many, often visible and heated, debates within each of the schools.

The repair school offers the simplest answer to the NPQ: nuclear weapons, while novel in important ways, do not require major changes in the role of the state and war or world order. The nuclear problem can be adequately dealt with by repairs at the intrastate level of strategy, force structure and policy. The repair school expects the nuclear age to be more or less like the pre-nuclear age in most important respects. They expect, and recommend, that states pursue a time-hallowed approach of deploying and potentially using any available weapon to pursue national security through military strength, threat and coercion. In this way of thinking, nuclear weapons are just another new weapon, one in the long sequence of military innovations. And like their many predecessors, nuclear weapons will be, and should be, countered, or surpassed, by further innovations in weaponry. Nuclear weapons exist and persist because they seem to solve problems which

many states face. Many states see nuclear weapons as a source of security, and many claim that the very enormity of the destructiveness of nuclear weapons will guarantee that they are extremely unlikely to ever be used, thus providing a sturdy and valued basis for great power peace.

While many versions of nuclear repairism proclaim their allegiance to the aim of avoiding nuclear war through deterrence, they recommend deployment of nuclear weapons in large numbers for a wide range of military options (Kahn 1961; Kroenig 2012). Given the nature of international politics, or even of humanity, this path is largely natural and inevitable. Not surprisingly, repairers see most arms control, and especially deep disarmament and nuclear zero, as some combination of failed, unworkable and undesirable. Arms control is difficult to achieve and maintain, and is 'impossible when necessary, and unnecessary when possible' (Gray 1992). Arms control is a distraction from the grim but necessary work of prudently deploying nuclear weapons, as well as a perilous step towards oppressive world government. In many ways, the repair-through-strategy approach has been dominant, as measured by influence on nuclear state policy.

The central idea of the reform school is deterrence, augmented with diplomacy and arms control to stabilise deterrence (Allison, Carnesale and Nye 1985; Brodie 1946; Gallois 1961; Goldstein 2000; Jervis 1984; Morgan 2003; Tucker 1985; Waltz 1990). The basic idea of nuclear deterrence is that nuclear forces, if properly configured, would render the initiation of a nuclear war suicidal and thus very unlikely. Arms control thinkers in the reform school emphasise that simple deterrence is unacceptably dangerous because of accidents, complexity and failures of rationality and speed (Blair 1993; Feiveson 1999). Crises may spiral out of control (Acton 2018; Ball 1982; Lebow 1987; Posen 1991). Nuclear security requires changes in state policy and military force structure, combined with the expansion of mutual agreements among states to resolve conflicts and configure weapons in less threatening ways (Bull 1961; Russell 2003; Sauer 2015; Schelling and Halperin 1961; Tannenwald 2007). The reform programme entails no alteration in the dominant role of states, the character of states or the main features of interstate anarchy. The aim is to moderate and preserve, not eliminate, interstate anarchy and state primacy. During the Cold War, reformist approaches were in continuous clash with the views and programmes of the repair school.

Revolution and NOW

Third is the revolution school and NOW, and its claims that nuclear weapons constitute a material revolution of unprecedented magnitude and that the survival of civilisation (and perhaps the species) depends on achieving major changes in world political order. In this view, nuclear weapons mark a fundamental change in the human relationship with nature. NOW advances a double and coupled revolution argument: there has been a revolutionary change in the nature of things of such magnitude as to require (for survival) a revolutionary change in world political order, and especially the role of the state in it.

In this way of thinking, nuclear weapons are revolutionary in their implications for basic features of world political order, posing a fundamental challenge to the viability of the state as provider of security. The near anarchic state-system must be altered in fundamental ways, and nuclear weapons must be as completely eliminated as possible. Some revolutionists hold that some form of a world government or world state is now needed for achieving security, but others reject world institutions configured as states, fearing a difficult-to-check devolution into an oppressive world totalitarian despotism.

The ideas of the revolution school flourished in the early nuclear era but were largely a marginalised outlier during most of the Cold War. Revolutionary views are less widely reflected in state policy, and less widely held by statist nuclear thinkers. Since the middle 1980s, a new and stronger version of the revolutionary position has emerged. New knowledge of the potentially disastrous impacts of nuclear war on the planet's biosphere, combined with growing awareness of the prospects for the 'leakage' of nuclear capability into the hands of potentially radical non-state actors, became important parts of the case for comprehensive denuclearisation. These developments have been inadequately recognised in many accounts of the nuclear question, are ignored or mischaracterised by reformers and repairers and are in many ways unintelligible to most forms of realism.

One difficulty in thinking clearly about nuclear revolution arguments is that the term 'revolution' has been employed to refer to changes and measures which are better recognised as reforms. In the large, sophisticated and prominent body of argument and debate about the role of deterrence, the adoption by states of deterrence as their core nuclear policy is cast as 'the nuclear revolution' (Green 2020; Jarvis 1989). But within any realistic reading of the scope of nuclear argument, this claim is really a moderate reform.

While NOW perspectives are marginal in the thinking of nuclear states, strong anti-nuclearism has been politically influential, remains a strong presence politically and is in some ways growing (Cortright 2008; Knopf 1998; Wittner 2009). There is a large (and always growing) number of non-nuclear states that could acquire nuclear weapons with reasonable effort (the 'nuclear overhang') but that have renounced nuclear acquisition (Kassenova 2022; Levite 2003; Pelopidas 2015). And several states with nuclear programmes and weapons have completely relinquished them ('reverse nuclearisation'). There has also been a growth in the number and spatial reach of nuclear-weapons-free-zones (NWFZ) (Mpfu-Walsh 2020). The 'Ban Treaty' in which contracting states completely renounce nuclear possession was rapidly negotiated, passed by the United Nations General Assembly, ratified widely, and has gone into force (Daalder and Lodal 2008; Fihn 2017; Meyer and Sauer 2018).

Three Phases of the Great Debate

The debate between NOW and other answers to the NPQ has passed through three fairly distinct phases. This evolution has been propelled by developments in both technology and politics, as well as by conceptual impasses and innovations.

The first phase of the Great Debate, the *Big Bang* phase, stretching from roughly 1945 to 1960, was dominated by revolutionary nuclear one-worldist thinking. In part, this early interest in NOW arguments derived from the widespread expectation that nuclear war would occur in the absence of such a reconfigured world political order and that the time for averting such a disastrous war was very short. It is notable that such thinking flourished and predominated in the years before large numbers of nuclear weapons were built and deployed, before thermonuclear weapons were invented and before the full planetary ecological consequences of a general nuclear war were understood.

The second phase of the Great Debate, the *Cold War Trinity* phase, occurred during the middle and late Cold War and centred on deterrence. Within this framework for thinking about nuclear security, there was a set of basic disagreements that centred around the question of how many nuclear weapons, prepared to do what, were needed to achieve deterrence. On this question, there were fairly sharp divides that coalesced into three fairly distinct schools of theory and practice: *war strategism*, *simple deterrence* and

arms control. The simple deterrence school viewed nuclear deterrence as extremely robust, almost an automatic consequence of the presence of a minimum number of nuclear weapons. But the war strategists and arms controllers saw it as potentially fragile and in need of augmentation, but in diametrically opposed ways.

The project of arms control, as it was understood and partially carried out during the Cold War, has had, at times, a confused and vexed relationship with the revolutionary NOW school of thinking and agenda (Lebovic 2013; Sims 1990). Some, such as Jonathan Schell, viewed arms control as a flawed alternative to deep denuclearisation, but these bodies of thinking and their agendas are better thought of as parts of a continuum, stretching from ‘shallow arms control’ to ‘deep arms control’ (Schell 2000). Both aim to restructure and to reduce use, and the project of ‘lengthening the fuse’ animates both. Some see the nuclear arms control project as inherently limited, because it does not seek to eliminate nuclear deterrence. But, as Jonathan Schell, building on the core notion of Robert Oppenheimer’s early control proposal, clearly articulated, nuclear use is *always* inherently only a few steps away. And the paralysing power of deterrence will persist, in a ‘recessed’ or ‘virtual’ form, in a world without actual nuclear weapons.

The third round in the great nuclear debate, the *Bombs Away* phase, began in the later years of the Cold War and is ongoing (Bracken 2012; Payne 2001; Yoshihara and Holmes 2012). It encompasses arguments that move considerably beyond the state-centric assumptions of the previous two phases and advances proposals that are in many ways quite radical. It assigns great importance to a menagerie of actors beyond states, who were traditionally subordinated to the prerogatives and imperatives of states. This phase is also marked by sharper differences in both understandings of the problem and remedies. Despite this diversity, there is one common feature of the current phase: weakened confidence in the stabilising role of deterrence (Krepinevich, Jr. 2019). Without the deterrence anchor, both war strategism and arms control have become increasingly radicalised, but in diametrically opposed directions: on the one hand towards ‘pre-emptive counterforce’ and ‘limited nuclear war’ scenarios (Acton 2013; Lieber and Press 2006, 2017; Roberts 2016) and on the other towards deep disarmament and nuclear zero.

NOW 2.0

Over the course of the nuclear era, there have been notable changes in both the diagnostic and remedy arguments of the revolutionary NOW school, which cumulatively and in combination make another version of NOW. In subsequent sections of this chapter, I explore several of these arguments, but before doing so, it is useful to briefly note six important ways in which the denuclearisation case and NOW have strengthened.

First, the harm of nuclear war is greater than previously thought because new knowledge from Earth System science shows the likely damaging impacts of a large nuclear war on the planetary biosphere and geophysical system would range from the severely catastrophic (many billions killed) to the existential (human species terminated—along with numerous other species).

Second, the Cold War historical record shows the probability of a major nuclear war was significantly higher than previously thought. New information made available over the last several decades indicates that the Cuban Missile Crisis of 1962 (previously widely recognised as ‘the most dangerous moment in world history’) came much closer to the use of nuclear weapons than previously thought (Blight 1992; Plokhly 2021; Sherwin

2020; Stern 2003). This record points to the centrality of ‘dumb luck’ in averting what Kennedy called ‘the ultimate failure’ (Lebow and Pelopidas 2023).

Third, the historical record also suggests the probability of nuclear detonations is higher than previously thought because of the occurrence of accidents involving nuclear weapons (‘broken arrows’) and their delivery and control systems (Perrow 1984; Sagan 1993; Schlosser 2013; Sokolski 2014).

Fourth, the historical record, combined with extensive thinking about the frailties of human beings and their limited capacities for reason (cognitive, emotional, social), suggests that nuclear war is more likely and that nuclear war is more likely to be uncontrollable (Erickson *et al.* 2013; Kull 1988; Lebow and Stein 1986; McDermott 2017).

Fifth, the probability of nuclear weapons use is higher than previously thought because of the potential for nuclear capabilities to leak from states into the hands of a potentially large number of non-state actors with plausible motives to employ them (cults, national and international revolutionary movements, coupists, criminal gangs, accelerationists, and anarchists) (Ferguson and Potter 2006; Ikle 2006; Willrich and Taylor 1974). The response requires international ‘counter-terrorism’, policing and intelligence cooperation. State anti-terrorism has significant ‘liberty fallout’ erosive of many individual rights (Ayres 1975; Scheppele 2006).

Sixth, building and maintaining the nuclear annihilation apparatus has had significant institutional costs by making states monarchic and despotic, more secretive and less subject to democratic accountability (Dahl 1985; Deudney 2010; Scarry 2013).

One-Worldism, Globalism and Planetary Earth

To see the core logics and unity of NOW as an answer to the nuclear question, it is essential to see NOW as embodying a far broader civilisational ‘one world’ or ‘globalist’ and ‘planetary’ world view which has, over several centuries, emerged, and become a powerful presence virtually everywhere. Its basic insight is that a cascade of technological super-empowerments, occurring in the finite and fixed space of planet Earth, have produced a massive ‘collapse of distance’, and thus an overall human situation marked by high levels of interaction, interdependence and mutual vulnerability. Along with NOW, multiple other ‘one-worldisms’ have emerged, most notably biospheric (‘catastrophic environmentalism’) and informational (‘noosphere’, ‘world brain’ and ‘global electronic village’), as well as a ‘space one-worldism’. Each is elaborately developed, rapidly evolving and organic to ongoing world order-building projects for these objects and domains.

The human world has been becoming global and planetary for a long time, and in many ways. A universalist ‘one world’ insight had existed aspirationally, in ethical cosmopolitanisms and in some religions, which were present, but never dominant, in pre-modern societies. Notions that the Earth as a whole had been created by supernatural divine actions suggested the presence of basic unity. And the slow spread of humans across the terrestrial Earth was the first and longest practical globalisation.

The early modern Copernican revolution produced a global conceptual revolution by establishing that humanity’s many and far-flung abodes were all parts of one object, globular in shape, which was also a planet, a wonderer, racing through a staggeringly vast void and isolated from other global worlds by vast distances. This shift in practical material world view also helped trigger another rapid conceptual and practical globalisation in a multi-century burst of further geographical exploration on and off the planet, providing detailed maps of the fuller Earth within which humans and their activities were situated.

Early modern Europe also gave birth to modern experimental science and the systematic application of this knowledge to invent new technologies and build new machines to serve human ends. The early applications of this new way of proceeding greatly augmented the power of one group in Europe, triggering a wave of global-scope imperialism, colonialism and exploitation (Abernathy 2000; Headrick 2010). Then, in the long 19th century, the Industrial Revolution, with the Europeans and their settler colonies again leading, triggered both another wave of imperial expansion, as well as the vast increase in the destructiveness of the chronic intra-European wars, culminating in the ‘total war’ destructions of World War I and II. Then, in the middle years of the 20th century, there was another burst of revolutionary technological advance, with nuclear weapons, powerful rockets and satellites, digital computers, and the beginnings of genetic engineering, a burst roughly coincident with a ‘great acceleration’ in economic activity, energy use and population growth, and their resulting biospheric devastations. Because of the magnitude of these empowerments and accompanying enlargements in the spatial range of human activities, it is appropriate to refer to the resulting overall situation as planetary rather than global.

It is notable that in attempting to make simple characterisations of the new situation in ways relevant to appropriate new world order building, many analogise the new bigger world with the familiar small spaces, places and objects, most notably the ‘global village’ and ‘spaceship Earth’ (Pemberton 1991; Rosenboim 2017). The unmistakable message is that we humans are all now ‘in the same boat’ in which we will sink or swim largely together. And these images of the human situation as small, crowded and dependent on complicated machinery and good navigation point to the imperative to ‘act globally as we had previously acted locally’ and to build new architectures of political restraints matched to the new technological super-empowerments. In sharp contrast, anarchy in homes, villages, neighbourhoods, and ships, especially when combined with super-empowered weaponry, emerges as catastrophically dangerous. Just as no one would bring assault weapons to a business meeting, fill one’s home with crates of dynamite or place powerful howitzers in their back yard to blast neighbours, so too nuclear weapons have no place on planet Earth.

In this situation, previously domestic and municipal-scale forms of government are appropriate. In reconfiguring the planetary megaviolence part of the anthroplex for nuclear security, familiar measures such as zoning ordinances, building codes, appliance safety standards, pollution control regulations, and eminent domain are useful models. The Armageddon gadget, a material artefact with planetary scope, is a ‘public works’ infrastructure, but one irrationally built for quick civilisational self-demolition. Comprehensive nuclear dewatering requires this odd and insane thing, this infrastructure-for-suicide, be dismantled and its parts and places re-assembled very differently.

Multiple Superpower Technological Revolutions

The story of very recent revolutionary scientific and technological advances related to actual nuclear developments only begins with nuclear weapons and extends to several other recent bursts of change—in scientific understandings of the natural and material world, in the institutionalisation of discovery and invention and in transport and communication technological capabilities and spatial expansions—that are large enough to be appropriately recognised as revolutionary. The arguments of NOW in the Great Debate, the course of actual nuclear material and political history and the case for (and contours of) deep arms control are unintelligible without taking into consideration this broader horizon of material transformation.

In addition to the nuclear revolution in the volume destructiveness, there have been revolutions in transportation (long-range aircraft and ballistic missiles) and information (computers, satellite observations and ‘accuracy revolutions’). The actual Armageddon gadget, what is commonly called nuclear ‘force structures’ and their ancillary supports, is an amalgam of information, transportation and nuclear artefacts and infrastructures.

Rapid developments in aeronautics and astronautics have altered the *velocity* of violence in revolutionary ways. Across the first half of the 20th century, the speeds of human transportation machines leapt—railroads to ballistic missiles—some four orders of magnitude. With ballistic missiles, everywhere was potentially and rapidly accessed from anywhere within less than an hour. When the superpower states coupled the immense destruction of nuclear weapons with extremely rapid planet-scope transportation capabilities, they dramatically altered their time horizon for mobilisation and response, a situation in which ‘there will be no time’ (Borden 1946). And revolutionary advances in technological abilities to gather, transmit, process, and employ information have produced enormous expansions in volume, velocity and spatial reach. With the militarisation of the electromagnetic spectrum, particularly radio waves, the tendrils of the war machine have become completely all-enveloping.

Taken together, these new capabilities have produced a major expansion in the spatial extent of the violence megamachine, what amounts to a geographic revolution, another shift from global to planetary scope. As battlespace for great power war became planetary, the security of territorial state came to hinge almost entirely on violence machines deployed in the vast fluids, airs and voids of the planet. States were haunted—and attracted—by the possibility that one state might militarily dominate these spaces and establish an imperial hierarchical abolition of interstate anarchy.

What are the implications for arms control order building of the fact that actual nuclear force structures are a complex artefactual system incorporating the products of adjacent empowerment revolutions in destruction, transportation, information and invention, and employing the planetary spatial enlargement of battlespace? To start, what is commonly referred to as ‘nuclear arms control’ has never been about the direct control of nuclear weapons but rather mainly about their transportation systems and their spatial deployments (nuclear-free zones, domain bans for Antarctica, orbital space, and celestial bodies). The main U.S.-Soviet nuclear arms control measures were mainly about the control of ‘nuclear delivery systems’. And among delivery vehicles, ballistic missiles have been of first importance, followed by long-range aircraft (Deudney 2020). As such, arms control has been attempting to control, or at least circumscribe, the revolutionary leap in the velocity and spatial reach of violence. These facts suggest that the neglected agenda of zero ballistic missiles (ZBM) deserves more analysis and prioritisation (Frye 1992).

The Earth System Science Revolution and Biospheric Nuclear Vulnerability

Perhaps the single most important new feature of recent NOW thinking has been its incorporation of a new understanding of nuclear war as a biospheric phenomenon. Over the course of the last two centuries, understanding of the natural systems of the planet has greatly improved. These new discoveries about the Earth, and about the growing human effects on the Earth, have catalysed a fundamental revolution in Earth science and amount to a re-discovery of the Earth. This advance in geographical knowledge about the contours of nature is comparable in its magnitude to the early modern Copernican revolution, which firmly established the globality of the Earth and its identity as a planet.

This scientific revolution in knowledge about the Earth System led to discoveries of new ways in which a nuclear war would be far more harmful than previously understood. In effect, an immense new vector of global/planetary vulnerability was discovered. The new Earth System knowledge revealed that a major nuclear war would be an act of assured suicide via biospheric assault and murder. The features of this scientific revolution and its nuclear-relevant implications can be briefly summarised.

First, it is interesting to note that investigations of the geographies of the newly opened planetary battlespaces (enabled by rocket transportation, satellite information gathering and computer modelling), producing the discovery of major secondary effects of nuclear weapons and the discovery of the features of the climate system, have been entangled in fundamental ways from the beginning. Knowledges of the secondary effects of nuclear weapons—fallout, electromagnetic pulse, biospheric collapse and nuclear winter—all were based on new understandings of the biosphere and climate (and orbital space). The U.S. military during the Cold War funded a great expansion in the Earth sciences in order to track radionuclides produced by nuclear detonations and to gain a better understanding of how to operate on the expanded planetary terrains—and potential battlespaces—opened by the rocket transportation revolution.

From the beginning of the nuclear age, the notion that nuclear war would potentially eliminate humanity had been widely voiced. In the early Cold War, it was the externalities from the nuclear weapons testing, most notably ‘fallout’, the dispersal of carcinogenic radionuclides into all parts of the biosphere, that caused widespread concern. These discoveries and public knowledge about them have been widely recognised as catalysts for the negotiation of the Limited Test Ban Treaty of 1963 (Higuchi 2020; Jacobs 2022). But aside from the immediate blast effects and the lingering radiation, it was unclear how a nuclear exchange might actually produce human extinction. In the 1970s and 1980s, scientific understandings of the likely effects of nuclear war took major steps forward. Researchers began to realise that nuclear war would produce major effects on the biosphere, leading to the collapse of the habitability parameters that humanity had both taken for granted and been ignorant of.

Even before they were invented, the ability of nuclear explosions to produce enormous quantities of heat, blast effects and fires had been well understood, and indeed was the reason they were invented, at such great cost, in the first place. Trinity, Hiroshima and Nagasaki abundantly confirmed the anticipations of their creators. But then scientists discovered two other unanticipated and secondary side effects of nuclear explosions stemming from the fires they ignite (Eden 2004).

In the 1970s, scientists discovered the possibility of civilisational collapse through the combustion by-products (especially nitrogen oxides and particulate matter, soot) of numerous nuclear detonations and their resulting fires. The injection of these substances into upper layers of the atmosphere would probably dramatically reduce the protective film of ozone in the stratosphere that naturally blocks out harmful forms of ultraviolet radiation. Unshielded, the sun’s radiation would cause blindness throughout the animal kingdom, the destruction of microorganisms at the base of the oceanic food chain, and massive increases in human cancer rates. These discoveries, synthesised in reports by the U.S. National Academy of Sciences, received wide attention, notably in the work of the *New Yorker* writer Jonathan Schell in *Fate of the Earth* (National Academy of Sciences 1975).

In the 1980s, another related grave biospheric vulnerability to nuclear war was discovered. In part by studying other planets and in part by studying the global climate effects

of several major volcanic eruptions, atmospheric scientists came to understand the immense influences of sun-blocking atmospheric dust on global temperatures. Calculations (often made on powerful computers built for modelling nuclear explosions) indicated that soot produced by the fires of numerous burning cities would create a ‘nuclear winter’, in which the surface temperature in the interiors of the continents would fall significantly for at least several years, devastating plant and animal life and food production (Badash 2009; Ehrlich *et al.* 1984; Grinspoon 1986).

The revolution in Earth science, significantly spawned by the military questions and resources, has produced knowledge which subverted the appeal of nuclear weapons, a quite unwelcome finding to the nuclear military and state (Furchette and Roberts 2014; Hamblin 2013). Military funding did not corrupt science; rather, new scientific knowledge severely undermined the appeal of the military’s ‘absolute weapon’ and the vast organisational and material deployments ready to employ it. In the simplest terms, the military sent scientists to find new information to assist in the conduct of warfare in new environments. The scientists came back with the finding that a general war would be significantly suicidal in character, not from some assured retaliation of a well-armed nuclear adversary, but from the inescapable ‘retaliation’ produced by the natural systems of the planet. Aiming to better expand the spatial scope of battlespace to the vast fluid commons of the planet, the military-sponsored research which discovered that human survival required severely circumscribing the instrumentalities for conducting general war. Even though the military innovation project could not effectively weaponise the larger geophysical and biophysical features of the planet—despite serious efforts to explore such possibilities—these parts of the planet were already parts of the ‘kill chain’ of large-scale nuclear destruction. SAD (Self Assured Destruction), in addition to MAD (Mutually Assured Destruction), were realities of the nuclear Earth. Overall, the implications of new Earth knowledge for the practice of war and for viability of long-established state approaches to providing security have greatly strengthened the revolutionary answer to the NPQ. With the coming of industrial violence, ‘war is too important to be left to the generals’, as Clemenceau famously proclaimed. With the coming of planetary habitat vulnerability, nuclear war is too important to be left to states.

Scientific-Technological Modernity, the ‘Invention of Invention’ and Weaponisation Races

It is not accidental that so many revolutions in understanding nature and in building powerful technologies have emerged so quickly. These advances have resulted from a more general change in the relation between science and technology and human society, often expressed as the ‘invention of invention’. Of course, the entire record of human history, and especially military history, has been marked by technological discoveries and inventions, sometimes with major consequences. But until the Enlightenment and its spread and deepening, scientific research and technological innovation were very slow, minimally resourced, poorly institutionalised, and largely accidental. A signal institutional feature of modernity, accelerating and broadening with the Industrial Revolution and then exploding in the 20th century, has been the development of large, well-funded and staffed organisations devoted to making technological advances. This trend has been particularly pronounced for military purposes. During the Cold War, both the United States and the Soviet Union embraced technological advances as essential to achieving security (as well as material progress generally), and their rivalry produced a succession

of major military technological advances (Evangelista 1989; Kaldor 1981; Oreskes and Krige 2014; Rubinson 2016; Weinberger 2018).

Rapidly advancing technology creates a future horizon of fear, a steady succession of new dilemmas, uncertainties and choices, and the general sense that both sides are trapped on an escalator of violent empowerment that they can neither abandon nor effectively control. Despite extensive and increasingly sophisticated efforts of ‘technological forecasting’ (which technologies will become possible?) and ‘technology assessment’ (what are the second-order, indirect consequences of deployments?), the future remains significantly and recalcitrantly opaque, condemning arms-racing states to paths with difficult-to-foresee consequences. And every arms control accomplishment, no matter how politically strenuous to achieve, is confronted with chronic, almost planned, obsolescence.

NOW and the End of the Cold War

Another part of the historical story of NOW is the influence of these ideas on the end of the great Soviet-American Cold War (Deudney and Ikenberry 2011). The reasons this conflict ended when and how it did are many and remain subject to vigorous debate among historians and political scientists. But several key facts about this great historical juncture are widely accepted. It ended very quickly and unexpectedly peacefully. Its settlement was centred on a set of far-reaching arms control and disarmament treaties. Also largely beyond debate are the central roles played by the Soviet leader, Mikhail Gorbachev, and the American president, Ronald Reagan. There is strong evidence that NOW ideas catalysed and guided the extraordinary Gorbachev-Reagan diplomacy and shaped the settlement.

A focal point for all accounts of the end of the Cold War, and the influence of one-worldist ideas, is Gorbachev and his like-minded colleagues and advisers. The Gorbachev group believed that the Soviet Union was a woefully inadequate realisation of the promises of Soviet-Marxist political thought. To bring reality closer to the ideal, they embarked upon major reforms, domestically and in international affairs. Gorbachev’s new foreign and security policy, known as ‘New Thinking’, articulated a straightforwardly one-worldist understanding of nuclear (and environmental) perils and the need for major changes in world political order. This new agenda for world order verged on the revolutionary: nuclear arms control and disarmament should be rapidly pursued to complete elimination. The United Nations’s capacity to resolve conflict, keep the peace and solve problems of interdependence should be dramatically expanded. For the first time, the leader of the most heavily armed nuclear state articulated, and acted upon, a strong version of the one-worldist thinking and programme for political change. This was a radical shift for the Lenin-Stalin regime, built through mass repression and war (Zubok 2007).

One foundation for Gorbachev’s ‘New Thinking’ were innovations in Soviet-Marxist theories of historical and dialectical materialism (Shenfield 1987). The leaders who built and ruled the Soviet state placed great importance on getting ideology right and acting vigorously to implement its dictates. During the Gorbachev era, the official version of Marxism in the Soviet Union shifted significantly because of new, scientifically established facts about nuclear weapons. Where Marx and his many followers had emphasised the centrality of class and class conflict, the new version posited the human species as the universal class whose interests were to be protected and advanced. In simplest terms, the ‘material forces’ had been revolutionised by technological advances in weaponry and

required a significant reorganisation of the ‘superstructure’ of political relations, institutions, and ideologies. With this updated, globalist historical materialism, the Communist Party and its leaders would continue to play their role as the vanguard of human progress and modernity on the largest scale.

Soviet NOW was also advanced by leading Soviet scientists who were globalists. Extremely secretive, the Soviet state closely regulated information flows and travel opportunities. But because of the strong Soviet commitment to scientific and technological progress, scientists and engineers were esteemed, privileged and often influential. Many leading Soviet scientists, including physicists prominent in nuclear development, most notably Evgeny Velikhov, head of the Soviet Academy of Sciences and Gorbachev’s science adviser, participated in international scientific conferences and exchanges. At Pugwash events, they exchanged arms control ideas with leading Western physicists, many also prominent in weaponeering (Pugwash’s influence was acknowledged internationally with the Nobel Peace Prize in 1995 [Evangelista 1999]).

It takes two to tango, and almost miraculously, Reagan was ready to dance, to the dismay and disbelief of many. Reagan’s strong anti-nuclearism, not prominent in his long career as a hard-line anti-communist, first appeared in his activist leadership in the Los Angeles peace movement of the late 1940s and was re-ignited in the 1980s by dangerous nuclear developments and the mass anxieties and movements they triggered, making him the ‘Manchurian candidate’ of the global anti-nuclear movement (Lettow 2005; Mann 2009; Taubman 2012).

From Classical NOW and World Statism to Republican-Federal NOW and Whole Earth Security

Turning from the diagnostic side of NOW to its visions of world order remedies, there has been a significant evolution from NOW 1.0 to NOW 2.0.

NOW thinkers in the first phase of the Great Debate almost all thought nuclear security required a world state (Craig 2004; Deudney 2007; Herz 1959). The American analyst and chronic intellectual extremist James Burnham provides an ‘imperial NOW’ with his proposal for the United States to employ its early monopoly of nuclear weapons to quickly destroy the Soviet Union and then form a world government. The members of the Chicago Committee to Draft a World Constitution came up with ‘maximal world federal NOW, urging the creation of a full-blown, liberal democratic, federal constitutional state’. Others, ‘minimal world federalists’, urged the creation of a state possessing nothing but a monopoly of nuclear weapons to keep the peace among states. The eminent realist thinker Hans Morgenthau argued that a world state was necessary but not possible until a world identity analogous to nationalism in states emerged, making for ‘tragic NOW’. All NOW world state thinkers were acutely aware of the danger of a world government becoming a dark-end-of-history despotism. They proposed a large number of institutional ‘checks and balances’, but none seemed strong enough to rely on, and thus they reached something of a conceptual impasse (Deudney 2019).

The general tendency of subsequent NOW thinking has been away from world-state solutions and towards much more decentralised and horizontal architectures of restraints. In one version of such recent thinking, I have elsewhere proposed what I refer to as a modified, or ‘Republican-Federal NOW’, in which architectures and theories of institutional restraint drawn from republican theory and practice are employed to conceptualise and design authoritative but non-state, world security orders (Deudney 1995a, 2000).

Instead of building a world state and then figuring out how to control it, the path would be successively deeper steps of arms control and disarmament. Institutionally, this would take the form of a *planetary nuclear republican constitutional union* designed to be explicitly as much an avoidance of hierarchy as of anarchy. Such a nuclear union would not institutionalise anything resembling a world statist government. Instead of aggregating nuclear capacity in the hands of one actor, a world nuclear constitutional union would specifically proscribe any actor from possessing deployed nuclear weapons. Ideally, this union would prohibit any international and intergovernmental organ from possessing more than the most residual capacities for violence. The union codified in such a nuclear constitution should be confederal, not federal, meaning that explicit options for withdrawal would be included.

In thinking about the possible key features of such a world security order, the concept of ‘whole earth security’ (WES) is also useful (Deudney 1983). By this I mean a political order focused solely on the regulation of superpower capabilities, to be achieved by the strategic neutralisation of the extraterritorial realms of the planet, and the joint regulation of the full chain of steps in superpower weaponisation, coupled with the political arrangements to operate and sustain such a set of material re-configurations.

Realist thinkers have often analogised states as billiard balls of varying sizes, which bang against one another in the permissive environment of international anarchy. Advocates of moderating international anarchy with measures such as public international law, international organisations and regimes often analogise their enterprise as one of slowly immobilising state violence by weaving nets of restraint, progressing through cobwebs, strings, ropes and metal cords. The main diagnostic claim of NOW is that the nuclear and related revolutions have, in an instant, transformed the ‘hard shell’ billiard ball state into eggs, fragile and subject to catastrophe from collisions. The WES insight is that this process should seek not a bigger billiard ball but rather an egg carton-like structure of superpower and extraterritorial dewatering.

Elements of a WES System

Four clusters of nuclear security measures are key parts of a WES system. First, at the centre of a WES regime is a new order for nuclear fissionable material. Without this material, nuclear weapons are impossible. And there is a surprisingly small total amount of fissile uranium and plutonium, roughly enough to fill to the rafters of a high school basketball gymnasium. And this material has very distinctive physical properties, most notably its routine and detectable radiological emissions. The various proposals for a Fissile Material Cut-Off Treaty (FMCT) provide the essential starting package: a full global inventory, then cession of further plutonium production (and reductions in uranium enrichment) (Feiveson *et al.* 2014). The implementation of such measures would be a step to ‘nuclear zero’, but there are several quite different visions of a ‘zero nuclear world’ (Paul 2012; Perkovitch and Acton 2008; Schultz *et al.* 2008; Steinberger, Udgaonkar and Rotblat 1993).

One path, always available in principle, would be to create a guardianship military apparatus with global scope, and with a complete monopoly of the residual nuclear capability. Another direction would burn (in reactors) or bury deeply the residual. Both these paths would probably be strenuously resisted by nuclear states. A more appealing alternative would be to establish a nuclear ‘recessed deterrent’ or ‘virtual arsenal’ force structure. After all deployed nuclear weapons were dismantled and the total quantity of fissile material significantly shrunk, residual capacities to reconstitute nuclear weapons would

be elaborately preserved in isolated and massively hardened sites with robust anti-aircraft and missile defences. These facilities would be alike across all the member states and would be subject to extensive mutual monitoring. The ‘around zero’ force structure would be essentially designed to ‘lengthen the fuse’ to increase the amount of time separating the decision to *use* nuclear weapons from the ability to *have* nuclear weapons (Mazarr 1995; Schell 1984, 1998). This reconfigured nuclear force structure also would be configured for what engineers and designers refer to as ‘graceful degradation’.

Second is a cluster of test bans and ‘open labs’ measures to deal with the problems posed by the relentless rapidity of technological innovation arms racing and its project of finding and making ever better ways to destroy and kill. Some of the most effective arms control measures have been test bans, which hobble both development and deployment of new weapons. But to really cork the kill-tech genie bottle, restraints should be placed earlier in the sequence of steps stretching from basic scientific discovery, through technological innovation, to deployment. One simple measure would be to build a global regime in which all states publicise the results of their tests or, even better, only conduct tests on a fully cooperative basis with all other states.

Making such restrictions effective would require versions of the ‘open labs’ proposal, advanced by Niels Bohr in the early nuclear era (Bohr 1950; Rabinowitch 1959). Remarkably, despite the tremendous potential military applications of basic scientific research, the conduct of scientific research across the international system is still significantly ‘open’. Preserving and extending this open information system should remain a high priority. As throughout the Cold War (e.g., the IGY and the ISS), cooperative large-scale scientific projects are an effective way to bolster open science. The Antarctic Treaty regime of disarmament combined with open science, with short-notice visits for verification, is a model that should be expanded and employed in Lunar and Martian exploration. Pushing the openness regime a further step back in the ‘kill supply chain’ into the weapons design and testing steps is obviously radical from the standpoint of current practice and thinking, but, once implemented, could become regularised and institutionalised as just another part of ‘how things are done’.

A third set of nuclear-secure world order measures are institutional. Once the bomb is shrunk and decoupled from rapid delivery systems, the time made available by the reconfigured material infrastructure should be exploited by establishing more institutional checks and balances on the nuclear-use decisions, replacing the current despotic nuclear command arrangements. The decision would be in the hands of ‘concurrent authorities’ (meaning that more than one actor would be in the decision loop [Raven-Hansen 1987]). And through a process of *correlative constitutionalism*, states would make parallel alterations to their domestic constitutions, producing a mutual restraint arrangement without building and empowering a general enforcer of restraint. To further inhibit violations of the nuclear constitutional order, criminal law would be made universally applicable to all individuals, meaning that ‘sovereign immunity’ would be partially peeled back, exposing all state leaders and operatives to personal criminal liability. To enforce, uniform standards of policing would be established, and universally accessible courts, with universal jurisdiction on regime-related matters, would also be constructed (Waskow 1963).

Fourth, a nuclear-secure world order should include specifically configured educational systems, as well as ceremonial and ritual activities. These measures would combat nuclear forgetting and compensate for the ‘out-of-sight-out-of-mind’ character of nuclear weapons and destruction (Deudney 1995b; Mitchell 2021; Weart 1988). The members of the constitutional union of nuclear power restraint should agree to institutionalise in

their educational systems parallel bodies of instruction about the realities of nuclear weapons and the consequences of their use. Leaders of the members of the union would take oaths and periodically gather and ritually and ceremonially pledge their allegiance to the provisions of the union's constitution. It might even be valuable to periodically cooperatively and ritually detonate a nuclear weapon in some remote place, configured for those with nuclear authorities and responsibilities to sit as close as minimally safe.

Another feature of this vision of a world nuclear security order is that parts of it can be built directly by the states that are currently nuclear-weapons-free and supporting the nuclear ban treaty. These states could start implementing anti-nuclear educational, ceremonial and ritual measures among themselves and then invite and pressure the nuclear states to join them.

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2 Psychological and Societal Sources of Nuclear Peace

Jeffrey W. Knopf

At of this writing, more than 77 years have passed since the United States dropped atomic bombs on the Japanese cities of Hiroshima and Nagasaki. In the years since 1945, no state or other actor has carried out an attack using nuclear weapons. What accounts for this absence of nuclear war? And just as important, can this condition of what, with caveats, could be called ‘nuclear peace’ be maintained?¹

Scholars have offered several explanations for the non-occurrence of nuclear war. Without rejecting any of these, in this chapter, I will argue that existing explanations are incomplete. I will propose that there are crucial psychological underpinnings of nuclear peace, which at times are promoted or reinforced by societal factors. Specifically, I will suggest that a combination of fear and hope is necessary to reduce (though not eliminate) the chances of nuclear weapon use. Further, activities in civil society have helped create the necessary psychological conditions and will continue to be needed in the years ahead.

These psychological and societal sources of nuclear peace are only becoming more important. In response to the dangers posed by nuclear weapons, the world developed international institutions and informal norms that helped provide global governance of nuclear issues. But recent trends are not good; the nuclear order is under increasing stress (Bollfrass and Herzog 2022; Knopf 2022). At a time when global governance of nuclear weapons is eroding, the contributions to avoiding nuclear war made by psychological and societal factors must carry more of the weight. This is not, however, grounds for complacency. On the contrary, it will be crucial to strengthen global governance of nuclear arms; even better would be to find a path to abolition of nuclear arms. But recent geopolitical trends are not favourable for achieving nuclear disarmament in the near term. Hence, at present, it has become necessary to shore up the psychological and societal sources of nuclear restraint as a stopgap measure to try to maintain nuclear peace while working to improve global governance arrangements and increase the momentum towards nuclear disarmament.

This chapter is organised as follows. It first reviews existing explanations for the absence of nuclear war and argues they cannot fully explain this fortuitous result. The chapter next outlines psychological factors that contribute to restraint. It emphasises the importance of leaders having a healthy level of fear of nuclear war, combined with the hope that nuclear catastrophe can be avoided. The following section notes how civil society has contributed to creating fear and hope. A concluding section relates the analysis to global governance and offers recommendations for future action.

Existing Explanations for Nuclear Peace

Scholars have offered several possible explanations for the absence of nuclear war. The supposed deterrent effects of nuclear arsenals remain the most commonly cited factor (Waltz 1990). Others have suggested that non-use is less a function of deterrence than an absence of situations in which nuclear arms would have tactical utility in conflict (Mueller 1988). Still others argue that a strong norm, a nuclear taboo, is the primary reason for the non-occurrence of nuclear war (Tannenwald 2007). For other observers, none of these explanations is convincing, and they attribute the non-use of nuclear weapons to sheer luck (Pelopidas and Wellerstein 2020; Sherwin 2020).

I do not dismiss any of these factors; I believe each accounts for a portion of the explanation for non-use. But neither singly nor collectively can they fully explain more than 75 years of nuclear peace. This is so for two reasons. First, each explanation is imperfect; we should not expect any hypothesised cause to be 100 per cent reliable in preventing any use of nuclear weapons. Second, each explanation is incomplete. None can explain why national leaders would hold the beliefs required by the hypothesis. Why, for example, would leaders see nuclear weapons as a deterrent too powerful to ignore? Why would they decide that nuclear arms lack military utility, or that there should be a norm against first use or that incidents that raise the possibility of nuclear escalation require leaders to do everything in their power to step back from the brink? We need to explain the caution associated with each explanation. The hesitation about using nuclear weapons is all the more striking given that most states with nuclear arsenals continue to modernise and in some cases increase their forces, suggesting they do not see ongoing possession as itself a source of unacceptable risk. How then has the maintenance of nuclear arsenals so far coexisted with the absence of use? And can this state of affairs continue?

Consider each explanation for non-use in turn. There are good reasons to believe that nuclear weapons have strong deterrent effects. In normal circumstances, it is hard to imagine that any state would make aggressive moves that threaten the survival of a nuclear-armed opponent; what could the challenger gain that would outweigh the costs of possible nuclear retaliation? But there are also good reasons to doubt that any deterrent posture will prove 100 per cent effective. States can initiate lower-level challenges in the belief they can control the risk of escalation, only to find the situation begins to spiral out of control in ways that lead to possible nuclear use (George and Smoke 1974).

In addition, states will not always make the kinds of rational calculations assumed by theories of nuclear deterrence. Military organisations can follow rigid routines that leaders above them are not aware of, and these can lead to dangerous developments in a crisis that increase the risk of states launching nuclear strikes (Sagan 1993). Furthermore, the predictions made by rational actor models can be undermined by many well-documented sources of misperception (Harrington and Knopf 2019; Jervis, Lebow and Stein 1985). Given the multiple factors that can subvert expectations of rationality, we cannot count on nuclear deterrence to remain for the rest of history fully effective in preventing any use of nuclear weapons.

The argument about an absence of military utility similarly does not provide a full explanation for nuclear non-use. Although there are few circumstances in which a tactical nuclear strike can achieve a military objective that conventional arms cannot, some situations could create a temptation to consider a nuclear option. Why would a nuclear-armed state risk possibly losing a war against a non-nuclear adversary when it might change the tide of the war with a narrowly targeted nuclear strike? After its invasion of

Ukraine bogged down, Russia hinted that it would consider using tactical nuclear weapons rather than accept defeat. And there is historical precedent. The United States considered possible nuclear use in the wars in Korea and Vietnam (Tannenwald 2007). And after 9/11, when Osama bin Laden eluded U.S. efforts to capture him in Afghanistan, some strategic analysts suggested that low-yield, earth-penetrating nuclear warheads could have been used to eliminate bin Laden and his forces while they were hiding in the caves of Tora Bora (Bell 2008).

The notion that nuclear arms never have tactical utility risks becoming circular. If the weapons are not used, it must be because they were not militarily useful. But the fact that possible use has been considered and debated, and that the United States and other countries have fielded what they view as potentially usable tactical devices, shows that the issue of utility is not so clear-cut. Nina Tannenwald (2007) has demonstrated convincingly that governmental debates over possible-use scenarios end up rejecting the nuclear option because of the belief that this would violate a norm against use and lead world opinion to turn against the state that launches a nuclear strike in any scenario other than a retaliatory second strike.

But the nuclear taboo also cannot fully account for non-use. Critics have argued that the norm is not as strong as the word ‘taboo’ suggests (Paul 2009). There is also evidence that the general public does not share in the sense of nuclear use as taboo (Press, Sagan and Valentino 2013). More to the point, states do not always respect international norms. Among nuclear-armed states, the North Korean regime, which sees the United States as an existential threat, has not been shy about broadcasting threats to use nuclear weapons in response to any challenge to the survival of the Kim regime (Smith 2022). A strong norm against use would also logically imply that states exercise restraint in threatening to launch a nuclear strike. But when Russia began its invasion of Ukraine, President Vladimir Putin issued an obvious nuclear threat in an effort to deter possible Western intervention to help Ukraine. And Putin and other Russian officials subsequently repeated nuclear threats on multiple occasions (Sanger, Troianovski and Barnes 2022). Although U.S. rhetoric has not been as overt, the United States has never embraced a no-first-use policy, and nuclear postures adopted by the George W. Bush and Donald Trump administrations envisioned a range of scenarios beyond a retaliatory second strike in which the United States might use nuclear weapons. Given repeated and seemingly growing challenges to the norm against being the first side to use nuclear weapons, even Nina Tannenwald (2018) has concluded that the nuclear taboo is getting weaker. The norm, although essential, cannot be counted on to fully rule out any chance of nuclear war.

A final common explanation for the absence of nuclear war puts the emphasis on good luck. This perspective points to the many close calls the world has experienced which fortunately did not escalate to nuclear use. These include false alarms, accidents, dangerous and unexpected incidents during crises, and erratic or impaired leaders who might have tried to order nuclear attacks in a moment of madness (Lewis *et al.* 2014; Sagan 1993). Martin Sherwin (2020) recounts how the essentially random assignment of Capt. Vasily Arkhipov to a particular Soviet nuclear submarine likely prevented the Cuban missile crisis from turning into World War III when Arkhipov convinced his submarine commander not to go through with an order to launch a nuclear torpedo. This explanation has rather different implications from the first three. To argue that it has been a matter of luck that we have so far dodged nuclear Armageddon does not offer any reason for confidence that this condition could continue indefinitely. As Benoît Pelopidas (2017) has pointed out, leaders tend to draw false confidence from the past track record of luck,

as if good luck in previous close calls means that good luck should be expected again the next time nuclear dangers rise. But luck is random. The next time an accident, false alarm or unexpected incident pushes leaders closer to the nuclear brink, instead of good luck, the world could just as easily experience bad luck. The argument that the world has so far been lucky does not provide any reason to expect that nuclear peace will continue to prevail.

Begging the Question: The Psychological Microfoundations Underlying Existing Explanations

The most popular explanations for nuclear peace all shed some light on how the world has avoided nuclear war, but none of the hypothesised causes is foolproof. Each allows for some possibility that nuclear weapons could be used. In addition, each explanation rests on assumptions that cannot be taken for granted. They each assume that political and military leaders will think in certain ways, but the required modes of thought are not automatic.

Why are policymakers deterred by nuclear weapons, especially if they think there are strong norms that would inhibit others from following through on nuclear threats? Why do decision-makers and military planners see so little utility in using nuclear weapons on the battlefield? Why would states embrace a norm that limits their options and can probably never be enforced? Why would accidents and false alarms induce efforts to de-escalate a crisis rather than convince a state to launch its own weapons before the other side can complete an attack that appears to have begun?

Any explanation for non-use depends on psychological underpinnings that affect how leaders think and act, and these need to be examined. All of the existing explanations assume leaders view nuclear use as a danger to be avoided, but there is no reason to assume this will necessarily be true in every case.

Again, start with deterrence. Why would nuclear threats deter states from starting mischief? The answer seems obvious: the costs a state would suffer in any nuclear retaliation its actions might provoke would certainly outweigh any prospective benefits they might hope to gain. But this only seems obvious if people think about nuclear weapons in particular ways. It requires decision-makers to believe that any nuclear attack could be enormously destructive and that once nuclear weapons start being launched, there is an unacceptable risk of further escalation. It also requires leaders who prioritise the self-preservation of their country and its people over other possible values.

It is easy to understand why actors might hold the necessary beliefs, but none are inevitable. Decision-makers must possess a certain base level of information. People are not born knowing what nuclear weapons can do. They must somehow be informed about nuclear weapon effects and how significantly these differ from conventional weapons. During the Cold War, leaders and the public alike could learn about the effects of nuclear weapons from books such as John Hersey's *Hiroshima* (1946) or Jonathan Schell's *The Fate of the Earth* (1982). But from the end of the Cold War until recently, the nuclear issue in many parts of the world had faded into the background, and it is no longer automatically the case that national leaders will be well-briefed on the consequences of nuclear weapon use. A leader who has only a vague sense that these weapons are more powerful than conventional alternatives might be tempted to order a nuclear attack on the assumption that 'bigger is better'. This risk has been compounded in recent years by the presence of authoritarian-leaning world leaders who prize a tough-guy persona.

In addition to having a basic grasp of the facts, leaders must also draw certain inferences about what those facts mean (Knopf 2012). Deterrence rests on the premise that nuclear dangers require states to act with caution. But why? Throughout the nuclear age, some government officials and strategic thinkers have rejected the idea that nuclear weapons are qualitatively different and hence inappropriate for battlefield use in war. Both the United States and Russia have invested in tactical and low-yield nuclear weapons. A single or very limited use of lower-yield nuclear weapons against targets not located close to major cities would not necessarily cause the level of death and destruction we commonly associate with nuclear war. It is not unimaginable that the leaders and top military officers in a country could view such nuclear weapons as usable instruments of war and dismiss as unwarranted the fear of nuclear war that many analysts have tended to take for granted. Officials who hold such views will not necessarily be deterred from using nuclear weapons if they believe the other side will recognise that their nuclear attack was of a limited nature.

State leaders must also hold values that give priority to national survival. Most will, but possibly not all. Leaders who face defeat in war and possible loss of political power at home might decide to go out in a blaze of glory that destroys both sides rather than suffer humiliation and removal from power. The fear that Putin might be such a leader is one reason why Western governments have taken his nuclear threats seriously.

At the opposite end from attempts to 'conventionalise' nuclear arms, the idea that nuclear weapons are uniquely powerful can make them especially attractive to certain leaders. The literature on nuclear proliferation has long recognised that some states pursue nuclear weapons in part because they believe that such weapons confer status or prestige (Sagan 1996/97). Jacques Hymans (2006) has suggested that individual leaders who both fear the outside world and have high levels of national pride are likely to fall in love with the idea of having the bomb and will pursue nuclear weapons regardless of the associated cost-benefit calculations. Where symbolism and emotions loom large, leaders might decide to proceed in the face of nuclear deterrent threats in the belief that their actions will be a source of pride or prestige for their country or a way to achieve honour.

Self-righteousness about one's own cause or negative images of 'the other' could have similar effects. This is especially the case when the other side lacks its own nuclear deterrent, and decisions not to conduct a nuclear strike depend more on the norm of non-use. The decision by the United States to drop atomic bombs on Hiroshima and Nagasaki, and more recent U.S. policy debates that have contemplated nuclear 'pre-emption' against Iraq or Iran, suggest that neither norms nor deterrence would necessarily always restrain the United States against an adversary that is non-democratic and non-white.

In short, deterrence is most likely to be maintained when decision-makers understand the potential level of destruction that could follow nuclear use, believe that such death and destruction should be avoided where possible, believe escalation is hard to control and believe that these facts require the state to act with caution. These beliefs are likely to be common, but they are not automatic and might not be held universally. For these reasons, it would be helpful if there were ways to spread and reinforce the knowledge and inferences that support stable deterrence relationships. However, as the foregoing suggests, deterrence can never be made perfectly stable.

These same considerations apply to arguments about utility, norms or luck. If political and military leaders considered nuclear arms to be just another weapon, to be used when convenient, debates about utility would not arise. In a world that 'conventionalised' nuclear arms, if a nuclear strike were viewed as even slightly more likely to be effective or

to cost less than a conventional alternative, military commanders would order its use and probably would not even have to get political authorisation. But we do not live in that world. And this is because governments in all the nuclear-armed states regard nuclear weapons as distinct, as being in a category apart from conventional forces. To get a nuclear option even to be considered, a nuclear strike would have to have a significant margin of utility above that of conventional weapons, and the objective to be achieved would have to be of overriding importance. The bar for judging utility has been set extremely high precisely because relevant decision-makers understand nuclear weapons to be exceptionally destructive and conclude that it is better to behave cautiously and not risk escalating a situation to what might become a catastrophic nuclear exchange.

A similar observation holds even more clearly for norms. Why try to make nuclear attacks taboo? This is because *any* use is seen as likely to be exceptionally destructive, with the potential to escalate further, combined with a belief that no legitimate policy objective exists that could justify causing so much harm. An understanding of nuclear weapons as uniquely destructive and an inference that this requires erecting as many barriers as possible to their use are necessary underpinnings for the development of a norm of non-use.

Although luck would seem to be random, beliefs are also relevant here. In practice, the world has experienced good luck. False alarms, accidents and other close calls have not resulted in nuclear war. In large measure, this is because when unexpected incidents have pushed the world closer to the brink, key actors have reacted with extreme caution. Here again, decision-makers have held certain views of nuclear dangers that have inclined them in moments of uncertainty or rising tensions to shy away from any risk of escalation.

One famous example took place in September 1983. At a time of heightened U.S.-Soviet tensions, the Soviet early warning system reported an apparent launch of American ICBMs. Lt. Col. Stanislav Petrov, the officer who at that moment was in charge of monitoring alerts, concluded it was probably a false alarm. He decided to ignore official procedure and did not report the warning to his chain of command. Had he done so, Soviet doctrine called for launching a massive nuclear strike against the United States. Petrov's decision to violate his orders and risk ignoring the alert quite possibly saved the world from nuclear Armageddon (Stein and Lotan 2019).

In one way, this observation seems to support an argument that good luck might be a feature of a nuclear world. It suggests that unforeseen developments do not have a 50/50 chance of leading to a nuclear exchange because decision-makers will shy away from moving up the ladder of escalation. But if this is true, it is only because critical actors have beliefs that motivate them to react in a particular way to incidents that raise the risk of nuclear war. Had Petrov not believed that early warning systems can issue false alarms and been highly motivated to avoid any unnecessary escalation, events might not have unfolded so benignly. The earlier case of Capt. Arkhipov is similar. In one of his previous deployments, an accident on a nuclear-powered submarine had exposed several crew members to a lethal dose of radiation. Arkhipov's first-hand knowledge of radiation effects added to his motivation to ensure that his submarine commander during the Cuban missile crisis did not accidentally start a nuclear war (Sherwin 2020: 22–28).

There is no reason to assume that someone like Arkhipov or Petrov will always be in the loop when false alarms, accidents or unplanned incidents take place. Instead, the officers in key positions might not have a sufficient aversion to nuclear war to consider defying mandated procedures. And at the top of the system, there could be leaders who do *not* have a good understanding of what might happen once they push the button or

who believe that suffering a first strike would be the worst possible outcome and so would launch on warning, no matter how dubious that warning were. As long as nuclear weapons continue to exist, in order to avoid nuclear use in the aftermath of accidents or false alarms, there must be a critical mass of key actors with a certain view of nuclear dangers that motivates them to act as circuit-breakers in response to events that could trigger nuclear war.

All of this points to the importance of nuclear learning (Nye 1987). If political and military leaders do not automatically come to their positions with good knowledge of nuclear weapon effects, and if they do not necessarily infer from this knowledge that in situations of risk or uncertainty, they should be very cautious about doing anything that would bring the two sides closer to possibly using nuclear weapons, then such leaders must be educated or socialised into the required understandings. Nuclear learning serves as an intervening variable between the brute facts of what nuclear explosions could do and the presence of decision-makers who display extreme risk aversion in situations that could lead to nuclear war.

Nuclear learning involves both a factual dimension, which involves learning the effects of nuclear detonations, and an inferential component, which involves adopting beliefs that nuclear dangers require states to act with prudence. This nuclear learning must also be shared across relevant governments (Knopf 2012). Learning only serves to reduce nuclear dangers if nuclear-armed rivals hold a similar understanding of the implications of nuclear weapons and recognise that the other side shares the same understanding. If one side believes nuclear dangers require acting with caution, but the other side sees nuclear weapons as great tools of intimidation and believes that it can use nuclear sabre-rattling to coerce the first side, then the relationship will not be stable.

The key point here is that nuclear weapons do not, by their mere existence, produce nuclear peace. Certain kinds of learning, shared across nuclear-armed states, are necessary. And this learning might not happen or might be unlearned (Bell and Miller 2022). Moreover, even if all states have come to share an understanding that nuclear weapons require behaving cautiously, this still does not ensure that these weapons will not be used. There are still things that could go wrong and lead to accidents or inadvertent escalation. Rather than despair, however, until such time as an effective state of nuclear disarmament might be achieved, the goal must be to create the conditions that most favour the continued avoidance of nuclear war.

Fear and Hope: The Psychological Sources of Nuclear Peace

Continued non-use of nuclear weapons cannot be taken for granted. The factors that help prevent nuclear attacks must be regularly cultivated and reinforced. If the foregoing analysis is correct, however, the factors most commonly identified in the literature as preserving nuclear peace cannot fully account for non-use. Whether we are discussing deterrence, a perceived lack of military utility, a norm of non-use, or even luck, certain underlying conditions must be in place for these to operate to reduce the chances of nuclear war. All of the leading explanations for the absence of nuclear attacks since 1945 assume certain types of knowledge and reasoning. In the face of potential nuclear dangers, critical decision-makers must react with a caution that leads them to hesitate to do anything that might make the situation worse.

This caution derives from certain underlying psychological states of mind. It depends primarily on fear of nuclear war, but this fear must be accompanied by hope that such a

war can be avoided. Fear and hope in combination serve as psychological sources of nuclear peace (see also Lifton 2022).

The importance of fear is easy to grasp. If people were not afraid of nuclear war, they would feel freer to use nuclear weapons. But fear is not automatically helpful. Too much fear can be paralyzing. Decision-makers who are overwhelmed by fear will be less able to take action to steer events away from the abyss. The same holds true for members of the public. As the psychologist Robert Jay Lifton long ago observed, the danger of nuclear war can lead to ‘psychic numbing’, in which people simply ignore the nuclear threat because it is so overwhelming that they feel no hope of being able to do anything about it (Lifton and Falk 1982).

In an insightful blog post, Michael Krepon (2022) commented on what he called ‘the use and misuse of nuclear fear’. Advocates of arms control and disarmament seek to mobilise public support for these goals by painting a terrifying picture of the risks and consequences of nuclear war. But sometimes such scare tactics can be counterproductive, Krepon notes, ‘because nuclear fear can breed resignation, hopelessness, and despair’. They can also lead to public support for building more nuclear weapons in the name of effective deterrence, which is not necessarily conducive to nuclear peace.

There is still another risk in emphasising nuclear dangers. Krepon’s blog post was a response to nuclear threats issued by Russian President Vladimir Putin in connection with his country’s invasion of Ukraine.² Putin’s threats were an attempt at coercion, trying to manipulate the fear of nuclear attack to persuade Ukraine and its supporters in the West to back away from efforts to defeat Russia on the battlefield. If fear of nuclear war were to lead Kyiv or its supporters to concede to Russia’s territorial conquest, this would show that nuclear coercion can be effective and possibly encourage more countries to engage in nuclear blackmail. In such a scenario, nuclear fear would have led to outcomes likely to make the world more violent and less safe. For these reasons, Krepon concludes, what is really needed when discussing nuclear dangers is ‘calibration’. As Névine Schepers (2022) puts it, ‘The challenge, therefore, lies in explaining the risks of possible nuclear escalation and their consequences without either overstating or downplaying them’.

At the risk of creating an oxymoron, I propose that what is needed is a ‘healthy fear’ of nuclear war, or, in the words of Lifton (2022), what could also be called ‘appropriate fear’. A healthy fear would be whatever level of concern about nuclear dangers falls into the Goldilocks zone between too much and too little fear.

To explore how a healthy fear might be created and sustained, one must deal with an added complexity. The word ‘fear’ has a double meaning; it can refer to both a cognition and an emotion (Crawford 2000). In one meaning, fear is compatible with a rational actor model. It describes an actor’s reasonable recognition of a future risk or danger. An actor with such foresight can take prudent steps to avoid or alleviate the risk in question. A rational fear of this sort is at the heart of deterrence. A rational actor who fears triggering possible nuclear retaliation is expected to exercise restraint so as not to cross the other side’s red lines.

But fear in this cognitive sense is not sufficient to explain the extraordinary lengths state leaders have sometimes gone to in order to stay away from the brink of nuclear war. And, before continuing, it must also be acknowledged that, at other times, states have engaged in nuclear sabre-rattling or pursued arms buildups in an effort to achieve a first-strike advantage, actions that are less consistent with a fear of nuclear war. Where fear is at play, however, to see the limits of fear in its rational sense, consider a well-known issue with deterrence. A great deal of nuclear deterrence theory has been based on a concern that some threats of

nuclear retaliation lack credibility. In situations other than a nuclear attack on one's homeland, would a state follow through on nuclear threats if introducing nuclear weapons into a conflict could then lead to its own destruction? Fear in the sense of a rational anticipation of future dangers would seem to limit the scope of deterrence, as there would be less need to fear nuclear threats that lack credibility. One might argue that prudence is still rational because even if there is a low probability of retaliation, it still has exceptionally high consequences. But note that this depends on a further understanding of any nuclear weapons use as potentially catastrophic. If one worries that even a limited tactical use has inherent potential to escalate to something much worse, we are moving beyond an objective, rational calculation to something that involves emotional reactions as well.

Research on emotion identifies fear as one of the core human emotions. Fear exists along with happiness, sadness and anger, and perhaps a handful of other emotions as something apparently innate in human nature. How do actors react to being threatened, for example, with nuclear attack? Threats are most likely to lead to fear or anger, or perhaps a mix of both. If a threat is seen as unprovoked or illegitimate, anger is the most likely response. But if the other side threatens retaliation if a vital interest or widely recognised norm is challenged, then fear of provoking such a response is more likely. This difference matters because different emotions have different effects (Stein 2012). Anger tends to lead to reckless or risk-acceptant behaviour, which would not be conducive to maintaining nuclear peace. But fear tends to induce caution, an effort to shy away from danger. Fear of stumbling into a nuclear war, when it functions as an emotion, reinforces fear in the sense of rational anticipation of future danger and helps explain the extra steps decision-makers might take to minimise the risk. Such fear, again presuming that fear exists at a healthy rather than a paralysing level, can also motivate ordinary people to join efforts to put pressure on governments to reduce nuclear dangers.

But fear alone is not enough. Fear by itself can lead to despair unless people also believe there is a possible way to escape a prospective fate of nuclear annihilation. Fear, in other words, must be paired with hope. For government leaders, this is the hope of finding an effective policy. In ordinary circumstances, leaders must believe that deterrence can work, and they do not need to resort to a preventive first strike.³ In crisis, leaders must hope they can find a diplomatic solution that will let them avoid war.

Perhaps the most famous illustration of the necessary mix of fear and hope comes from the Cuban missile crisis. At the height of the crisis, as war appeared increasingly inevitable, Soviet Chairman Nikita Khrushchev sent an extraordinary letter to U.S. President John F. Kennedy. This last-ditch effort to find a way out of the crisis is worth quoting at length:

Mr. President, we and you ought not now to pull on the ends of the rope in which you have tied the knot of war, because the more the two of us pull, the tighter that knot will be tied. And a moment may come when that knot will be tied so tight that even he who tied it will not have the strength to untie it, and then it will be necessary to cut that knot, and what that would mean is not for me to explain to you, because you yourself understand perfectly of what terrible forces our countries dispose.

Consequently, if there is no intention to tighten that knot and thereby to doom the world to the catastrophe of thermonuclear war, then let us not only relax the forces pulling on the ends of the rope, let us take measures to untie that knot. We are ready for this.

(Sherwin 2020: 8–9)

In this passage, there is a clear recognition of the ‘terrible forces’ that will be unleashed if nuclear arms start flying. There is also an urgent sense of increasing danger as the metaphorical knot gets pulled tighter and just as important a realisation that this is a shared danger. These reflect the nuclear fear that was so central to the crisis. But there is also hope that it is not too late for the two sides to ‘relax the forces’ pulling on the rope and ‘take measures’ to resolve the crisis. The combination of fear and hope expressed in Khrushchev’s message opened the door to diplomatic resolution of the crisis.

But hope is important not only for political and military leaders but also for people around the world who can raise their voices and take action to pressure governments to reduce nuclear dangers. We cannot count on political leaders to always behave with prudence. Russia’s nuclear sabre-rattling in connection with its invasion of Ukraine shows that leaders who are not constrained by social pressures can talk very recklessly about nuclear weapons and take actions that increase the danger of war. For people to act, however, they must have reason to hope that their actions might make a difference.

Research commissioned by the Nuclear Threat Initiative (2021) found compelling evidence that messages based solely on fear do not motivate people to act. Educational efforts that consist exclusively of images of mushroom clouds leave people feeling hopeless and thinking that nothing they might do would make a difference. The result is apathy, not activism. To be willing to take action, people must be able to imagine the possibility of a better future. And they must believe that actions they can take personally can contribute to bringing about this better future. To mobilise people to participate in a campaign to reduce nuclear dangers requires communicating a persuasive narrative that conveys at least as much hope as it does fear.

The Societal Sources of Nuclear Peace

Actual control over nuclear weapons is restricted to only a handful of top officials in the nine countries that have nuclear arsenals. The willingness of these national leaders to push the button, or to take steps that bring their nations closer to the brink of nuclear war, depends on underlying psychological states of mind. To reduce the risk of nuclear war, leaders must have a healthy fear of getting too close to the nuclear precipice and a hope that by prudent, careful behaviour, they can stay away from the brink.

Where do the requisite fear and hope come from? There are several possibilities. As some of the work on nuclear learning suggests, leaders might learn from their own experiences with a crisis or close call that nuclear dangers require them to act with prudence in the future (Cohen 2017). But it is also possible that a new nuclear nation might not learn the lessons in time to survive its first crisis, or new leaders could come to power who have not internalised the lessons taught by an earlier crisis.

Leaders might also develop nuclear fear after they take office as a result of receiving briefings about the consequences of nuclear weapons use. Or they might simply use their own imagination to envision nuclear Armageddon. But neither of these is inevitable. There is no reason to assume that leaders and their top advisers, if left to their own devices, will learn much about the consequences of nuclear use or develop a healthy fear of nuclear war or an associated belief that this requires acting cautiously.

Because leaders do not automatically develop a healthy fear of nuclear war, civil society matters. Activities in civil society can be a source of education about nuclear dangers and also about how to manage them. Leaders can learn to have fear *and* hope as a result of being exposed to these activities (either before or while in office). But even leaders who

have not developed a healthy fear of nuclear war or hope for a better future might be constrained by civil society. They might have to worry about domestic public opinion or world opinion. Expressions of public or world opinion can create incentives for political leaders to restrain their use of nuclear threats or their willingness to consider ordering a nuclear strike out of concern that this could hurt their ability to stay in power or provoke international condemnation that leaves their country diplomatically isolated.

Several different strands of activity in civil society (construed broadly here) have contributed to promoting fear and hope in the minds of world leaders and segments of the general public. In the years after World War II, scientists who had helped develop the atom bomb had great concern about what might happen to the world as a result of their invention. They launched an array of educational efforts designed to bring attention to the dangers of nuclear war (Smith 1965) and, beginning in the 1950s, to the risks of radioactive nuclear fallout from nuclear weapon testing (Divine 1978).

Social protest movements have also been important (Wittner 2009). Protests and associated media coverage often draw attention to the dangers of nuclear war, which helps promote nuclear fear. And even where leaders are not necessarily convinced, social movements have helped prod reluctant governments to enter nuclear arms-control talks and to build support for arms-control treaties that have been negotiated (Knopf 1998). With respect to hope, NGOs and think tanks can be important—although not all think tanks are the same, and some have instead been major promoters of a continued commitment to nuclear buildups. Pro-arms-control groups are often sources of ideas for potential agreements or other risk-reduction measures that open the door to possible progress on addressing the nuclear threat. They can also convene meetings that allow diplomats and experts from different countries to interact and explore ideas that are not yet ripe for formal negotiation.

In addition, the impact of popular culture should not be overlooked; images related to all things nuclear have long played a major role in producing fear (Weart 1989). Books and movies like *On the Beach*, *Dr. Strangelove* and *Fail Safe* gave an entire generation the ability to imagine how a nuclear war might start and how terribly destructive it might be. Science fiction also left its mark through movies like *Godzilla* and a host of stories set in a post-apocalyptic landscape, of which the post-apocalyptic novel *A Canticle for Leibowitz* might be the best known (Miller 1960). The 1983 made-for-TV movie *The Day After* reportedly made a big impression on then-President Ronald Reagan and reinforced his desire to find a way to reduce nuclear dangers (Stover 2018).

In short, societal sources of nuclear peace supplement the psychological sources. They help disseminate the images and information that promote a healthy fear of nuclear dangers and can sometimes also suggest paths for hope. Pressures from civil society can also constrain leaders who do not particularly fear being drawn into nuclear war to still behave with restraint. The psychological factors of fear and hope are most fundamental, but societal forces can help to produce these psychological sources of nuclear peace or magnify their effects.

Implications for International Institutions

After 1945, the world invested considerable efforts in developing mechanisms to limit the dangers associated with nuclear weapons. There is a long-running debate over whether existing treaties, such as the nuclear Non-Proliferation Treaty (NPT), have ever been sufficient to deal with the danger of nuclear war. But regardless of how one evaluates

existing global governance of nuclear arms, it is possible to describe a global nuclear order. It includes both formal arrangements, such as arms control and nonproliferation treaties, and informal norms, such as the nuclear taboo.

The problem today is that the global nuclear order is under a great deal of strain, and the international institutions that govern this issue are in danger of unravelling (Bollfrass and Herzog 2022; Knopf 2022). This has several implications. First, because international institutions are getting weaker, more of the task of preventing nuclear war now rests on the psychological and societal sources of nuclear peace. It is important to try to strengthen the psychological and societal factors precisely because we cannot be as confident in the restraining effects of international institutions.

Second, an agenda for strengthening international institutions should give consideration to how new initiatives and proposals would interact with the psychological and societal elements of nuclear peace. Ideally, we should look for positive feedback loops between the two. On the one hand, when developing proposals to buttress global governance, it might be less important at this time to consider their ability to bring about reductions in nuclear arms or other practical constraints and more important to look for initiatives that would reinforce the psychological and/or societal sources of nuclear peace. On the other hand, it would also be appropriate to look for proposals that would dovetail with psychological and societal forces since tapping into these would provide a kind of wind in the sails to help build momentum behind new initiatives.

Several possibilities exist. One option involves continuing the Humanitarian Initiative. The Initiative grew out of the 2010 NPT Review Conference, which approved a statement of concern about ‘the catastrophic humanitarian consequences of any use of nuclear weapons’. This led to a series of international conferences to discuss the humanitarian impact of nuclear weapons. These were designed, in part, to set the stage for negotiations on a treaty to ban nuclear weapons. The United Nations General Assembly adopted the Treaty on the Prohibition of Nuclear Weapons (TPNW) in 2017 (Davis Gibbons 2018; Kmentt 2021).

Now that the ban treaty exists and has received the requisite number of state ratifications to enter into force, it is possible to consider a new version of the Humanitarian Initiative that would serve as a purely educational effort. Either as part of continuing the Humanitarian Initiative, or as a spinoff from it, there could be a renewed effort to call attention to what we have learned about the likely consequences of nuclear weapon use. This effort should also be directed at a broader audience. The initial Humanitarian Initiative targeted diplomats. A Humanitarian Initiative 2.0 should aim to educate publics around the world about the effects of nuclear war. Doing so could both help stimulate more civil society activism against nuclear weapons and reinforce the psychological inhibitions among leaders contemplating the use of nuclear weapons.

Another approach would be to look for negotiating forums that could attract participation by a wide range of states, despite the deep geopolitical tensions current in the world. One candidate would be to revive the Nuclear Security Summits that took place from 2010 to 2016.⁴ These meetings, launched by the Obama administration, brought together heads of state from more than 50 countries. The summits were designed to promote action and coordination around measures that would reduce the chances that actors such as non-state terrorist groups could obtain nuclear materials useful for constructing a nuclear explosive device (Kutchesfahani, Davenport and Connolly 2018; Turpen 2016). Because much of the focus was on the threat posed by terrorist groups, the summit process sidestepped political divisions that pit nuclear and non-nuclear countries against each other. Because most states do not want a terrorist actor to get the bomb, the

summits invited states to make common cause against a shared danger. Given this shared interest, a revived Nuclear Security Summit process could get states that would otherwise be reluctant to negotiate new arms control or disarmament measures to engage with each other in a constructive manner.

A third option is to find issues in which it would be possible to convene small groups of technical experts who operate well below the head of state level. In the past, both scientist-to-scientist and military-to-military activities between Russia and the United States have proved fruitful (Hecker 2016). Working-level, bureaucratic relationships can help buttress abstract agreements to cooperate by giving them a solid foundation (Knopf 2016). Although Russia might not agree to participate, concerns about the Zaporizhzhia nuclear power plant in Ukraine suggest that ensuring the safety of nuclear reactors in war zones would be a logical area for technical discussions.

Finally, it is worth thinking about how to promote appropriate norms in relation to nuclear weapons. In his final book, Michael Krepon (2021) identified three existing norms in relation to nuclear weapons: no use, no testing and no proliferation. He suggested trying to promote a further norm of never threatening to use nuclear weapons. Repeated nuclear threats issued by President Putin and other Russian officials in connection with their invasion of Ukraine have created new urgency around the idea that threatening a nuclear attack should be off-limits. Efforts to negotiate a statement of principles or code of conduct could be one vehicle for trying to establish a no-threats norm.

It is vitally important to maintain the health and functioning of existing international institutions that limit nuclear arsenals and seek to reduce the chance of nuclear weapons use. It also continues to be necessary to negotiate new agreements and create new arrangements that could further reduce nuclear dangers. And in the longer run, a verifiable nuclear disarmament agreement would be the safest possible arrangement. At this moment, however, existing global governance arrangements are under tremendous strain, and the prospects for new initiatives, let alone abolition, are not promising. In these circumstances, less tangible psychological and societal sources of inhibitions play a more important role. It makes sense to think of global governance not only in terms of tangible institutions and numerical limits on weapons but also as a way to excite and energise civil society and to remind world leaders of the catastrophic consequences that could follow any nuclear attack. Even where new meetings, discussions or proposals do not, in the short term, lead to concrete progress in restricting nuclear weapons, they can still be useful in helping to reinforce the psychological and societal sources of nuclear peace. As people continue to search for a path to global zero, it has become increasingly vital to reinforce the guardrails against nuclear war at a time of immense challenges to the global governance of nuclear weapons.

Notes

- 1 I use the term 'nuclear peace' in a narrow sense of no deliberate attacks using nuclear weapons. It would be misleading to imply that this meant peace in broader terms. The years since 1945 have seen plenty of wars and other acts of organised violence. The threat of nuclear attack has been used for purposes of deterrence and in some cases coercion. And many nuclear devices were exploded in nuclear tests. Although the decades following World War II have hardly been peaceful overall, the absence of nuclear war is still a very important fact.
- 2 I will not address here whether the war in Ukraine could have been avoided by different U.S. and NATO policies. Regardless of whether better U.S. diplomacy might have satisfied Russian concerns and prevented its invasion, Russia's rhetoric and actions have increased the risk of nuclear weapon use, and my focus here is on the implications of the fears raised by the situation in Ukraine.

3 Lack of such confidence was a key motivation for the U.S. invasion of Iraq in 2003.

4 I thank George Moore, scientist-in-residence at the James Martin Center for Nonproliferation Studies (CNS), for this suggestion.

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3 Lessons from Existing WMD Multilateral Programmes and Platforms

Richard Lennane

Global governance of what are now classed as weapons of mass destruction (WMD) has a long history, predating the United Nations, the nuclear age and the introduction of the term as a general category of weapons. The horrors of chemical weapons use in World War I prompted international efforts to outlaw such weapons. As the world entered the nuclear age following World War II, the prospect of atomic warfare and the existential risk to humanity was an early priority of the United Nations. Over the subsequent decades, an increasingly elaborate system of treaties, regulatory regimes and institutions has been developed to try to eliminate, or at least manage and reduce, this global catastrophic risk.

And we are all still here; the Earth is not (yet) a smoking ruin. This may be due to the success of existing global governance efforts, or to luck or both. But the risk remains. So, what can we do better? In the current geopolitical circumstances, and given the complex and interlocking layers of existing international law and institutions, are there practical and feasible ways that we can address weaknesses in global governance of WMD and better manage the catastrophic risks posed by WMD?

The answer is yes.

WMD as Global Catastrophic Risks—Nuclear, Chemical and Biological Weapons

Nuclear weapons need little introduction as global catastrophic risks. From their first use in Hiroshima and Nagasaki in 1945, nuclear weapons have been associated, in both the public imagination and among political elites, with the prospect of global catastrophe, the end of civilisation and possibly even the extinction of humanity. And these impressions are largely backed by science and data assembled over the past few decades. While it is possible to exaggerate the effects of an all-out nuclear war—human extinction is unlikely, and the total collapse of civilisation is not a given—there is no question that global catastrophe would result. Tens or hundreds of millions of direct casualties, many more poisoned by radiation, colossal destruction of infrastructure and damage to the natural environment would be followed by disastrous follow-on effects, including economic collapse, mass movements of refugees, disease, and famine (Schell 1982).

Even a limited, regional nuclear conflict would have catastrophic global effects. This has been known for decades, but the evidence continues to grow and paints a sobering picture.¹ The most recent study of the possible effects of nuclear detonations on climate and food production concluded that a regional nuclear war could lead to more than two billion deaths worldwide due to reduced food production (Xia *et al.* 2022).

Public and political interest in the risk of nuclear war has fluctuated over the years according to geopolitical circumstances, relations among the nuclear-armed states, current conflicts and crises, and competing concerns. The end of the Cold War brought a relatively long period of nuclear optimism, or perhaps complacency, where the threat gradually receded from the public conscience. Russia's invasion of Ukraine in 2022, and the associated nuclear rhetoric and responses, brought it abruptly back to the forefront of concerns. But it is important to recall that throughout these fluctuations of concern, the risk has always been there: hundreds of nuclear weapons on high alert, ready to be launched within minutes. Many accidents and close calls have been documented; presumably, many others remain classified (Lewis *et al.* 2014; Schlosser 2014). In contrast to the slow but steadily advancing catastrophe of human-induced climate change, nuclear war is a global catastrophe that could occur instantaneously, literally at any minute—whether deliberately or by accident or miscalculation—and this has been the case for decades.

But nuclear weapons are only one kind of weapon of mass destruction. The other two weapons falling under this admittedly rather arbitrary label are biological and chemical weapons. Neither has the apocalyptic potential of nuclear weapons, but the COVID-19 pandemic has vividly illustrated the global catastrophic risk of a biological weapon. There are various other ways in which a biological weapon could have a global impact, including through targeting crops and livestock.

Chemical weapons are clearly the least massively destructive of the three types of WMD, with effects much more limited in area, generally effective countermeasures and response options and a consequent relative lack of potential to inflict death and disruption on a large scale. It is no coincidence that of the three types of WMD, it is chemical weapons that have been most used in warfare and for terrorism, and that are most likely to be used today. The inclusion of chemical weapons in the WMD definition appears to be partly due to lasting horror at the results of their widespread use in World War—which led to their being linked with biological weapons in the 1925 Geneva Protocol (United Nations 1925)—and partly to fears that use of chemical weapons would ease the way to, or provoke, the use of biological or nuclear weapons.²

The International Response So Far: An Interlocking Legal Patchwork

Given the evident global risks, it is no surprise that the international community has attempted to respond with governance measures. The very first resolution adopted by the United Nations General Assembly in 1946 established a commission 'for the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction' (United Nations 1946). This was followed by numerous other resolutions and multilateral efforts in the 1950s and 1960s, including the creation of the International Atomic Energy Agency in 1957 and the conclusion of the Partial Nuclear Test Ban Treaty in 1963. But it was around 1970 that the current international legal regime governing WMD began to take shape.

The Non-Proliferation Treaty (NPT) (IAEA 1968) was signed in 1968 and entered into force in 1970. This treaty, commonly referred to as the 'cornerstone' of the international regime governing nuclear weapons, attempted to freeze the number of nuclear-armed states of the five then existing (China, France, the Soviet Union (now Russia), the United Kingdom and the United States) by preventing further proliferation of nuclear weapons while requiring the five 'official' nuclear-weapon states recognised in the treaty to pursue nuclear disarmament. The nonproliferation obligations of the NPT are implemented

through a system of safeguards operated by the International Atomic Energy Agency (IAEA), designed to ensure that fissile material is not diverted for use in nuclear weapons. Today, the NPT has a large membership of 191 states parties; only India, Israel, North Korea, Pakistan (all nuclear armed),³ and South Sudan remain outside the treaty.

The NPT was followed throughout the 1970s, 1980s and 1990s by a series of bilateral treaties between the United States and the Soviet Union—the Strategic Arms Limitation Talks Agreements (SALT) and the Strategic Arms Reduction Treaties (START),⁴ among others—which limited and later significantly reduced the nuclear arsenals of each.

On the multilateral front, the NPT was joined in 1972 by the Biological Weapons Convention (BWC) (United Nations 1972), which was the first multilateral treaty to prohibit an entire category of weapons. The BWC contains a broad and robust prohibition of biological weapons but does not include any verification provisions or establish an international organisation to manage the implementation of the treaty. There had been attempts to negotiate a treaty prohibiting both biological and chemical weapons—envisaged as a successor to the 1925 Geneva Protocol, which prohibits the use in warfare of both, but not their development or possession—but political differences on chemical weapons resulted in a decision to separate the two. The Chemical Weapons Convention (CWC) (OPCW 1992) had a long period of gestation but was concluded in 1993. It contains analogous prohibitions to the BWC but includes an elaborate implementation and verification system operated by a dedicated international organisation, the Organisation for the Prohibition of Chemical Weapons (OPCW), based in The Hague.

The adoption of the more elaborate CWC inspired BWC states parties to begin negotiating a protocol to the treaty, which would add similar verification provisions and establish an international organisation. These negotiations collapsed in 2001, sending the BWC on a different path that included the establishment of a small Implementation Support Unit for the treaty in 2007 (Lennane 2006; Millett 2011).

The three multilateral WMD treaties were conceived to deal principally with WMD possessed—or that might come to be possessed—by states. None of them deals directly with the prospect of non-state actors acquiring or using WMD, although they each have provisions on transfers and on national implementation that have the indirect effect of making it more difficult for non-state actors to acquire WMD. While various concerns were raised over the years about the possibility of terrorists using WMD, it was the September 11 attacks in the United States in 2001 that really focused serious global attention on the risk. The result was UN Security Resolution 1540, adopted unanimously under Article VII of the UN Charter in April 2004, which obliges all UN member states to develop and enforce appropriate legal and regulatory measures against the proliferation of chemical, biological, radiological, and nuclear weapons in order to prevent non-state actors from acquiring WMD. Implementation of the resolution is overseen by the 1540 Committee of the Security Council, with a small staff of technical experts to help member states implement their obligations.

Evaluation of the Response: The Good, the Bad and the Ugly

Although the international legal regime governing WMD is something of a hodgepodge, overall, it has seen some significant success in preventing, or at least diminishing the likelihood of, the use of WMD and a global catastrophe. There are, however, some important and worrying weaknesses, as well as a significant difference between the results on nuclear weapons and the results on biological and chemical weapons.

Nuclear Weapons

The NPT is widely regarded as having been remarkably successful in preventing the spread of nuclear weapons. Apart from the five nuclear-weapon states recognised by the treaty, only four other states, India, Israel, North Korea, and Pakistan, have acquired nuclear weapons, making a total of nine nuclear-armed states worldwide. This is a much lower number than had been expected in the 1960s, before the conclusion of the NPT. There is certainly reason to be concerned about the four nuclear-armed states *outside* the NPT, none of which show any signs of moving towards disarmament or accepting any form of international governance over their nuclear weapons. There are also questions about double standards: Pakistan, India and Israel enjoy a much greater level of acceptance of their possession of nuclear weapons than does North Korea. (The double standards of Western states which essentially accept Israel as a *de facto* nuclear-weapon state while noisily complaining about North Korea's nuclear weapons and Iran's alleged nuclear programme, are particularly glaring.)

In addition, there have been, and continue to be, concerns over potential cheating by NPT non-nuclear-weapon states parties. The discovery of Iraq's nuclear programme in the 1980s led to a major upgrade of the IAEA's safeguards system in order to be able to detect similar activity in future. North Korea, originally a party to the NPT, left the treaty in controversial circumstances in 2003 and proceeded to develop and test nuclear weapons. And a major international drama over alleged nuclear weapons activity in Iran continues to this day.

But while these cases dominate the news and the attention of certain governments, they involve only a tiny proportion of the membership of the NPT and the world's states; overall, the treaty has an impressive record of preventing proliferation.

It is a different story, however, for the disarmament provisions of the NPT. Article VI of the treaty obliges all parties to 'to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament'.⁵ Put bluntly, this has not been done. Over the past five decades, the five nuclear-weapon states have consistently dragged their feet, made excuses, resisted steps towards implementation, and simply ignored commitments they had made in the course of the five-yearly review conferences of the treaty.

Two factors have contributed to this situation. The first, and most significant, is that the disarmament obligations set out in Article VI of the NPT have no time limit beyond the vague and essentially meaningless phrase: 'at an early date'. The nuclear-weapon states therefore can claim to be in compliance with Article VI as long as they are doing something, however nebulous and insubstantial, in the general direction of its implementation. This is an inherent and fundamental flaw in the treaty, as it makes it impossible to assess, in a legal sense, if the essential bargain embodied in the treaty—i.e., non-acquisition of nuclear weapons in exchange for nuclear disarmament—is being kept.

The second factor is the existence of around 30 non-nuclear-weapon states which, although prohibited from possessing nuclear weapons themselves, are in military alliances with nuclear-weapon states and depend on nuclear weapons as a component of their national security (i.e., they are under a 'nuclear umbrella'). These include the NATO member states, as well as U.S. allies Australia, Japan and South Korea. Many of these countries are wealthy, influential and active and effective in multilateral diplomacy. They have typically been key actors in achieving other disarmament treaties, but on nuclear weapons, they have no more interest than the nuclear-weapon states themselves in seeing

Article VI of the NPT actually implemented. They, therefore, support the procrastination and foot-dragging of the nuclear-weapon states, advocating vague and/or ineffective measures to advance disarmament and resisting any initiative that might require action or accountability.

Unsurprisingly, the non-nuclear-weapon states parties to the NPT have grown increasingly frustrated, as it has become clear that the nuclear-weapon states have no intention of taking serious steps towards disarmament and are modernising, and in some cases expanding, their arsenals. This frustration was among the factors leading to the creation of a new treaty, the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW). This treaty imposes a comprehensive prohibition on nuclear weapons, analogous to the prohibitions of the BWC and CWC. In the words of proponents of the treaty, it thus ‘fills the legal gap’⁶ in the regime governing WMD, putting nuclear weapons on the same international legal footing as biological and chemical weapons.

The TPNW was, and still is, fiercely resisted by all the nuclear-armed states, as well as the states that are in nuclear alliances with nuclear-armed states (see, for example, NATO 2020). The treaty was developed on the humanitarian principles and norm-building approach that also provided the basis for the 1997 Antipersonnel Mine Ban Convention and the 2008 Cluster Munitions Convention, as opposed to the transactional arms control approach of traditional WMD treaties. It entered into force in 2021 and so is still in the very early stage of implementation. Thus, it remains to be seen how effective it will be in shaping a more robust and unequivocal global norm against nuclear weapons and in driving actual disarmament (Lennane and Moyes 2021).

Biological Weapons

For a short, simple treaty with no enforcement or verification measures, the BWC has proved highly successful in building a strong global norm against biological weapons. Although its membership at 184 states parties is not universal, and slightly lower than that of the NPT, its normative impact is such that no government today would claim that biological weapons are a legitimate means of defence. This is a major change from the 1950s and 1960s when biological weapons were just another option in the strategic arsenals of the Cold War superpowers and several other countries. Clandestine biological weapons programmes may still exist, but they are clandestine for a reason: governments know that discovery would bring universal condemnation and significant consequences.

But there are other challenges. The lack of any kind of formal verification machinery remains a problem. There is no standing capacity to investigate allegations of violations of the BWC, nor is there any kind of routine monitoring of biological facilities. Since the September 11 attacks in the United States in 2001 and the anthrax letters incident that followed soon after, governments have grown increasingly concerned about the risk of biological weapons being acquired and used by terrorists. This concern has been further fuelled by the huge and rapid growth in biological science and technology, which potentially allows biological weapons to be made in many more places, at much less cost and with fewer highly trained people. A multilateral treaty like the BWC is a ponderous instrument with which to confront and manage these risks (see also the section on non-state actors later in this chapter).

A further problem is that the scope of the treaty is limited to weapons; it does not deal with other biological risks, such as accidental releases of pathogens or naturally occurring outbreaks of disease. This is an artificial separation, as pathogens neither know nor

care whether they are naturally occurring, accidental or deliberate. In many scenarios, it will not be known at the outset whether a biological weapon has been used. Coordination of an international response and cooperation between security and public health agencies are complex and politically sensitive issues.

Chemical Weapons

In several ways, the CWC represents the zenith of multilateral disarmament treaties. Negotiated during a propitious geopolitical window following the collapse of the Soviet Union, it is an ambitious, potent and elaborate treaty that would be extremely difficult to replicate in today's international environment. Its normative effect has been similar to that of the BWC; no government is willing to admit to possession or use of chemical weapons (although some are nevertheless prepared to use them). The CWC's extensive verification system provides for regular on-site inspections of chemical facilities that could be misused for chemical weapons production, as well as 'challenge inspections' to investigate allegations of non-compliance. Inspections are conducted by OPCW experts, who are full-time professionals, well-equipped and well-trained and able to be deployed at short notice. OPCW experts also oversee and verify the safe and secure destruction of chemical weapons stockpiles of states joining the treaty, a process that is now almost complete.

In recent years, the use of chemical weapons in the war in Syria has prompted much discussion over the effectiveness of the CWC and the durability of the global norm against possession and use of chemical weapons. While the situation has certainly thrown up operational and other challenges for the OPCW and political headaches for CWC states parties—and is yet to be resolved to anyone's satisfaction—it has if anything only demonstrated the strength and global permeation of the norm. The various parties may trade accusations over who is responsible for chemical weapons use, but none attempt to argue that such use is legitimate or excusable in any way (e.g., that it was dictated by military necessity, was a response to extreme circumstances, or was some kind of 'fog-of-war' mistake). All rebuttals from alleged users are based either on claims that chemical weapons were not in fact used or on claims that they were used by someone else. In other words, the controversy is conducted entirely within the bounds of the norm, despite the context of a long, brutal and chaotic intra-state conflict.

As to the effectiveness of the CWC, it is important to recall that at the time of the first alleged use of chemical weapons in the war, Syria was not a party to the treaty. Despite this, the international response was—by the admittedly modest standards of multilateral disarmament action—robust and decisive: an ad hoc UN-OPCW investigation was conducted in the midst of an active conflict, and Syria was strong-armed into joining the CWC (Arms Control Association 2020).

Non-State Actors

Given that the WMD treaties were not designed to deal with non-state actors, their states parties have in fact made a surprisingly successful effort to adapt them to this purpose. The respective review processes of the NPT, CWC and BWC have, in different ways, adopted measures to improve and develop national implementation mechanisms so that they form effective barriers against non-state actors acquiring WMD. Many of these measures dovetail with—and often were developed in coordination with—measures

taken pursuant to Security Council Resolution 1540. In addition, enforcement options against non-state actors were significantly boosted in 2010 and 2017 with amendments to the Rome Statute of the International Criminal Court explicitly defining the use of chemical and biological weapons, respectively, as war crimes under Article 8 of the Statute.⁷

Nevertheless, the system is unquestionably jury-rigged, and gaps and weaknesses abound. National implementation measures vary hugely from country to country in terms of scope, comprehensiveness and effectiveness. Capacity and resources are a constant problem, especially for the BWC, which lacks an international organisation analogous to the IAEA and OPCW, both of which conduct extensive and structured activities to help states parties enact and strengthen their national measures. Coordination among the three WMD treaties and UNSCR 1540 is ad hoc and haphazard, although it does happen to a degree. Currently, the Rome Statute does not explicitly include the use of nuclear weapons as a war crime (although most of the plausible scenarios for the use of nuclear weapons would constitute war crimes under various other provisions of Article 8).

New and Emerging Technologies

New technological developments present novel and largely unanticipated challenges for the international legal regime governing WMD. The prospect of autonomous weapons or delivery systems and the integration of artificial intelligence capabilities into command and control systems for nuclear weapons raise a range of difficult and frankly frightening questions about the degree of human control over the use of WMD, new and unpredictable failure modes, and legal accountability (Boulanin *et al.* 2020; Kallenborn 2022). Many of these issues have been explored with respect to conventional weapons, notably through expert group meetings held under the UN Convention on Certain Conventional Weapons on lethal autonomous weapon systems (popularly referred to as ‘killer robots’), but they have yet to be formally considered within the review processes of the WMD treaties.

Similarly, the ever-increasing prevalence of cyberattacks by both governments and criminals raises the prospect of creating new avenues for triggering the use of WMD or for creating improvised WMD. For example, detection and warning systems could be manipulated to signal a non-existent nuclear attack, triggering mass panic at least, or nuclear retaliation at worst. Or control systems of maximum containment biological laboratories could be sabotaged in order to cause the release of a dangerous pathogen.

Since both these phenomena exist outside the WMD themselves—it is the interaction with WMD that is the problem—the WMD treaties with their limited scope are poorly adapted to respond. A further challenge for treaty-based governance is the fact that much of the technology concerned is in the hands of non-state actors, both legitimate (such as the large private-sector technology corporations) and illegitimate (such as cybercrime organisations). National government capacity for oversight and control is limited, and intergovernmental efforts even more so.

Lessons and Recommendations: WMD Governance in the 21st Century

Any attempt to draw lessons from the existing WMD governance arrangements must begin from the obvious conclusion that things could be much worse: nuclear weapons have not been used in warfare since 1945; proliferation of nuclear weapons has been

restricted to only nine states; robust legal prohibitions and global norms exist against biological and chemical weapons; chemical weapons are further controlled by an effective international verification system. WMD have not been used by terrorists, and as far as is known from publicly available sources, there have been few, if any, attempts to develop or acquire them that had serious prospects of success.

Still, the risk of global catastrophe remains. The principal and most imminent risk comes from nuclear weapons, with a considerably lesser but still potentially significant global risk from biological weapons. What then needs to be done? What weaknesses in WMD governance need to be addressed in order to better manage the risks and how can this be most effectively pursued in the current geopolitical circumstances?

Correcting Preserved Ambivalence: ‘Normalising’ WMD Norms

One lesson derives from the observation of the difference between the norm against nuclear weapons and the norms against biological and chemical weapons. As noted earlier, the global norms that have emerged through the adoption and implementation of the BWC and CWC over several decades are robust and absolute: biological and chemical weapons are beyond the pale, ‘repugnant to the conscience of mankind’, as the preamble to the BWC elegantly puts it, and no government will defend them (at least in public). But the norm on nuclear weapons that has emerged through the NPT and the associated regulatory regime is distinctly different and indeed self-contradictory. On the one hand, nuclear weapons, like the other WMD, are dangerous and unacceptable. Therefore, non-nuclear-weapon states must not have them. On the other hand, nuclear weapons are permitted, at least *ad interim*, by the NPT for the five nuclear-weapon states, and these states regularly and persistently insist that their nuclear weapons are both legitimate and necessary for their own national security and for international stability.

As the NPT and its ecosystem have developed over the decades into the ‘cornerstone’ of global nuclear weapons governance, this normative ambivalence has become embedded and proved to be a major obstacle to progress on nuclear disarmament. After all, if nuclear weapons are legitimate and necessary, why would a state want to get rid of them? (Curiously, this question is almost never asked of the NPT nuclear-weapon states.) A psychologist observing the behaviour of the nuclear-weapon states over the course of the NPT review process in the last 50 years would be bound to conclude that they are engaged in the task of avoiding doing something they desperately don’t want to do while trying to appear as if they are in fact doing it.

The solution must be to resolve this preserved normative ambivalence: to ‘normalise the norm’ against nuclear weapons by aligning it with the norms against biological and chemical weapons. Fortunately, the means of doing this has already been developed: the TPNW. Developing an unambiguous and absolute global norm against nuclear weapons was a key objective of the proponents of this treaty. Indeed, this is the only way to understand the purpose and functioning of the TPNW, as it makes little sense as a ‘traditional’ WMD disarmament treaty if none of the nuclear-armed states joins it—and all have resolutely stated their intention not to.

The idea is that as membership of the TPNW grows, and as implementation activities expand, the norm it embodies will gradually take hold—just as the analogous norms did in the case of the BWC and CWC. While the involvement of nuclear-armed states in this process would certainly help, it is not necessary. This is a key advantage of the

humanitarian approach to disarmament, which makes no distinction between possessors and non-possessors of the weapon in question and thus empowers many states which would otherwise have little influence in the diplomatic process (Lennane and Moyes 2021).

Developing WMD Governance Networks

A second lesson that emerges is that the inevitably inflexible and cumbersome nature of a governance system, based principally on national governments acting collectively through multilateral treaties, imposes unavoidable limitations on its effectiveness and, especially, on its capacity to adapt to new developments and rapid changes. As discussed earlier, the current WMD governance system provides a reasonably sound legal and normative base, but modifying it to remedy shortcomings, or to address new challenges, is slow, difficult and often impossible. A case in point is the attempt to negotiate a protocol to strengthen the BWC with CWC-like verification provisions, which dragged on for eight years before collapsing in failure in 2001 (Littlewood 2005).

Similarly, the fact that the system is state based, with non-state actors involved only peripherally, as and when permitted by the states, further limits its capacity and flexibility. This is particularly the case when key technologies driving the evolving risks are largely in the hands of non-state actors, typically the private sector and/or the scientific community. Again, biological weapons provide a good example here: the extraordinary advances in biotechnology in recent years have largely taken place outside government. Effectively managing the risks associated with these advances requires the support and active involvement of the biotechnology and pharmaceutical industries, scientific and professional bodies and academia, among others. As then Secretary-General of the United Nations, Ban Ki-Moon said in 2008,

Governments alone cannot confront the risks posed by biological weapons ... to manage the full spectrum of biological risks, you need a cohesive, coordinated network of activities and resources. Such a network will help to ensure that biological science and technology can be safely and securely developed for the benefit of all.

(Ban Ki-Moon 2008)

Another obvious area where a network approach is needed is in managing the risks associated with the interactions of cyber- and hybrid warfare with WMD, especially nuclear weapons.

Governance networks also have much to offer in terms of improving the implementation and enforcement of the existing WMD regime. As the explosion in open-source intelligence has illustrated, many of the compliance-monitoring and verification techniques once only available to governments and intergovernmental organisations (such as the IAEA and OPCW) are now in the hands of civil society organisations, private-sector corporations and individual citizens. It is possible, even likely, that such independent verification and investigative means will become even more capable than the 'official' treaty mechanisms. We can envisage, for example, a situation where the result of an OPCW investigation of alleged use of chemical weapons is compared and contrasted with a parallel independent investigation carried out using remote sensing, satellite imagery, drone surveillance, video evidence, and witness testimony collected via social media, and even on-site sample collection and analysis.

The idea of network-based governance is not new and, indeed, already operates in other fields. Anne-Marie Slaughter wrote in 2017 that the only way to manage many global challenges is

to leave the realm of traditional law and politics and to design, build, and manage regional and global networks. These networks can include government officials, particularly at the sub-national level, such as governors and mayors, but must also engage corporate and civic actors.

(Slaughter 2017)

She went on to describe an example of such a network, the Global Covenant of Mayors for Climate and Energy, which ‘connects and mobilises government and nongovernment actors in more than 7,100 cities across the world, all of whom will continue implementing the Paris climate agreement regardless of what national governments do’.

How can such networks be built for WMD governance? And should they be built or left to emerge on their own? Would they be integrated with the WMD treaty system or operate parallel to it? How would they be run, and how would they be accountable?

There are many possible answers to these questions, and certainly, they should be widely discussed. But one big advantage of network-based governance is that it is not necessary to know all the answers—or to secure global consensus—before getting started. Neither is it necessary to invest huge resources or create new international bureaucracies. The network approach lends itself both to experimentation and to natural selection. All that is needed to initiate a new element of a governance network are motivated stakeholders, technical capability and funding. Initiatives that prove effective and useful will attract broader support and additional funding, and perhaps be absorbed or integrated into official treaty mechanisms. Those that fail to deliver will fade into irrelevance or wither away completely.

An existing example of an ad hoc governance network that has emerged essentially spontaneously and is largely self-organising can be found around the BWC. As noted earlier, the BWC’s effectiveness in managing catastrophic biological risks is constrained by its scope being limited to weapons and by its focus being state, rather than non-state, actors. Following the collapse of the protocol negotiations in 2001, BWC states parties established a process of annual expert meetings to address specific aspects of implementing the treaty. This was originally intended as a stop-gap measure pending the resuscitation of the protocol negotiations. But it was soon found to be a surprisingly effective mechanism of engaging non-state actors—i.e., intergovernmental organisations such as the World Health Organization, the World Organisation for Animal Health, the Food and Agriculture Organization, Interpol, international and regional scientific and professional bodies, and the biotechnology and pharmaceutical industries (Lennane 2006).

Conclusion: Getting the Ball Rolling

Improving WMD governance is not a matter of pursuing new global treaties, much less a single WMD treaty to rule them all. Nor is it a matter of discarding, deprecating or neglecting the various elements of the existing system, whatever their limitations. The ingredients for better WMD governance are all there. Perhaps with hindsight, they could have been better designed in both themselves and in the way they fit together, but their advantages far outweigh the likely costs of trying to replace them wholesale or even of trying to amend them. The geopolitical conditions that enabled their creation no longer

exist. In the circumstances, they are ‘good enough’. The tools and elements needed to improve them also exist and can be seen in operation in various other fields. The challenge, then, is selecting and applying the right tools in a starkly divided and contentious global political landscape for disarmament.

There are opportunities for smaller states, working in coalitions, and for other actors—civil society, the private sector, the international scientific community—to get things started. A global consensus is not required. In contrast to, say, climate change governance, WMD governance can be improved piecemeal, with small increments, and gradually woven into what the International Committee of the Red Cross once aptly described as a ‘web of prevention’ (ICRC 2003). By continuing to work on strengthening WMD norms (especially the deficient norm on nuclear weapons) and by developing WMD governance networks in various forms, the global catastrophic risks posed by WMD can be steadily reduced. Such a varied and amorphous governance system will never be elegant or neat. But it can be effective, even in times of instability and conflict. Over time, it can also pave the way for more fundamental structural and systemic reforms, such as revisions to the UN Charter. It should, therefore, be pursued.

Notes

- 1 For a comprehensive overview of the extent and variety of the consequences, see Federal Ministry for Europe, Integration and Foreign Affairs (Austria) 2015.
- 2 For a concise overview of the history of efforts to outlaw and eliminate chemical weapons, see the history page, OPCW (n.d.).
- 3 For the purposes of the treaty, the NPT defines a *nuclear-weapon state* as a state ‘which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967’. India, Israel and Pakistan do not meet this definition, so cannot join the NPT as nuclear-weapon states. They refuse (so far) to join as non-nuclear-weapon states, as this would require them to eliminate their nuclear weapons. North Korea originally joined the NPT as a non-nuclear-weapon state but withdrew from the treaty in 2003.
- 4 SALT I was concluded in 1972, SALT II in 1979. START I was concluded in 1991, START II in 1993 (but never entered into force) and New START in 2010.
- 5 Article VI in its entirety reads: ‘Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control’ (IAEA 1968).
- 6 ‘Fill the legal gap’ became something of a rallying cry for those advocating for the creation of the TPNW; the phrase came to prominence in the Humanitarian Pledge adopted at the 2014 Vienna Conference on the Humanitarian Impact of Nuclear Weapons (Federal Ministry for Europe, Integration and Foreign Affairs (Austria) 2015).
- 7 Article 8 (b) (xviii) defines as a war crime ‘Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices’ and Article 8 (b) (xxvii) defines as a war crime ‘Employing weapons, which use microbial or other biological agents, or toxins, whatever their origin or method of production’ (IAEA 1968).

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4 Towards a Global Nuclear Ban Treaty

ICAN's Anti-Nuclear Triad

John Miller

Eighty years after their last use in combat, nuclear weapons continue to occupy considerable space in the minds of security theorists, policymakers and the global public. This is for good reason: nuclear weapons have played a starring role in much of the past century's geopolitical drama, and their capacity for causing immense destruction and human suffering is unmatched. Even the tradition of their non-use in combat has bestowed a certain mystique upon them. While great powers have fetishised these weapons as ultimate symbols of international power and coercive capacity, non-nuclear states have variously portrayed the hegemony of the nine nuclear-armed states in terms of a 'nuclear apartheid' wherein a small set of states enjoy a potentially existential upper hand over the rest of the international community (Reynaldi 2020: 889).

The existential fear concerning nuclear weapons is not overstated; they exist in a class of their own in terms of their disproportionate destructive capacity and the threat they pose to the common goals and shared values of the international community, including humanity's fundamental rights to life, peace, health, food, and a clean environment. Worst-case nuclear scenarios tend to envision the use of nuclear weapons in global great-power conflict, but even a relatively contained nuclear war—between India and Pakistan, for instance—could precipitate a global nuclear winter, killing billions via secondary effects including radiation and famine.

Global governance at the intergovernmental and UN levels has failed to secure the human and environmental security of the globe vis-à-vis the threat posed by nuclear weapons over the past 80 years. Spurred by recognition of this failure, civil society groups intent on achieving nonproliferation, nuclear arms reduction and outright prohibition have proliferated. As we will see, such groups have the power to exert a profound influence at the international level, particularly when banded together in global coalitions. This chapter will explore how the International Coalition to Abolish Nuclear Weapons (ICAN) has confronted the nuclear threat head-on and mobilised international collective action on one of the fundamental global issues of our time—one involving international existential risk, national pride and great-power posturing. It will examine the dynamic nuclear landscape within which ICAN has operated, trace the coalition's roots and analyse three key strategies it employed in order to play a pivotal role in ultimately mobilising the ratification by 91 states of the Treaty on the Prohibition of Nuclear Weapons (TPNW) (ICAN 2017), the first and only comprehensive global nuclear ban treaty to date.¹

The Nuclear Landscape

The increase in geopolitical volatility over the past decade has been reflected in the dynamics of the nuclear order. As this order is defined by the collective interpretations of its key actors, it is equally subject to domestic political and social forces as it is to inter-state relations. The order's key actors include the nine states currently possessing operational nuclear weapons: China, France, India, Israel, North Korea, Pakistan, Russia, the United Kingdom, and the United States, followed by other states that rely on the protection of nuclear states' defence umbrella. The possession of nuclear weapons among adversarial pairs, including the United States-Russia and India-Pakistan, has proven to be a particularly formidable headwind confronting nuclear disarmament and prohibition movements, as it has sustained the perceived legitimacy of deterrence. The fact that nuclear arms, if used, would have truly catastrophic consequences for the global community lies at the core of this Cold War-era theory.

Rather than serve as a reason to move towards their prohibition, the overwhelming threat has instead been a cause for nuclear weapons' further entrenchment in states' security apparatuses under the logic that nuclear weapons—and the mutually assured destruction their use would ensure—keep hostilities at bay among great powers. While the end of the Cold War and the remainder of the 1990s saw a general strengthening of the non-proliferation and nuclear security regimes, momentum has since been halted and is wavering towards retreat.

With the end of the Cold War came the end of the bipolar world order, renewing concerns over proliferation as the fulcrum of the nuclear order shifted from opposing bipolar superpowers to a focus in the West on preventing proliferation to non-Western states and even non-state actors. The commitment of nuclear powers and their allies towards this end has been seen in their willingness to take immediate, far-reaching measures to prevent rogue states and non-state actors from gaining access to nuclear weapons: from imposing the UN Security Council's sanctioning power to, in the case of Iraq, outright invasion (Bolton 2019: 318).² These attempts to prevent nuclear weapons from falling into the 'wrong' hands have distracted policymakers' attention from the tremendous dangers posed by the arsenals of the nuclear powers. This shift, coupled with a general post-Cold War complacency, has resulted in 15,000 nuclear weapons remaining in the world—over 85 per cent of which are possessed between the United States and Russia (Fihn, Bolton and Minor 2019).

The slow unravelling of the nuclear arms control regime is evidenced by open non-compliance with existing accords, including Russia's ongoing and conspicuous violation of the 1987 Intermediate Nuclear Forces Treaty, America's 2002 withdrawal from 1970's Anti-Ballistic Missile Treaty and China's refusal to agree to restraints on its warhead delivery systems. Moreover, contrary to the letter and the spirit of Article VI of the Non-Proliferation Treaty (NPT), there has been no attempt to bring the nuclear arms race to an end and set in motion a process of nuclear disarmament; rather, the nuclear powers are instead modernising and expanding their arsenals in direct contravention of the NPT and, as we will see, the TPNW. The unravelling can also be seen in non-nuclear states' open hedging by keeping a foot on both sides of the debate: while they vocally support the disarmament movement in international fora, they return home only to double down on alliances with the nuclear powers for coverage under their deterrence umbrella.

The continued global reliance on nuclear weapons has resulted in the wasting of vast economic and human resources on the production and maintenance of these weapons,

diverting funds from areas of true need, including health care, education and civil infrastructure. According to ICAN, the global expenditure on nuclear weapons was estimated at \$82.4 billion in 2021, or \$9.4 million each hour, a sum larger than the total amount of funding provided by the International Monetary Fund (IMF) to its member countries for COVID-19 impact mitigation between 2020 and 2021 (ICAN 2021).

Ironically, more than any treaty or agreement, perhaps the most important pillar of the nuclear order has been the tradition against their non-use. The decades-long erosion of this norm can be seen from Russia's 1993 abandonment of the USSR's 'No-First-Use' doctrine to current headlines concerning its nuclear posture vis-à-vis Ukraine. In fact, China is the only nuclear state to officially maintain a no-first-use policy, although implicit nuclear threats against U.S. involvement in a potential Taiwan conflict test the doctrine's credibility.³ Despite worrying signals, the fact remains that the international community has refrained from the use of nuclear weapons in combat since August 1945.⁴ Moreover, as the nuclear abolition movement gathers strength, so too may the norm be strengthened, as the idea that nuclear weapons are too destructive and indiscriminate to be used becomes internalised more broadly in the international arena.

A continued failure to take clear, effective and concerted action towards banning nuclear weapons will be to defer to their eventual use, whether on purpose or by accident—the consequences of which would be catastrophic for humanity and the planet. Although the use of nuclear weapons is currently prohibited by an array of international conventions and agreements, their possession is not subject to such restrictions under international law. This contravenes the treatment of other weapons, including biological and chemical weapons, landmines and cluster munitions, which have been outlawed as being indiscriminate, inhumane and presenting an unacceptable threat to non-combatants. Despite nuclear weapons posing an even greater threat, progress towards their prohibition has for decades been largely without meaningful consequence.

History of ICAN

Launched in 2007 against this deteriorating backdrop, ICAN is a global civil society coalition working to affect a global prohibition on nuclear weapons through the full ratification and implementation of the TPNW. As of November 2022, ICAN consists of 652 partner organisations in 107 countries (ICAN 2023). The coalition gained international notoriety when it was awarded the 2017 Nobel Peace Prize. In bestowing the award, the Nobel Committee offered specific praise for '[ICAN's] work to draw attention to the catastrophic humanitarian consequences of any use of nuclear weapons and for its ground-breaking efforts to achieve a treaty-based prohibition of such weapons' (The Nobel Prize 2017). In the space of only a decade, ICAN grew from an idea to being a crucial actor in the international nuclear disarmament discourse, doing so through its use of three key strategies: mobilising civil society, achieving a humanitarian shift in the nuclear discourse and leveraging normative forces to affect concrete change.

ICAN was first conceptualised in 2005 by Dr. Ron McCoy, a retired obstetrician from Malaysia and co-president of International Physicians for the Prevention of Nuclear War (IPPNW), which was itself awarded the Nobel Prize in 1985. Dr. McCoy's proposal followed the 2005 Review Conference of the NPT—which failed to make any substantive progress on advancing the disarmament agenda—and a subsequent World Summit which similarly failed to deliver (Ruff 2018: 237).

ICAN was formed with the understanding that disarmament would have to pursue a new direction if it were to bear any fruit. As such, ICAN was not conceived to be just another summit among world leaders or diplomats; rather, it was created to forge global partnerships among civil society groups and non-governmental organisations (NGOs) to mobilise nuclear disarmament campaigns at the national level and harness their collective strength. While many believed a global nuclear ban treaty could not hope to be effective, ICAN pursued such a treaty in hopes that, independent of its legal reach, it would further contribute to the international stigmatisation of nuclear weapons, empower non-state actors and provide new opportunities to politically and financially pressure pro-nuclear actors.

ICAN's first formal office was established in Melbourne in 2006. Bolstered by Norwegian funding, ICAN was later able to establish an Oslo office in 2010 and engage UN headquarters staff in Geneva to expand coordination across Europe, the Middle East and Africa. This funding also enabled the establishment of a Geneva office in 2011, where the organisation has since been headquartered. A crucial boost to ICAN's global profile came when Norway named it the official partner organisation of civil society for the Oslo Humanitarian Consequences Conference in March 2013. This conference broke new ground in placing the humanitarian consequences of nuclear weapons at the forefront of the prohibition discourse. At the conference, scientists presented research on the impact a nuclear detonation or war could have on humans and the environment. Specifically, a crucial wake-up call for the international community came when global aid organisations, including the United Nations Development Programme (UNDP), stated that in the event of a nuclear attack, no organisation could provide adequate emergency relief, nor was it likely that such capacity could be built in the near-term. The lasting impact of the conference was the extent to which it established and/or heightened states' awareness that the consequences of even a single nuclear detonation could not be reliably mitigated or contained.

Soon after the Oslo Conference, a new government in Norway deprioritised engagement with ICAN, cutting off a key lifeline and threatening the coalition's future. Fortunately, Austria and Mexico quickly picked up the banner and would come to provide decisive backing for the establishment of a nuclear weapons ban treaty, hosting two subsequent Humanitarian Consequences Conferences: one in Nayarit, Mexico, held in February 2014, which was attended by representatives of 146 states, and one in Vienna, Austria, held in December 2014, attended by representatives of 158 states including, for the first time, the United States and the United Kingdom. In addition to expanding upon the topics discussed in Oslo, the Nayarit Conference discussed the risks of accidental detonations. In Vienna, additional topics included the legal status of nuclear weapons in the context of international humanitarian and environmental law.

Following the success of the humanitarian conferences and rising profile of the movement more broadly, 155 states submitted a joint humanitarian appeal for nuclear disarmament to the United Nations General Assembly in October 2014. Two years later, in October 2016, the UN First Committee adopted a landmark ICAN-supported resolution to launch negotiations on a treaty outlawing nuclear weapons. This treaty, which came to be the TPNW, was adopted by a vote of 122 to 41 on July 7, 2017, with notable abstentions from China, India and Pakistan. Just a few months later, in October, it was announced that ICAN had won the Nobel Peace Prize. This award vaulted the coalition to international prominence, giving it public name recognition that no number of statements before UN committees could have achieved.⁵ Three years later, in October 2020, the 50th state ratified the TPNW, triggering its entry into force on January 20, 2021.

In just 15 years of existence, ICAN had successfully built a global civil society coalition that placed a renewed spotlight and impetus behind the idea of nuclear prohibition, resulting in an operational global prohibition treaty. This occurred against the backdrop of decades-long international failures to achieve responsible global governance of nuclear weapons, let alone a treaty of such ambitious scope.

To achieve so much in such a short time, ICAN utilised three key strategies to refocus policymakers and the global public on the humanitarian, human rights and environmental impacts of nuclear weapons. First, it effectively mobilised a global coalition of civil society groups. Second, it critically differed from previous nuclear arms reduction efforts in reframing the disarmament debate to focus on the humanitarian threat posed by nuclear weapons, particularly the catastrophic health and environmental consequences of their use, indiscriminate targeting and long-lasting radioactive effects. In support of this shift, ICAN took a data-driven approach in disseminating scientific data on the harms of nuclear weapons, carefully documenting the medical, economic, political, and environmental impact of nuclear weapons.

Third, ICAN has also at times attempted to be intentionally performative, re-emotionalising the nuclear conversation which has been historically dry, technocratic and affectless (Bolton and Minor 2016: 391). Fourth, ICAN leveraged ‘naming-and-shaming’ tactics to augment the normative pressures the movement could apply. These pressures have also proven effective in buttressing the reach of the TPNW, giving it a second (and potentially sharper) row of teeth in addition to its legal requirements for signatories.

Background, History and Precedent

In order to trace the new path ICAN forged, it is helpful to survey the successes and failures of past nuclear prohibition efforts. The history of these efforts is as long as the history of the weapons they have sought to restrict. Since nuclear weapons’ initial development and use, there has been international pressure for their prohibition. In fact, the very first resolution adopted by the United Nations General Assembly on January 24, 1946, a mere five months after the first use of atomic weapons in Hiroshima and Nagasaki, set a goal of eliminating atomic weapons and all other major weapons of mass destruction from national armaments. Unfortunately, an outright prohibition on nuclear arms would be long in coming, and efforts towards this end have persisted to the present day.

Nuclear prohibitionists met what initially appeared to be a landmark success in the NPT, which was ratified by the United States, the United Kingdom, USSR, and 40 other states, and ostensibly codified an international intention to ‘achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament’ (IAEA 1968). The Treaty preamble’s acknowledgement of the need to ‘take measures to safeguard the security of peoples’ was an early indication of the humanitarian concerns that would form the cornerstone of ICAN’s mission 40 years later (*ibid.*). Unfortunately, such concerns would not have a substantive impact on deterrence doctrines, and, to date, the NPT has proven largely ineffectual. For instance, whereas Article VI of the Treaty requires states to ‘pursue negotiations ... on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control’ (*ibid.*), states’ arsenal-modernisation policies and continued use of the nuclear threat in security doctrines directly contravene their obligations under the Treaty.

Although agreement on nuclear prohibition has failed on the global level, treaties more limited in scope have seen success. Among such limited treaties are regional nuclear weapon-free zones (NWFZs), which mandate the total absence of nuclear weapons within a given geography and proliferated as progress in geographically broader bodies ground to a halt. These NWFZs cover Latin America and the Caribbean (Treaty of Tlatelolco, 1967), the South Pacific (Treaty of Rarotonga, 1985), Southeast Asia (Treaty of Bangkok, 1995), Africa (Treaty of Pelindaba, 1996), and Central Asia (Treaty of Semipalatinsk, 2006). Additional treaties have been agreed to internationally which aim to ensure the peace of any state jurisdiction and restrict the use of nuclear arms in areas beyond it. These treaties include the Antarctic Treaty (1959), which prohibits military activities such as nuclear testing and waste disposal in Antarctica; the Outer Space Treaty (1967), which prohibits the stationing of weapons of mass destruction (WMDs) in orbit or in space; and the Seabed Treaty (1971), which prohibits the stationing of WMD on the seabed beneath international waters.

Furthermore, the most effective international, categorical nuclear treaties have been those that are more limited in scope and primarily pertain to testing restrictions. These include the Partial Test Ban Treaty (1963), which prohibits all above-ground nuclear explosions; the aforementioned NPT, which prohibits non-nuclear states from testing nuclear weapons; and the Comprehensive Test Ban Treaty (1996), which bans all nuclear explosions. Whether as a result of these treaties, the nuclear taboo or other reasons, the moratorium on nuclear weapon tests has been observed universally since the late 1990s, with the exception of tests carried out by North Korea that are also in contravention of several UN Security Council resolutions.

Important as these limited treaties are, ICAN aimed to achieve a global, categorical ban. For successful precedent on this scale, the International Campaign to Ban Landmines (ICBL) and the 1997 Mine Ban Treaty it championed are instructive models. Like ICAN, ICBL is a civil society coalition. By the time the Mine Ban Treaty entered into force on March 1, 1999, it had more than 1,400 partner organisations from over 70 countries worldwide. To achieve a landmine ban, the ICBL challenged the idea of landmines' military utility and relied on expanding the view of state security to account for the prevention of harm to individual citizens rather than just the defence of states from external threats. The coalition's opposition to landmines focused on their indiscriminate nature and violation of concepts of just war. In order to influence the beliefs and, more importantly, the actions of governments, non-state actors and civil society, the ICBL applied primarily normative, rather than legal, pressure.

Progress towards the campaign's ultimate goal of a Mine Ban Treaty was rapid, though never a foregone conclusion. Prior to 1995, not a single state had announced a policy banning landmines. Less than three years later, on December 2, 1997, the Mine Ban Treaty was signed by 121 states, and as of December 2022, the number of signatories is 137. With the exception of Egypt, every non-party to the Treaty is also a nuclear power: China, India, Israel, Pakistan, Russia, and the United States. Stated reasons for resistance to the Treaty mirror those given for resistance to nuclear prohibition and reduction agreements. For instance, U.S. opposition stems from its sustained claim that landmines, irrespective of their harm to non-combatants, remain a vital tool providing a 'necessary warfighting capability' (Esper 2020). The process is a crucial demonstration of how energised, targeted normative pressures can enable fast international action in the face of resistance by great powers (Wexler 2003: 605). In recognition of its achievements, the ICBL and its coordinator, Jody Williams, were awarded the 1997 Nobel Peace Prize.

In awarding the Prize, the Nobel Committee recognised that the ICBL had created a fresh form of diplomacy, as the Mine Ban Treaty entered into force faster than any other major multilateral arms control agreement of the 20th century—the Treaty progressed from initial negotiations to adopted text in just eight months. Moreover, the campaign achieved this while simultaneously offering proof of concept that diplomacy could be driven by a minimally hierarchical civil society group without formal diplomatic ties, perhaps inaugurating what Richard Falk and Andrew Strauss called ‘the New Diplomacy’, a conception of global governance which puts civil society organisations at the centre of efforts to improve the existing architecture for international cooperation (Falk and Strauss 2001). Although ICBL members had differing reasons for wanting to ban landmines, ICBL coordinated their activities and harnessed the desire for a common end to generate the required energy to achieve a binding ban treaty. With the lessons of prior arms reduction movements and a bold, new vision for a nuclear-free future in mind, ICAN employed three key strategies which ultimately contributed to its success.

ICAN’s Strategy: Three Keys

Key 1: Coalition Structure

The first key to ICAN’s success was its structure as a minimally hierarchical coalition of civil society groups. The decision to decentralise and democratise was not an obvious one, particularly as it related to the nature of nuclear policy. As U.S. Diplomat James Marshall observed in 1949, the diplomatic and military apparatuses were the least receptive policy domains to democratisation. Unfortunately for nuclear prohibition and other arms reduction movements, this still holds true more than 70 years on (Marshall 1949: 83). In these domains, policymaking and agenda setting remain the domain of career professionals and, particularly in the nuclear sphere, technicians. This has historically limited the set of voices deemed to be legitimate in the space, negating ideas and perspectives arising outside the pro-nuclear establishment.

The successful engagement of civil society in diplomatic affairs, however, is not without precedent. During the drafting of the UN Charter in the wake of World War II, the U.S. Department of State invited over 40 domestic organisations to send representatives to the 1945 drafting conference in San Francisco. The delegates represented labour, business, agriculture, education, civic, and peace groups, among others, and contributed immensely to the American understanding of the Charter and to the nation’s eagerness to join the United Nations (an admittedly weak-by-design organisation). Crucially, their participation also augmented the belief among policymakers that the nation’s diverse interests would be represented, contributing to the Senate’s overwhelming 89–2 approval of the Charter.⁶ Now more than ever, the globalisation of digital connectivity has enabled instant, low-cost engagement across the globe, allowing individuals and NGOs to play a more integral role in international relations than Marshall could have imagined. While the effects of this are only beginning to be seen, it is hopeful that the efforts of lay citizens will increasingly complement traditional forms of interstate diplomacy (Bhandari and Belyavina 2011: 1).

The work of non-state actors, particularly civil society groups, in diplomatic efforts has historically proven to have the most impact in its effects on institutions, communities and societies (Bhandari and Belyavina 2011: 1). Despite the frequent inability to directly affect policy, civil society efforts can have a significant influence on the perceptions and

emotions of policymakers, constituents and other actors in the policy space. For this reason, the decentralisation, democratisation and diminished influence of hierarchy within the ICAN coalition deepened ties between stakeholders, as each truly felt it had a meaningful voice and role to play.

Key 2: Shifting the Nuclear Discourse to Humanitarian Grounds

This model enabled the inclusion of a plethora of voices and perspectives. The next key to ICAN's success was the content of the message these voices carried: ICAN affected a crucial shift in the nuclear discourse from a historically restrictive discursive space to one occurring on more universally intelligible humanitarian grounds. The movement capitalised on a reality that states' positions on nuclear weapons are not entirely rooted in technicians' coldly rational evaluations of deterrence and utility. Rather, they are also influenced by normative appropriateness and policymakers' entrenched perceptions (Borie 2012).

Building on the experience of the Mine Ban Treaty and Convention on Cluster Munitions (CCM), this shift would prove crucial in introducing doubts into the minds of policymakers on positions they had assumed to be true. In particular, ICAN sought to dismantle nuclear weapons' mystique by problematising the idea that nuclear weapons have some legitimising characteristic that other prohibited WMDs lack. In order to achieve this end, ICAN both minimised the credibility of the Cold War-era theory of deterrence and instead maximised humanitarian considerations. In fulfilment of ICAN's initial vision, these methods resulted in the TPNW containing language that effectively punctured the nuclear mystique, negating claims of any legitimatising quality possessed by nuclear weapons.

In affecting this shift, a key hurdle was the need to offer a substitute narrative to the theory of deterrence. For over 70 years, this dominant ideology has supported the nuclear apparatus and, as a result, entrenched a nuclear technocracy that has marginalised outsiders and non-nuclear states from the nuclear discourse (Bolton and Minor 2016: 388). At its heart, the theory of nuclear deterrence relies exclusively on consequentialist justifications as embodied in the concept of mutually assured destruction: that is, whatever ends they are believed to be able to achieve justifies their existence. In short, the belief that nuclear weapons make nuclear war prohibitively destructive is a sufficient basis for their existence, notwithstanding the obvious fact that were nuclear weapons non-existent, there would be no threat of nuclear war to begin with.

ICAN recognised early on that an effective disarmament initiative would therefore rely on problematising deterrence and distancing itself from the security framework that bases policy decisions on threats and fear (Bolton and Minor 2016: 385). To quote former U.S. Senator J. William Fulbright in 1964, 'the shape of the world a generation from now will be influenced far more by how well we communicate the values of our society to others than by our military or diplomatic superiority'. In the modern age, sustainable security cannot be created through threats and fearmongering; rather, it must be constructed through the building of relationships, work towards common goals, establishment of trust and recognition of mutual interdependence (Peebles 2017).

Indeed, the vast majority of global catastrophic risks facing humankind admit no solutions outside of a framework of much stronger international cooperation. Moreover, the reality is that threats to national security today are, in most regions, less based on the threat of armed invasion than ever before. Rather, they concern terrorism, cyber-security,

poverty, and environmental catastrophe. In each of these matters, nuclear weapons have little to no deterrent value (Peebles 2017). From 2020 to 2021, in the middle of the most disruptive global pandemic in a hundred years, having the most powerful army and largest nuclear arsenal in the world was irrelevant in the effort to protect American lives. During those two years, the number of American COVID-related fatalities surpassed the number of combat deaths the nation suffered in World War I, World War II, the Korean War, and the Vietnam War combined. Regarding environmental security, nuclear weapons not only lack deterrent value but risk causing decades-long incidences of radiation poisoning and contamination of air, soil, water, and food supplies.

Recognising this modern security landscape, the humanitarian impulse that formed the basis of ICAN's message challenged the framing of nuclear weapons as instruments of state security and stability. ICAN challenged the global community to consider nuclear weapons systems from the perspective of whether their use would cause unacceptable harm. This challenge extended beyond questions of legality to include moral and political assessments of nuclear weapons' potential effects on both civilians and combatants, and whether the use of such weapons could under any circumstance be legitimised by responsible states and military commanders (Minor 2015: 721). At its most simple, ICAN claimed the possession of nuclear weapons to be incompatible with universally accepted humanitarian considerations. This claim then shifted the burden of proof onto nuclear-armed states to show the legitimacy of their position rather than challenging the abstract idea of deterrence head-on, adding yet another vector of attack on the entrenched ideology (Minor 2015: 712). The humanitarian impacts of nuclear detonation range from the immediate blast (thermal radiation vaporising those at ground zero accompanied by a shockwave that destroys buildings and kills those further away) to long-term effects, including environmental contamination, cancer and genetic damage.

In support of its ideas, ICAN built on the precedent of the landmine and cluster munition ban initiatives to employ a data-driven approach using medical, economic, political, and environmental data that clearly defined the unacceptable impact of nuclear weapons use. Placing nuclear weapons within the framework of other banned weapon classes and measuring them according to the same criteria denied their unique nature. After all, as former UN High Representative for Disarmament Angela Kane remarked in relation to the stigma that exists around other weapons of mass destruction, 'how many states today boast that they are 'biological-weapon states' ... who speaks of a bioweapon umbrella?' (Kane 2014).

In promoting its humanitarian agenda, coalition-building could not be an end in and of itself for ICAN. The coalition's ability to gain representation in international fora, which vary in the extent to which they include civil society groups in discussions, proved to be another crucial hurdle (Foster and Shelden 2019: 34). Part of the solution to this problem was the organisation of three Humanitarian Impact Conferences, beginning in Oslo in 2013 and concluding with Nayarit and Vienna in 2014. These conferences incorporated new voices in the call for nuclear prohibition, including the *hibakusha* (survivors of the atomic bombings in Japan) and survivors of nuclear test sites in the Marshall Islands, Australia and the United States. Although marked by the notable absences of the five nuclear-armed states that are signatories to the NPT (China, France, Russia, the United Kingdom, and the United States),⁷ the conferences, with 179 countries attending one or more of them, demonstrated the increased international will to make a change in the nuclear landscape and avoid traditional fora to do so.

The Humanitarian Impact Conferences enabled ICAN to accomplish the crucial work of building relationships, working with like-minded parties towards a common goal and establishing trust. In their wake, joint statements to the United Nations General Assembly on the subject garnered similarly substantial support. In 2013 and 2014, for instance, New Zealand delivered statements endorsed by 125 and 155 countries, respectively. In 2015, the humanitarian concerns ICAN had championed among members of the international community were codified in a United Nations General Assembly resolution which recognised that nuclear weapons present ‘unacceptable risks’ and as such ‘[pose] the most serious threat to mankind and to the survival of civilization’ (United Nations General Assembly 2015). The shift ICAN affected, embodied by this resolution, further heightened normative pressures towards nuclear prohibition. ICAN would leverage this pressure in its striving towards the establishment of a comprehensive nuclear ban treaty.

Key 3: Exerting Normative Leverage

The third key to ICAN’s success was its utilisation of normative power, primarily through ‘naming-and-shaming’ tactics, to apply additional normative pressure towards nuclear prohibition and to extend the influence of the TPNW, even before its entry into force. In addition to backstopping signatories’ legal obligations, this pressure influenced non-signatories as well.

The practice of naming and shaming—calling out and shaming actors violating norms on the international stage—has a proven record of efficacy. Shaming violators of international norms serves a dual function by influencing the behaviour of the violating party and of non-violator parties; the latter internalises the norm by aiming to avoid a similar fate as the violator and through the public confirmation that the norm is broadly shared (Wexler 2003: 564). Given the didactic and self-reinforcing consequences of violations, perfect compliance is not required for the development or strengthening of a norm.

To isolate the normative capacity of international treaties, it is helpful to look at changes in the behaviour of non-signatory states. As the Mine Ban Treaty entered into force, Egypt, although not a party to the Treaty, announced a policy in parallel against producing landmines. Similarly, since the CCM entered into force in August 2010, the non-signatory United States has only used cluster munitions once in an isolated strike in Yemen. Prior to the Treaty’s entry into force, cluster munitions had been a fixture of U.S. military strategy dating back to the Vietnam War. In 2016, the United States went a step further and halted transfers of cluster munitions to Saudi Arabia, which used them frequently in airstrikes against Houthi forces in Yemen (Sanders-Zakre 2020: 8). This move came in response to significant evidence that the munitions were causing unacceptable harm to civilians. According to *Cluster Munitions Monitor*, 92 per cent of cluster munition casualties worldwide between 2010 and 2014 were civilians (Landmine & Cluster Munitions Monitor 2015).

The Mine Ban Treaty and CCM also effectively discouraged production and investment in companies that produce prohibited weapons. In tandem with the entry into force of the Mine Ban Treaty, the ICBL took to naming and shaming landmine manufacturers. Together with Human Rights Watch, it sought to inform the American public about the relationship between U.S. companies and landmine production. Its efforts prompted numerous companies to renounce that relationship, and the mere investigation prompted 17 manufacturers to renounce any future involvement in the landmine trade (Wexler 2003: 573). A similar case occurred in the wake of the CCM’s entry into force when Textron and Orbital ATK, two companies that produced cluster munitions in the United

States, halted production even though the United States was not a party to the pact. The Treaty's normative influence extended into the financial sector as well when the U.S.-based mutual fund Eventide Asset Management excluded companies that produce cluster munitions from its investments in November 2017 (Sanders-Zakre 2020: 8).

With this wealth of precedent in mind, ICAN launched a global nuclear divestment initiative called 'Don't Bank on the Bomb' in 2012. Spurring a norm not just against states but also against corporations, the initiative sought to delegitimise nuclear weapons by publishing an annual index of companies in the nuclear armaments field. It also denounced financial institutions investing in companies identified as being involved in the production and maintenance of nuclear weapons (de Champchesnel and Reisman 2018: 8). As a result of this initiative and the TPNW five years later, a number of weapon manufacturers and financial institutions have stepped away from supporting the nuclear supply chain, including one of the largest pension funds in the world, the Dutch fund ABP, which announced in January 2018 that it would divest from nuclear weapon production companies (Sanders-Zakre 2020: 9).

The shaming and education strategies employed by the ICBL, cluster munition campaign and ICAN demonstrate the potential of norms to influence the agendas of states, non-state actors and corporations alike (Wexler 2003: 605). Furthermore, they highlight the mutually reinforcing power of norms and treaties. Learning from these examples and harnessing the lessons learned to push for an ambitious nuclear prohibition treaty, ICAN would achieve its greatest success with the TPNW.

The TPNW

ICAN's efforts towards a nuclear ban treaty culminated with the negotiation, ratification and entry into force of the TPNW (ICAN 2017). Alongside and in tandem with ICAN, the broader nuclear prohibition movement was energised by widespread recognition of the NPT's inefficacy and insufficiency. As faith waned in that treaty, hope was generated that a newer, better treaty might have greater effect. The movement benefitted from renewed political capital and diplomatic energy when then-U.S. President Barack Obama endorsed the goal of a nuclear-free world in a 2009 Prague speech.⁸

This energy continued through the 2010 NPT Review Conference, where proposals for a nuclear ban treaty emerged (although without immediate consequence). The movement found stronger footing when the 2015 iteration of the NPT Review failed to adopt a consensus final document, despite the endorsement of 160 states. Rather than work within existing fora, dissatisfied parties sought to transition efforts to a new working group within the United Nations General Assembly. The working group was formed, albeit without the participation of the nuclear-armed states; it met three times in 2016 with discussions focused on how to move the disarmament agenda forward. Tension developed between states advocating a swift ban and other states, those with a nuclear reliance, wanting to move more slowly and towards a more constrained set of objectives. The proponents of an outright ban were to prevail, and the working group voted to adopt a resolution recommending the United Nations General Assembly convene a 2017 conference to prohibit nuclear weapons. This resolution was approved by the full United Nations General Assembly body, and negotiations took place during two sessions in the spring and summer of 2017. From these sessions, the TPNW was born and formally adopted on July 7, 2017. Throughout these sessions, all rounds of negotiation were boycotted by the nuclear states, most of NATO and many nuclear-reliant states.

The TPNW was the first, and remains the only, nuclear arms control agreement to frame nuclear weapons strictly in terms of the threat they pose to international humanitarian and human rights law (Fihn, Bolton and Minor 2019). Of the many humanitarian threats nuclear weapons pose, the Treaty specifically notes their ‘grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations’ (ICAN 2017). The TPNW recognises the principle of international humanitarian law that ‘the right of parties to an armed conflict to choose methods or means of warfare is not unlimited’ (ibid.). The Treaty builds on the taboo against nuclear weapons, placing them alongside other pariah weapons that are banned under international humanitarian law as causing unnecessary suffering and having indiscriminate and/or disproportionate effects.

In further alignment with the treatment of other WMD, the Treaty differed from prior nuclear reduction and prohibition treaties in its integration of a concrete plan for the elimination of nuclear arms, including clear steps and a verification process. Article 1 of the TPNW places a categorical ban on nuclear weapons, making them illegal under the same type of international law covering other WMD, such as chemical and biological weapons, and weapons deemed indiscriminate, such as landmines and cluster munitions: ‘states are prohibited to use, threaten to use, develop, produce, manufacture, acquire, possess, stockpile, transfer, station, or install nuclear weapons or assist with any prohibited activities’ (ICAN 2017).

Such a ban is noted as ‘the only way to guarantee that nuclear weapons are never used again under any circumstances’ (ICAN 2017). This includes ‘detonation by accident, miscalculation or design’ and places the burden of responsibility for preventing nuclear detonation on all states, whether nuclear-armed or not (ibid.). By not only banning the use of these weapons but also articulating a comprehensive prohibition against their possession, the TPNW has established a framework for, and created more favourable conditions for, the elimination of nuclear weapons worldwide.

Upon acceding to the Treaty, signatory states must declare whether they have eliminated a previous nuclear weapons programme, currently have nuclear weapons or hold another country’s nuclear weapons within their territory, and if so, they must be eliminated or removed. Whereas the NPT does not require states to adopt or maintain safeguard protocols, the TPNW requires signatories to adhere to their current International Atomic Energy Agency (IAEA) safeguard agreements and, if none are already in place, to implement safeguards within 18 months.

Regarding non-signatories, Article 12 of the Treaty mandates signatory states to urge non-signatories to join. Holding the door open for nuclear-armed states to join, the Treaty includes two pathways for them to join: either join the Treaty and then destroy their nuclear weapons or destroy their nuclear weapons and then join the Treaty. States that destroy before joining must cooperate with a ‘competent international authority’ designated by the Treaty to verify dismantlement of its arsenal. States that join before destroying must immediately remove nuclear weapons from operational status and submit a time-bound plan for destroying the weapons within 60 days of joining the Treaty.

A final issue requiring resolution was to break from other treaties’ practice of requiring consensus decision-making. While this provision accelerates the gathering of signatures, as states need not fear they will be bound by a resolution they are not in favour of, it results in either the lowest common denominator agreements or paralysis. The TPNW sought to avoid the worst-case scenario of consensus decision-making that states had experienced as part of the UN Conference on Disarmament. At that conference, in a

remarkable mixture of lassitude and incompetence, the parties were unable to agree on even an agenda from 1996 to 2018 (Ruff 2018: 235). Fortunately, the TPNW only requires a two-thirds majority for amendments or other decisions. Through all of its efforts, ICAN has proven itself more than willing to press forward with or without the support of the nuclear-armed states.

Conclusion

From its origin in 2005, ICAN confronted the dynamic and increasingly volatile global nuclear landscape with a new vision and approach. Deviating from past failures of nuclear reduction and prohibition efforts, ICAN looked towards more successful arms reduction efforts, such as the ICBL, as models on which to pursue nuclear prohibition. In its mission to achieve the passage of a nuclear ban treaty, ICAN employed three key strategies. First, it mobilised a global coalition of civil society partner organisations to generate momentum at the national level. This minimally hierarchical approach encouraged the engagement of a diversity of stakeholders. Second, the humanitarian shift it affected in the nuclear weapons discourse fundamentally altered the perspective, prevailing voices and entrenched narratives that had stymied progress for so long. Crucially, the shift removed nuclear weapons' mystique and forced engagement on the issue to take place on a concrete, human level rather than on the plane of abstract geopolitical theories. Thirdly, its self-conscious reliance on normative power both blunted the impact of nuclear-armed states' resistance to its efforts and extended its influence to non-state actors, including weapons manufacturers and financial institutions. Together, these strategies helped ICAN secure the international momentum necessary for action within the United Nations General Assembly, ultimately culminating in the TPNW.

Despite its remarkable success, ICAN continues to be met with scepticism, largely concerning the efficacy of the TPNW it helped bring into being. Some worry whether such a treaty can truly advance global peace without being ratified by the world's nuclear powers. While it is too soon to tell, the well-documented normative impact of past treaties offers hope that it can. It is also important to keep in mind that much of the TPNW's strength lies not in its legal implementation and operationalisation but in its status as a legally binding document that will further bolster the international norm against nuclear weapon use (de Champchesnel and Reisman 2018: 8). During the Treaty's negotiation, ICAN itself argued that the power of the Treaty would be the normative power it conveyed, rather than any coercive mechanisms it contained (Bolton and Minor 2016: 319). In just five years since its ratification, these normative effects have already begun to show among signatories and non-signatories alike. It is unlikely that nuclear-armed states will ratify the TPNW in the near future. However, the Treaty has without doubt placed greater pressure on these states and has forced them to engage in a humanitarian discursive environment in which past rationalisations fall short.

Beyond the unprecedented impact it has had on the nuclear discourse, ICAN has proven that landmark international agreements can have their nexus in individuals and grass-roots coalitions. The model established by ICAN—and in particular the three strategies explored in this chapter—will hopefully galvanise similar movements to break geopolitical gridlock and reframe the public conception of key issues facing the global community. From food insecurity, migration and climate change to economic instability and widespread human rights violations, there is no shortage of crises facing the global community today. The decentralised, democratic and minimally hierarchical model

ICAN embodied may be exactly what is needed to energise collective international action on these issues. As we seek solutions, the inclusion and empowerment of diverse voices and perspectives will strengthen international efforts and help to ensure that the policies pursued meaningfully differ from those that gave rise to the current state of affairs.

Jonathan Schell's (1982) *The Fate of the Earth*, a work of impressive moral force and uncanny prescience, offered a key contribution to the world's understanding of the potential consequences of the use of nuclear weapons to settle international disputes. While not the first person to sound the alarm regarding the dangers of nuclear weapons, Schell was unique in the range, strength and eloquence of his arguments. In addition to the moral issues raised by their use, he was acutely conscious of the need for new governance mechanisms to forestall and prevent a nuclear cataclysm, contending that lasting international peace would be feasible only in the context of the creation of effective global institutions based on the principles of collective security. As he stated in *The Fate of the Earth*, 'I would suggest that the ultimate requirements are in essence ... global disarmament, both nuclear and conventional, and the invention of political means by which the world can peacefully settle the disputes that throughout history it has settled by war'. Schell was no longer alive when the TPNW came into being, but we have no doubt that he would have been a strong supporter, seeing it as an important—perhaps exceptionally important—innovation to our existing global governance architecture.

We have organisations for the preservation of almost everything in life that we want but no organisation for the preservation of mankind. People seem to have decided that our collective will is too weak or flawed to rise to this occasion. They see the violence that has saturated human history and conclude that to practice violence is innate to our species. They find the perennial hope that peace can be brought to the earth once and for all a delusion of the well-meaning who have refused to face the 'harsh realities' of international life—the realities of self-interest, fear, hatred, and aggression. They have concluded that these realities are eternal ones, and this conclusion defeats at the outset any hope of taking the actions necessary for survival.

(Schell 1982)

Notes

- 1 TPNW ratification count as of December 5, 2022.
- 2 It is important to note that the U.S. invasion of Iraq was later determined to be based on flawed intelligence about the Hussein regime's possession of WMD.
- 3 A senior Chinese military official stated his belief that the United States would stay out of a Taiwan conflict because U.S. leaders care more about Los Angeles than Taipei (Gellman 1998).
- 4 It must be noted that the direct threat of nuclear attack has been used numerous times, most notably during the Korean War, the 1961 Berlin Crisis, the 1962 Cuban Missile Crisis, and the 1973 Arab-Israeli War.
- 5 ICAN's winning of the prize continued a tradition of the Nobel Committee seeking to highlight organizations working towards the goal of nuclear nonproliferation and disarmament. Prior winners in this effort included the American chemist Linus Pauling, who worked to combat nuclear weapons testing in 1962; Japanese Prime Minister Eisaku Sato for his renouncement of the nuclear option for Japan in 1974; two diplomats, Alva Myrdal and Alfonso Garcia Robles, who worked towards disarmament at the United Nations in 1982; International Physicians for the Prevention of Nuclear War in 1985; the NGO Pugwash in 1995; and the International Atomic Energy Agency (IAEA) in 2005.

- 6 It is also important to note that another primary reason for the U.S. Senate's overwhelming approval of the Charter was because the veto power granted to the United States as a permanent member of the Security Council effectively exempted the United States from the Charter's obligations. As noted by Cord Meyer (1947), a member of the U.S. delegation to the 1945 San Francisco Conference, 'a major power can violate every principle and purpose set forth in the Charter and yet remain a member of the organization by the lawful use of the veto power expressly granted to it'.
- 7 These states took a joint position to boycott the meetings under the logic that the humanitarian discourse would undermine the strength and continued influence of the NPT—the treaty including obligations with which these same states are non-compliant.
- 8 While the Obama administration did not secure global nuclear disarmament, it did take incremental steps towards reducing the nuclear threat. These include convening 3 Nuclear Security Summits involving 50+ leaders that resulted in the removal of highly enriched uranium and plutonium for 50+ facilities in 30 countries, the negotiation of the Joint Comprehensive Plan of Action (informally known as the Iran Nuclear Deal) and the negotiation of the New START Treaty with Russia in 2010.

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5 Weapons, War and Military Spending

Disarmament Is Fundamental for Human Security and Sustainable Development

Jody Williams

The UN Charter and Its Unfulfilled Promises

Disarmament for sustainable development and a more secure world should be a self-evident goal in our complex, interconnected world. We have been talking about globalisation and its impact on people and the planet for decades. Climate change is recognised to be at a crisis point, but lacklustre responses to meeting the challenges facing us all have brought us to a catastrophic tipping point that puts all life on Earth at serious risk.

Diseases such as HIV/AIDS, SARS, Ebola and the COVID-19 pandemic demonstrate that borders cannot keep people safe from multiple health threats, nor can all the weapons in the world.¹ The Internet has made it possible for people to communicate easily with each other domestically and internationally, with positive and/or negative results. Cybersecurity and cyberattacks are now part of the vernacular. The climate crisis is affecting all life on the planet, and instead of moving towards nuclear disarmament, these weapons that can destroy us all are being ‘modernised’ while new weapons and other methods of death and destruction continue to be developed and used.

Instead of determined multilateral cooperation and action to ensure safety and security for all, those terms are still being defined by an anachronistic national security state system with roots in two treaties that brought about the Peace of Westphalia, ending the Thirty Years’ War in 1648.² The treaties laid out important elements of the international system still in place today, one which is not capable or willing to address our common 21st-century threats. These include the concept of national sovereignty, with each state solely responsible for law, order and control over the populations living in their territories. Every state also has the right to decide on its own internal political and religious systems.

The Westphalian national security framework focuses on the ability of a government to defend the apparatus and power of the state itself rather than prioritising the core needs that dignify people’s lives and allow them to live free from want and fear. Neither the two world wars fought in the first half of the 20th century nor the birth of the United Nations at the end of World War II have put much of a dent in the ongoing power struggles among states clinging to an outdated world view.

The following lofty words of the Preamble of the Charter that established the United Nations on October 24, 1945, have not played out to end the ‘scourge’ of war in the almost eight decades since the Charter was agreed upon. The promise of its Article 26, to divert resources from weapons development and production for our common benefit, did not even make it out of the starting gate. The Preamble reads,

WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS to practice tolerance and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS.

(United Nations n.d.-a.)

The words are inspiring, but it has always been clear that there was no real interest, euphemistically referred to as ‘political will’, to create the world described in the Charter. That vision never had a chance. The beginnings of the Cold War between the United States and the Soviet Union were brewing even as the United Nations was being established. Already by 1949, the United States and its allies had formed NATO, and the United States had troops stationed in Europe. The USSR’s Warsaw Pact was subsequently founded in 1955. The Korean War, the Vietnam War and the Cuban Missile Crisis only heightened tensions between the East and the West and reinforced the belief that it was only military might that made nations safe.

That does not mean that there have not been some advances over the decades in dealing with human rights in the continuing push for gender equality and promoting social progress—depending on one’s definition of progress—and better standards of life in some parts of the world. However, using ‘international machinery for the promotion of the economic and social advancement of **all peoples**’ [emphasis added] remains out of reach.

The 2022 World Inequality Report, produced by the World Inequality Lab, offers one sobering measure of the inequality in the world by looking at the distribution of global income and global wealth among individuals. The top 10 per cent of the world’s population captures 52 per cent of global income, while the bottom 50 per cent earns only 8 per cent. The middle 40 per cent makes 39 per cent. In terms of wealth, the richest 10 per cent controlled 76 per cent of the world’s wealth in 2021. The bottom 50 per cent owned a mere 2 per cent and the middle 40 per cent owned 22 per cent. Finally, between 1995 and 2021, the top 1 per cent of the population captured 38 per cent of the growth in global wealth and the bottom 50 per cent just 2 per cent in that same period (Chancel *et al.* 2022).

The implementation of Article 26 of the Charter, which could have been an important tool for disarmament and moving resources from weapons to foster sustainable development, went nowhere, as noted earlier. It reads,

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world’s human and economic resources, the Security Council shall be responsible for formulating, with the

assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

(United Nations 2023)

Reaching Critical Will (RCW), the disarmament programme of the Women's International League for Peace and Freedom, the oldest women's peace organisation in the world, analysed the intent of Article 26 and the impact of the UN Security Council's five permanent members' failure to implement it. It noted that the Article gave 'evidence of assumptions made about this new institution and how nations united and working together could actually prevent conflict and deliver peace and security, not just talk about it ... a task it has neglected entirely'.

Further, it directly challenges and addresses militarism—the concept that international relations and national security can only be determined through the threat of military force, as well as continuous preparation and readiness for armed conflict. ... [It] demands disarmament and reduced military expenditures as a precondition for increased security, development, and peace.

But instead of implementing the Article, 'the permanent members of the Security Council have engaged in weapons profiteering and arms races. ... In so doing, they have failed to fulfil a mandate of the UN Charter' (Reaching Critical Will n.d.). The billions and billions of dollars spent on weapons contracts and earned with arms sales and transfers are far more important than the lives destroyed with the weapons of war.

We cannot seem to escape the death, destruction and trauma caused by war, as countries continue their quest for military dominance and the power and so-called national security that comes with it. The staggering drain on resources results in multiple negative impacts on us all.

Human Security and Humanitarian Disarmament Is Possible

Thinking beyond weapons, war and violence to envision a different kind of world and work towards creating sustainable development and enduring peace is a challenge.³ Meeting that challenge requires a different way of thinking about what makes us all secure. The United Nations Development Programme's (UNDP) 1994 *Human Development Report* introduced the concept of human security 'which equates security with people rather than territories, with development rather than arms'. It posited 'a new paradigm of sustainable human development, capturing the potential peace dividend, a new form of development cooperation and a restructured system of global institutions' (United Nations Development Programme 1994).

The human security framework has continued to gain traction over the almost 30 years since its introduction, yet it has often been challenged as vague, unworkable and a 'do-gooder' vehicle for programmes inspired by idealists who do not grasp the realities of the dangerous world in which we live. Especially in times of military crisis, such as after the attacks of 9/11 and the U.S.-led wars resulting from them, and Vladimir Putin's February 2022 invasion of Ukraine, with his accompanying nuclear threats, it is not difficult to push the concept of human security into the background behind militaristic national security thinking.

At the same time, as the world order continues to shift, multilateralism continues to decline, the climate crisis worsens, socio-economic inequalities grow and pandemic health

concerns show little sign of abating, increased feelings of insecurity will not be allayed by massive military arsenals, an increasing number of nuclear states, or high-tech weapons powered by artificial intelligence with little to no involvement of human beings in the target-and-kill functions of these machines.

When asked what would make people feel secure in today's world, most would not answer weapons, war or increasingly bloated military budgets. Some of the fundamental elements to address human security needs include meaningful work with living wages, access to education for all, decent housing and good health care— including equal access to COVID-19 vaccines and other successful means of treatment for global pandemics. People would call for a more level socio-economic playing field, for turning around environmental destruction and for reversing climate change and the decimation of the other species that inhabit the planet.

In its 2022 special report on human security, the UNDP broadened the concept beyond the security of individuals and communities to include 'the interdependence among people, and between people and planet, as reflected in the 2030 Agenda for Sustainable Development'. The United Nation's 17 Sustainable Development Goals (SDGs) are goal-posts to measure progress towards meeting the 2030 Agenda, which is an action plan for people, the planet and prosperity for all.⁴

That report also introduced the 'Index of Perceived Insecurity', which is based on population-representative data covering more than 80 per cent of the world's people. The Index found that globally fewer than one in seven people felt secure or relatively secure and that over 50 per cent felt a very high level of human insecurity, as outlined in the Index. Feelings of perceived insecurity have increased over time, even in countries with very high Human Development Index levels (United Nations Development Programme 2022a).

Additionally, for the first time ever, and following on the COVID-19 pandemic, the UNDP's Human Development Index value declined for two years in a row (United Nations Development Programme 2022b). Reversing these harrowing trends not only requires that countries disarm but also that people recognise that disarmament is a humanitarian imperative and that being able to live in a peaceful world is a basic human right enshrined in the 1948 Universal Declaration of Human Rights (United Nations n.d.-b).

But systematic, planned disarmament is a difficult task, given that the UN Charter's Article 26 never went anywhere and the 'disarmament machinery' of the United Nations is largely dysfunctional, rendering itself irrelevant. Created in 1978, the Conference on Disarmament (CD) replaced previous UN disarmament bodies. It was meant to be the 'single multilateral disarmament negotiating forum of the international community' (United Nations Office for Disarmament Affairs 2001), but the last treaty the 65-member body successfully negotiated was the Comprehensive Nuclear Test Ban Treaty which was adopted by the United Nations General Assembly in 1996. That treaty has not entered into force (Arms Control Association 2022).

Despite the failure of the CD, civil society-led disarmament and arms control campaigns have demonstrated that shifting the focus from a national security framework towards one based on human security is possible. While not the only successful effort, the International Campaign to Ban Landmines (ICBL) was the first, and its ripple effect has been significant.

When the campaign was launched in October 1992, arms control and disarmament discussions were anything but people focused. They were always recognised as struggles among nations vying for power and advantage in terms of their weapons and their own national security. The sacrosanct conference rooms at the United Nations, whether in

New York, Geneva or Vienna, where weapons negotiations take place, were off limits to civil society. A variety of arguments were used to keep the doors to the kingdom of weapons negotiations locked. Two reasons in particular carried the weight of limiting and prohibiting participation by representatives of civil society.

First, as touched upon earlier, since the nation state is the guarantor of security, only national governments should be involved in talks about weapons and war. A second is that nuclear bombs and increasingly high-tech weapons such as killer robots—also known as lethal autonomous weapons systems—are so complex themselves that only experts can begin to understand them, how they fit in modern war scenarios and how ‘security’ would be affected by restricting their use or banning them outright. Thus, complicated and delicate negotiations involving such weapons should be left to the experts, and the experts are governments—or so the argument goes.

But does a person have to understand how to build an atomic bomb in order to know that they have no place on the planet? Are the moral and ethical dimensions of human beings who decide to create weapons, which, once released into the modern battlespace, can target and kill people on their own, off limits in discussions about such weapons? National security-centred disarmament might give lip service to these concerns before moving on to deal with the weapons from a realist point of view.

The effort to prohibit landmines grew from a non-governmental organisation (NGO) campaign into a movement that included pro-ban governments, UN agencies, the International Committee of the Red Cross, and other international institutions and organisations as well. It was, and still is, the cooperation and joint efforts of the various partners of the ban movement that have made the Mine Ban Treaty so successful and have also helped shape other campaigns working on a variety of weapons and/or how they are used. But without the NGO campaign, often called the engine of the landmine ban movement, recognising the long-term problem caused by landmine proliferation and deciding to take action to get rid of them, nothing would have happened to bring about the changes brought about through the Mine Ban Treaty (MBT).

Despite the fact that the Ottawa Process and the MBT it produced sent shock waves through the diplomatic world along with the desire of many governments and diplomats alike to see the whole thing as a one-off, stand-alone success with a rapid return to status quo ante, the model that evolved out of the work to ban antipersonnel landmines took root as a new approach to disarmament and arms control. The successful work of the ICBL, then the Cluster Munition Coalition (CMC), and the International Campaign to Abolish Nuclear Weapons (ICAN) demonstrated that the ‘diplomats only’ approach to weapons negotiations is illusory.

Not only were the ICBL and the CMC able to breach the walls ‘protecting’ such negotiations, they also were able to build enough support with governments to see that trying to ban landmines and cluster munitions inside the United Nations was not possible and were able to take the negotiations outside of the UN process to ban landmines (1997) and cluster bombs (2008). ICAN and like-minded governments achieved the Treaty on the Prohibition of Nuclear Weapons inside the United Nations General Assembly in 2017.

Work to ban antipersonnel landmines, cluster munitions, nuclear weapons, and killer robots, for example, have been efforts that put human needs above the lust for ‘newer, better, faster’ weapons of war with little concern about their devastating effects on people and the planet. The campaigns to ban nuclear weapons and killer robots, in particular, brought serious discussions of morality and ethics in the means and methods of warfare into sharp relief both inside and outside diplomatic conference rooms.

What has come to be called ‘humanitarian disarmament’, a young and developing field, was born out of the work to ban antipersonnel landmines and has continued to develop with other disarmament and arms control campaigns. This approach to addressing weapons focuses on the impact of weapons on people, on civilian populations. As stated on the Humanitarian Disarmament website, its aims are ‘to prevent and remediate arms-inflicted human suffering and environmental harm through the establishment and implementation of norms. This approach to disarmament is people-centred in substance and process’ (Humanitarian Disarmament n.d.). It seeks not only to shift the focus but also to broaden the range of stakeholders involved in the conversation.

Disarmament Is Fundamental to Human Security: Meeting the SDGs

It has long been recognised that meeting the SDGs is inextricably linked to nuclear disarmament because nuclear war negates and makes irrelevant all questions regarding human security and life on this planet. Yet from the start, as noted previously, the UN Security Council failed completely to implement the UN Charter’s Article 26 to divert resources away from weapons and towards establishing peace and security in the world. It failed not because it was an impossible task. It failed because the countries who won World War II had no interest in disarming—on the contrary.

Not only was developing a plan to divert resources away from armaments to address social ills and inequalities never taken seriously, but few other issues ever put a dent in military spending. Governments stress the need for weapons and strong militaries to keep their people safe, when, in fact, armies and their weapons are symbols of a country’s power and prestige, and governments and weapons industries make vast fortunes from the sale of weapons.

Not surprisingly, the world’s largest arms dealer is the United States. According to the Stockholm Peace Research Institute (SIPRI), the United States controlled 38.6 per cent of weapon sales between 2017 and 2021, an increase from 32.2 per cent between 2012 and 2016. In the 2017–21 period, the United States supplied weapons to over 100 countries. Of the eight largest exporters, five are permanent members of the UN Security Council. For the profit motive alone, it is easy to understand why the ‘perm five’, with their veto powers, are not particularly interested in disarmament.

Even as the world continued to reel from the impacts of the COVID-19 pandemic in 2021, then in its second year, SIPRI reported that world military expenditures exceeded \$2 trillion for the first time that year. And that was the seventh year in a row of increased military spending. According to Dr. Diego Lopes da Silva of SIPRI’s Military Expenditure and Arms Production Programme, ‘Even amid the economic fallout of the COVID-19 pandemic, world military spending hit record levels. There was a slowdown in the rate of real-term growth due to inflation. In nominal terms, however, military spending grew by 6.1 per cent’ (Stockholm International Peace Research Institute 2022).

According to SIPRI, between 2017 and 2021, the eight largest arms exporters in the world were the United States, with 39 per cent of global exports; Russia with 19 per cent; France with 11 per cent; China with 4.6 per cent; Germany with 4.5 per cent; Italy with 3.1 per cent; the United Kingdom with 2.9 per cent; and South Korea with 2.8 per cent. The five biggest importers of weapons in that same time period, together accounting for 38 per cent of global imports, were India, Saudi Arabia, Egypt, Australia, and China (Wezeman, Kuimova and Wezeman 2022).

The United States not only dominates the weapons market, but it also continues to outspend the next nine countries combined on defence. Additionally, relative to other countries, U.S. defence spending increased significantly between 2020 to 2021 (Peter G. Peterson Foundation 2023). Looking at a U.S. discretionary spending budget provides an interesting snapshot of the impact of military spending on meeting the day-to-day needs of the U.S. taxpayers who fund the budget.

While the United States is the most egregious in the amounts it allocates to defence, weapons and war, considering how any government allocates its resources is an instructive exercise. Because well more than half of the discretionary spending budget of the United States goes to defence, it is no surprise that areas important to the well-being of its citizens, such as education, health care, housing, infrastructure, transportation, suffer as a result.

And this is before considering the 8 per cent increase in military spending for fiscal year 23 passed by the U.S. Congress on December 15, 2022. The defence authorisation bill for fiscal year 2023 totalled \$858 billion, or \$45 billion more than had been requested in the Biden budget (Zengerle 2022). In addition, the Department of Energy's National Nuclear Security Administration's (NNSA) allocation is \$21.4 billion, which will 'allow NNSA to deliver the safe, secure, reliable, and effective nuclear deterrent the nation requires and continue NNSA's progress in modernising key production capabilities' (National Nuclear Security Administration 2022). This totals a staggering \$879.4 billion.

Comparing this amount to the \$60.4 billion allocated to the State Department, of which one half goes to U.S. AID programmes, it is clear that the Pentagon dominates foreign policy issues. The war and weapons budget is more than 14.5 times larger than that of the State Department! For meeting the human security needs of its citizens, the budget allocates \$237.3 billion for health and human services, \$88.3 billion for education, \$71.98 billion for housing and urban development, \$26.8 billion for transportation, \$37.7 billion for the justice department, and \$14.6 billion for the labour department to name just a few (National Nuclear Security Administration 2022).

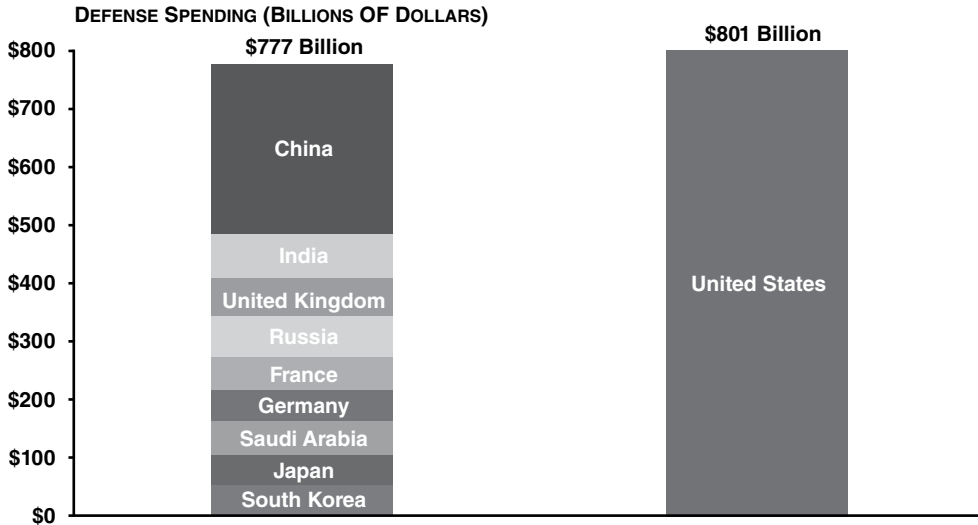
What if the budgetary focus was on human security and not on weapons and war? What might the United States look like? What if some of those resources were diverted to meeting the UN SDGs? What might the world look like? What if even half of the \$2 trillion of world military expenditures were spent on achieving the SDGs instead of fuelling wars around the world? What might the world look like then?

According to the International Committee of the Red Cross (ICRC) there are over 100 armed conflicts in the world today. The impact of the fighting is exacerbated by ongoing changes to the climate, coupled with increasing food and energy costs (International Committee of the Red Cross 2022). Some of the conflicts have been going on for decades yet are largely ignored unless one is a fighter or a victim in one of the conflicts or is profiting from weapons sales, the fighting itself or in some way benefitting from the destruction/reconstruction war brings. One of the conflicts had been taking place since 2014 in Eastern Ukraine with Russian-supported proxies fighting to split the country apart. 2014 also saw Russia's annexation of Crimea.

That early fighting was considered a low-level conflict, unless, of course, you were somehow caught up in the fighting—until, on February 24, 2022, Russia launched a full-scale invasion of the country. Not long after ordering his 'special military operation' against Ukraine, Putin began threatening the use of nuclear weapons to defend Russian territory, and a year into the invasion, the nuclear threats only increased.



The United States spends more on defense than the next 9 countries combined



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Figure 5.1 The United States spends more on defence than the next nine countries combined.

Notes: Figures are in U.S. dollars converted from local currencies using market exchange rates. Data for the United States are for fiscal year 2021, which ran from October 1, 2020, through September 30, 2021. Data for the other countries are for calendar year 2021. The source for this chart uses a definition of defence spending that is more broad than budget function 050 and defence discretionary spending.

Source: Stockholm International Peace Research Institute, *SIPRI Military Expenditure Database*, April 2022.

This is not the first time Putin has made nuclear threats. In 2014, during its invasion of Crimea, Russian leaders talked openly about putting nuclear weapons on alert. Then in 2015, Russia threatened Danish warships with nuclear weapons if that country joined NATO’s missile defence system. But neither of those threats rattled the world the way Putin’s nuclear threats over Ukraine have, including the possibility of dropping Russia’s policy of no first use of nuclear weapons (Lister 2022). Upping the ante again on March 25, 2023, Putin announced his decision to station tactical nuclear weapons in Belarus and said that ten Russian planes capable of carrying tactical nukes had already been moved there (Ellyatt 2023).

While people have not had to endure another world war, some argue that the Russian invasion of Ukraine on February 24, 2022, the ensuing war and the actions of the West in arming and providing other support to Ukraine portend a move in that direction. The invasion is described as having ‘triggered the deadliest conflict in Europe since World War Two and the biggest confrontation between Moscow and the West since the 1962 Cuban Missile Crisis’ (Faulconbridge 2022).

The Bulletin of the Atomic Scientists issued its 2022 nuclear year in review, declaring that the global nuclear order was ‘in shambles’ (Diaz-Maurin 2022). Among many issues, the piece cited the following major concerns: military attacks on nuclear reactors and

nuclear facilities in Ukraine; the possibility that North Korea is preparing for a nuclear test after launching more ballistic missiles in a single year than ever before; Iran beginning construction of its underground nuclear complex again, while disconnecting the International Atomic Energy Agency (IAEA) surveillance cameras and speeding up its uranium enrichment programme; and Saudi Arabia continuing to move towards enriching uranium while refusing to allow inspections by the IAEA (Diaz-Maurin 2022).

In 2022, there were no meaningful results from efforts at nuclear disarmament or nonproliferation, and days before the first anniversary of his February 24, 2022, invasion of Ukraine, Putin announced that Russia was suspending its participation in the New START nuclear arms control treaty. With this announcement, he effectively put the last nail in the coffin of the entire arms control architecture, according to NATO secretary-general Jens Stoltenberg. In any case, that treaty does not cover the battlefield tactical nuclear weapons that Putin has periodically threatened to use against Ukraine (Trojanovski *et al.* 2023).

Not only have nuclear weapons come to the fore again because of the war, but Ukraine, like other armed conflicts, is also a testing ground for new weapons and the ongoing development of military doctrine. Advances in technology and training are being closely monitored for the ways they are shaping combat. Two years before Putin's invasion, at a NATO conference held in Norfolk, Virginia, in October 2020, Ukraine's vice prime minister and minister of digital transformation, Mykhailo Fedorov, said, 'Ukraine is the best test ground, as we have the opportunity to test all hypotheses in battle and introduce revolutionary change in military tech and modern warfare'. Then he added, 'in the last two weeks, we have been convinced once again the wars of the future will be about maximum drones and minimal humans' (Jakes 2022).

The ultimate outcome and long-term impact of the Russian invasion of Ukraine remain to be seen, but Putin's ongoing nuclear threats alone should cause the world to pause and rethink the belief that weapons make us safe. Actually, it has long been held that nuclear *disarmament* is inextricably linked to achieving sustainable development.

Humanitarian Disarmament for Sustainable Development Is Possible

Despite the mostly disheartening state of disarmament efforts, the ongoing war in Ukraine, and Putin's continuous nuclear threats, progress was made in 2022/23 in dealing with some weapons and issues related to their use. These successes are the result of the same model of government, civil society and international institutions working together to make humanitarian disarmament work and change happen.

The Treaty on the Prohibition of Nuclear Weapons (TPNW)

The TPNW was also the result of a decade of work spearheaded by ICAN, in partnership with like-minded governments; the ICRC; and other international organisations. The United Nations General Assembly adopted the treaty on July 17, 2017. It entered into force on January 22, 2021, with its 50th ratification, and as of December 5, 2022, it had been ratified by 91 countries. For its groundbreaking work, ICAN was awarded the Nobel Peace Prize in 2017.

Despite Putin's threats, the TPNW is a critically important piece of disarmament law. As described on ICAN's website,

Prior to the treaty's adoption, nuclear weapons were the only weapons of mass destruction not subject to a comprehensive ban, despite their catastrophic, widespread and persistent humanitarian and environmental consequences. The new agreement fills a significant gap in international law.

(ICAN n.d.)

The treaty's obligations include prohibitions on

developing, testing, producing, manufacturing, transferring, possessing, stockpiling, using or threatening to use nuclear weapons, or allowing nuclear weapons to be stationed on their territory. It also prohibits them from assisting, encouraging or inducing anyone to engage in any of these activities.

(ICAN n.d.)

Both possessors of nuclear weapons and nations that host them on their territory can join the treaty. Possessors must destroy the weapons according to a legally binding, time-bound plan, and hosts must remove them by specific deadlines. Victims of the testing and use of nuclear weapons must be provided with assistance and environmental contamination must be remediated. The treaty's preamble recognises the harm that nuclear weapons cause, 'including the disproportionate impact on women and girls, and on indigenous peoples around the world' (ICAN n.d.).

While the TPNW offers the possibility of ridding the world of nuclear weapons, no one has any illusions that reaching that goal will be an easy task. No possessor nation or host country has had the courage to join the treaty. French diplomats have publicly stated that France will never give up its nuclear weapons because if it were to do so, no country would pay any attention to it—an immoral and horrifyingly cynical reason to hold on to nuclear weapons.⁵ Despite these formidable roadblocks, work continues to eliminate the doomsday weapons.

From June 21 to 23, 2022, Austria hosted the First Meeting of States Parties (1MSP) to the TPNW. Prior to this meeting, ICAN hosted a two-day ban forum on 18–19 June in Austria and then on June 20, 2022, the Vienna Conference on the Humanitarian Impact of Nuclear Weapons. The 1MSP resulted in the adoption of the Vienna Declaration and a 50-point Vienna Action plan to press ahead on work to eliminate nuclear weapons (ICAN n.d.). It also scheduled 2MSP to take place in New York City from November 27 to December 1, 2023.

The Declaration unequivocally condemned 'any and all nuclear threats, whether they be explicit or implicit and irrespective of the circumstances' and concluded that

[i]n the face of the catastrophic risks posed by nuclear weapons and in the interest of the very survival of humanity. ... We will not rest until the last state has joined the Treaty, the last warhead has been dismantled and destroyed and nuclear weapons have been totally eliminated from the Earth

(ICAN n.d.).

Words on paper without a concrete action plan to back them up are irrelevant. The Dublin Action Plan is a testament to the dedication of those working to eliminate nuclear weapons. The 50 points seek to advance the treaty itself as well as to carry out the commitments made in the Declaration. It includes

actions on universalisation; victim assistance; environmental remediation and international cooperation and assistance; scientific and technical advice in support of implementation; supporting the wider nuclear disarmament and nonproliferation regime; inclusion; and implementation of the treaty's gender provisions.

(ICAN n.d.)

Finally, concrete decisions to press universalisation of the treaty included the following:

Establishment of a Scientific Advisory Group, to advance research on nuclear weapon risks, their humanitarian consequences, and nuclear disarmament, and to address the scientific and technical challenges involved in effectively implementing the Treaty and provide advice to states parties.

Deadlines for the destruction of nuclear weapons by nuclear-armed states joining the treaty: no more than 10 years, with the possibility of an extension of up to five years. States parties hosting nuclear weapons belonging to other states will have 90 days to remove them.

Establishment of a programme of intersessional work to follow the meeting, including a coordinating committee and informal working groups on universalisation; victim assistance, environmental remediation, and international cooperation and assistance; and work related to the designation of a competent international authority to oversee the destruction of nuclear weapons.

(ICAN n.d.)

The Use of Explosive Weapons in Populated Areas

Over a decade's worth of work to deal with the horrific issue of the use of explosive weapons in populated areas culminated in an official ceremony in Dublin on November 19, 2022, in which 82 countries officially endorsed the Political Declaration of the Protection of Civilians from the Use of Explosive Weapons in Populated Areas (Government of Ireland Department of Foreign Affairs n.d.; INEW 2022a). It is the first formal international recognition of the urgent need to directly tackle the impact of the weapons.

These weapons are the leading cause of civilian casualties in armed conflict, and if there has ever been any doubt about the impact of such weapons on human beings and the infrastructure of a country subjected to war, Russia's assault on Ukraine and its people reveals the stark reality of such attacks. In the case of their use by Russia in Ukraine, many of the attacks have been called war crimes and crimes against humanity (BBC News 2023).

The work on these weapons was led by a coalition of NGOs: the International Network on Explosive Weapons (INEW), the ICRC and the United Nations and nearly three years of diplomatic negotiations led by Ireland (INEW 2022b). The resulting political declaration pushes for stronger standards to protect civilians and calls on states which endorse it to implement it by changing their national policies and practices, including military policies and operational rules of engagement.

A political declaration is not binding international law; thus those determined to see it work must be ever vigilant to help create the political will to make it function and thus make a difference in people's lives. Those involved in the process noted that the declaration is only a starting point, not the end game. INEW noted that there must be a robust implementation process, and various governments talked about the need to share good

practices and collaborate to make sure the declaration makes a real difference on the ground. For that to happen, the implementation phase must be as open, transparent and inclusive as the negotiations were (INEW 2022b).

Parliamentarians involved in the process issued their own Parliamentary Call to Action, already endorsed by 100 parliamentarians. They urge all countries to adopt and implement the declaration rapidly and effectively. Their statement notes correctly the important role parliamentarians can play in disarmament work, stating that

parliamentarians from different countries and backgrounds have a crucial role to play. As legislators, our role is central to the implementation of international agreements at the national level. In several of our countries, an active parliamentary process took place over several years, with the support of civil society, to call on our governments to urgently address this critical issue.

(INEW 2022b)

In their Call to Action, they committed to nine concrete actions to speed the process of universalisation and implementation of the Dublin Political Declaration, including a call to create a ‘group of friends of the EWIPA political declaration’ in national parliaments for working in and outside their governments on implementation, via hearings, public questions, resolutions, media outreach, and public awareness-raising. Finally, the statement also called for collaboration among parliamentarians at the global level to exchange information about good practices.

The Campaign to Stop Killer Robots (Autonomous Weapons Systems (AWS))

Another collaborative effort that is seeing results—despite their use in the war in Ukraine as a testing ground for new weapons and ways to use them—is the Campaign to Stop Killer Robots. Launched in April 2013, the campaign has endured a decade of repetitive discussions about the weapons in diplomatic meetings of the Convention on Conventional Weapons (CCW) held at the United Nations in Geneva.⁶ By the beginning of 2023, the CCW had not taken any action to ban or restrict weapons that can function autonomously and on their own carry out target-and-kill operations with no human intervention.

The CCW is uniquely suited to seeing that nothing happens regarding weapons which producers/exporters or importers/users do not want to see banned or restricted. The rule that requires all decisions related to CCW negotiations be made by consensus continues to have a stranglehold on any meaningful progress in Geneva. But as was the case in the work of the ICBL and the CMC, for example, those meetings have been fertile ground for work among governments, the ICRC and other international organisations, and civil society that do want action to ban killer robots.

As a result of diplomatic consultations in New York and Geneva, on February 24, 2023, at a regional conference hosted by Costa Rica and in a ‘significant act of political leadership’, 33 governments from Latin America and the Caribbean issued a historic Communiqué calling for ‘the *urgent negotiation of an international legally binding instrument on autonomy in weapons systems*’ (Ousman 2023). In order to ban landmines in 1997 and then cluster munitions in 2008, it proved necessary to abandon the CCW and negotiate those two treaties in stand-alone processes outside the United Nations. The February Communiqué should be the first step towards such a process to ban killer robots.

Back to the Future

The UN Charter describes an unfulfilled future. As described earlier, what would make us safer in our crumbling world would be a major diversion of funds from military spending towards meeting human needs and solving the global crises we face together, rather than staying the course to meet the demands of power-hungry governments and their militaries and the money-lust of weapons producers and dealers. Despite the chaos of the beginning decades of the 21st century and predictions of apocalyptic doom on our horizon, those who believe in the promise and possibilities of a future defined by human security and a better planet for all refuse to accept that nothing can be done to achieve a future as described by the UN Charter—and more.

Visions and descriptions of such a future abound. Governments, international organisations and bodies and civil society working together have demonstrated that positive change is possible, based upon the model of cooperative partnership to achieve the goals of humanitarian disarmament. Resources diverted by such efforts can and must be used to achieve the UN SDGs as soon as possible. Every single person is capable of contributing in their own way to helping transform our world. Collective and individual contributions are fundamental to change. Our possible future depends on it.

Notes

- 1 As of March 31, 2023, the reported number of deaths in the United States from COVID-19 was 1,125,277, almost twice as many as military deaths in World War I, World War II, the Korean War, and the Vietnam War combined (616,640), which speaks to the relevance of a human security framework as compared to the prevailing national security framework ('Track COVID in the U.S'. 2023; see also Statista 2023).
- 2 The two treaties forming the basis of the Peace of Westphalia were the Treaty of Münster and the Treaty of Osnabrück, signed in October and May of 1648 (Patton 2019).
- 3 Information in this section first appeared in Williams 2020.
- 4 The 17 SDGs are no poverty; zero hunger; good health and well-being; quality education; gender equality; clean water and sanitation; affordable and clear energy; decent work and economic growth; industry, innovation and infrastructure; reduced inequalities; sustainable cities and communities; responsible consumption and production; climate action; life below water; life on land; peace, justice and strong institutions; and partnerships for the goals.
- 5 I attended two public events, one hosted by the ICBL-CMC in Paris on January 16, 2013, and the other at the United Nations in Geneva not long before the COVID-19 pandemic hit. At the first event, while speaking on a panel, French Diplomat Frédéric Journès, without hesitation, stated that France would never give up nuclear weapons. At the second, a different French diplomat was talking about nuclear disarmament and when she finished, I mentioned how shocked I'd been by her colleague's comments at which point she said she stood behind his statement.
- 6 The full name of the CCW is the Convention on Prohibition or Restriction on Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (United Nations Office for Disarmament Affairs 2001).

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6 The International Implications of Japan's Non-nuclear Policy

Fumihiko Yoshida

Ultimately, eliminating the risk of nuclear war requires the abolition of nuclear weapons. But achieving this goal will require global governance of nuclear disarmament and dealing with the gap between the ideal of a nuclear-free world and the reality of living with nuclear weapons. The international community would do well to seek answers to this question by learning from Japan's experience of reliance on the U.S. nuclear umbrella.

Until its defeat in World War II, Japan was among the world's leading military powers and the only modernised nation in Asia with a huge military industry. The attacks on Hiroshima and Nagasaki at the end of the war made Japan the only nation to have suffered atomic bombings. Since then, Japan has chosen to maintain its so-called Peace Constitution and has made the abolition of nuclear weapons a key foreign policy goal.

Now an ally of the United States, with its nuclear arsenal and numerous military bases on Japanese territory, Japan's desire for a 'world without nuclear weapons' contradicts the reality that its national security depends on the deterrence of the United States. How has Japan dealt with the dilemma of this reality while adhering to its three non-nuclear principles: non-production, non-possession and non-introduction of nuclear weapons as a non-nuclear state? What implications do Japan's unique choices and trajectories have for the international community? In this chapter, I will examine these various points.

The first country in Asia to succeed in the Industrial Revolution, Japan fought in World War II based on militarism. It worshipped the emperor as a 'Living God', and even called itself 'God's State'. Japan's initial transformation into a new nation was taken on August 15, 1945, with the radio broadcast of the emperor's 'Declaration of Surrender'.

Only nine days before this Declaration, one atomic bomb had fallen on Hiroshima, and three days later, another fell on Nagasaki. Japan's military did not provide a detailed account of the horrors caused by the two attacks but briefly announced that a 'new type of bomb' had been dropped. Assessments of the damage began immediately after the bombings, with court prosecutors in Hiroshima and Nagasaki submitting reports to the Ministry of Justice. The Hiroshima report stated that some 10,000 people had been killed and between 50,000 and 140,000 injured. The Nagasaki report announced 30,000 deaths and 50,000 to 60,000 injuries. But the extent of the damage caused by the two atomic explosions was so great that it was impossible to determine the exact number of victims after the bombings.

After the draft text of the 'Declaration' was discussed at a Cabinet meeting on August 14, a recording of Emperor Hirohito reading the rescript was made that evening. At noon on August 15, the so-called Gyokuon-broadcast (Jewel Voice Broadcast) was heard,

announcing to the Japanese people that the war had ended. In his Declaration, the Emperor mentioned the atomic bombs dropped on Hiroshima and Nagasaki as follows:

(N)ow the war has lasted for nearly four years. Despite the best that has been done by everyone—the gallant fighting of military and naval forces, the diligence and assiduity of Our servants of the State and the devoted service of Our one hundred million people, the war situation has developed not necessarily to Japan's advantage, while the general trends of the world have all turned against her interest. Moreover, the enemy has begun to employ a new and most cruel bomb, the power of which to do damage is indeed incalculable, taking the toll of many innocent lives. Should We continue to fight, it would not only result in an ultimate collapse and obliteration of the Japanese nation, but also it would lead to the total extinction of human civilization.

(Huffman 2023)

The Emperor himself did not write the statement, which had been approved by the Japanese military regime. Until now, it is not known whether the atomic bombings were the main reason for the Emperor's or the regime's decision to surrender.¹ However, the text of his statement, with its phrase 'a new and most cruel bomb' rather than atomic bombs, suggests that both the Emperor and the military regime recognised the extraordinary power of nuclear weapons and even intuited the danger to human civilisation which they posed. The statement of surrender represented the first time the Japanese government had expressed its views on the atomic bombings to the world and to Japan. The majority of the Japanese people living outside of Hiroshima and Nagasaki had no idea of the devastation they caused.

A newly democratised Japan produced various accounts of the damage caused by World War II. In addition to the tremendous loss of life that Japan inflicted on the invading and occupying nations, its people were also made aware of the enormous number of Japanese casualties. Although multiple studies have produced wide-ranging estimates of casualties, the current consensus is that there were some 3.1 million war dead, including those from the Sino-Japanese War period. The breakdown of casualties is commonly cited as 2.3 million Japanese soldiers and 800,000 Japanese civilians.

Details of the damage gradually became clear, and today's figures indicate that by the end of 1945, some 14,000 people had died in Hiroshima (population 350,000 at the time) and about 70,000 in Nagasaki (population about 240,000), and the number of injured in Hiroshima about 79,000 and in Nagasaki some 75,000. It is also widely known that many *hibakusha* (atomic bomb survivors) suffered from radiation sickness long after the actual bombings.²

Until 1952, Japan was occupied by the General Headquarters of the Supreme Commander for the Allied Powers (GHQ). Although there was no visible social movement against nuclear weapons during this period, fear and loathing of nuclear weapons grew in Japan more quickly than anywhere else in the world. In the first post-war Hiroshima Peace Declaration (August 6, 1947), Hiroshima's mayor took great pains to avoid criticism of the United States.

Another factor in Japan's new pacifism was the Japanese Constitution, effective on May 3, 1947. Reflecting the Potsdam Declaration's inclusion of the demilitarisation of Japan, Article 9 of the Japanese Constitution included the renunciation of war and the non-retention of war potential. The preamble of the Constitution states,

The people of Japan, deeply conscious of the noble ideal of lasting peace and of the rule of mutual, positive human relations, have resolved to preserve their security and existence, trusting in the justice and faith of the peace-loving peoples of the world.

The Hiroshima Peace Declaration of 1948 was also written with the new Constitution in mind, stating, '[W]e are deeply conscious of the ideals of peace-loving nations, and determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world'. Moreover, the Mayor of Hiroshima emphasised that 'the ravages of war have shown us what future wars will be like' and warned of the danger of human extinction from war. At the same time, he stated convincingly that 'with all the efforts and ingenuity of mankind devoted to war, the creation of world peace is not impossible'. He then called for 'the eternal renunciation of war and the establishment of the idea of world peace on earth'.

However, it was not until April 28, 1952, when the San Francisco Peace Treaty came into effect, ending the GHQ occupation and restoring Japan's sovereignty, that the anti-nuclear movement in Japanese society gained strength. On August 6, 1953, the Hiroshima National Peace Convention was held under the auspices of 48 organisations, mostly labour unions. Participants included 663 people from all over Japan, and 13 slogans were adopted, including a 'ban on the use of atomic bombs' and 'stabilisation of the lives of atomic bombing victims'.

Another major turning point in Japanese anti-nuclear sentiment was the hydrogen bomb test conducted by the United States on Bikini Atoll in the Marshall Sea on March 1, 1954. The crew of the Japanese tuna fishing boat *Fukuryu Maru* was exposed to radioactive fallout from the bomb test; all were hospitalised after returning to Japan, and one died soon thereafter. This incident triggered a nationwide campaign to ban both atomic and hydrogen bombs, and as many as 30 million signatures were collected in Japan alone. This growing anti-nuclear movement led to the first World Conference Against Atomic and Hydrogen Bombs in August 1955 and the formation of the Japan Confederation of A- and H-Bomb Sufferers Organizations (*Nippon Hidankyo*), the only national organisation organised by the *hibakusha*.

The Russell-Einstein Manifesto, issued in June 1955, born with the aforementioned developments in Japan in mind, stated,

[It is known] on very good authority that a bomb can now be manufactured which will be 2,500 times as powerful as that which destroyed Hiroshima. Such a bomb, if exploded near the ground or under water, sends radioactive particles into the upper air. They sink gradually and reach the surface of the earth in the form of a deadly dust or rain. It was this dust which infected the Japanese fishermen and their catch of fish. ... No one knows how widely such lethal radioactive particles might be diffused, but the best authorities are unanimous in saying that a war with H-bombs might quite possibly put an end to the human race.

The authors, two intellectual giants, Bertrand Russell and Albert Einstein, expressed their strong fear that if many H-bombs are used, there will be universal death—sudden only for a minority, but for the majority a slow torture of disease and disintegration'.

Similar awareness of nuclear weapons was widely shared in Japanese society in response to the movement in the international community. Moreover, as the international community became better informed about Japan's experience of the atomic

bombings, it was clear that Japan had a moral responsibility to appeal to the world for a ban on nuclear testing and the abolition of nuclear weapons. This anti-nuclear consciousness came to resonate strongly with the pacifist line of the Constitution.

It is unlikely that the authors of the Declaration of Surrender intended or hoped for the subsequent development of anti-nuclearism and pacifism in Japan. However, it is a curious historical development that the sense of crisis over nuclear weapons implied by the wording of the Declaration of Surrender was shared by Japanese society in the aftermath of World War II. Dr. Hideki Yukawa (1989), a Nobel laureate in physics, explains the anti-nuclearism and pacifism that took root in Japanese society as follows:

[T]he appearance of the atomic bomb in the final stages of World War II and the creation of the hydrogen bomb after the war had a decisive impact on the way many people thought about war. As a result, the idea of 'rejection of war' has come to be accepted by a far greater number of people than before. It is probable that among the Japanese people, who experienced the horrors of the atomic bombings and suffered the consequences of the hydrogen bomb tests, this thought has taken root most widely. Soon after the war, the Peace Constitution was enacted, and despite various debates, it has remained in place.

What about contemporary Japan? With the passage of time and changes in circumstances, it is undeniable that the idea of rejection of war is not as powerful as it was in the 1950s and 1960s. However, a nationwide public opinion poll conducted by the Asahi Shimbun in November 2020 found that 59 per cent of respondents favoured Japan's participation in the Treaty on the Prohibition of Nuclear Weapons Convention (TPNW), compared with only 29 per cent favouring no participation. A second opinion poll conducted by the Asahi Shimbun in May 2022 found that 59 per cent favoured not changing Article 9 of the Constitution, compared to 33 per cent who favoured changing it. These data strongly suggest that the rejection of war, anti-nuclearism and pacifism remain deeply rooted in Japanese society and continue to influence Japan's nuclear disarmament and nonproliferation policies.

Japan's 'Nuclear Dilemma' Part I

While the concept of rejection of war has been an ideal in Japan, the country has continued to rely heavily on its military alliance with the United States, a nuclear superpower, for its national security.

As noted earlier, the restoration of Japan's sovereignty with the entry into force of the San Francisco Peace Treaty (SFPT) marked a major turning point for the anti-nuclear movement in Japanese society. On the other hand, another treaty signed the same day as the SFPT forced Japan to confront the contradiction in its policy regarding nuclear weapons, viz., the bilateral Japan-U.S. Security Treaty. With the Cold War in full swing, this Treaty was intended to guarantee the continued presence of U.S. military bases in Japan, even after the restoration of Japanese sovereignty.

Article I of this 'twin Treaty' states,

Japan grants the right to station U.S. forces in Japan. U.S. forces stationed in Japan may contribute to the security of Far East Asia and provide defence assistance in the event of direct armed invasion or civil unrest in Japan at the instigation of a foreign power.

However, the obligation of U.S. forces to defend Japan was not clear. Moreover, the position regarding 'extended deterrence' and 'extended nuclear deterrence' (the provision of a nuclear umbrella) was also unclear.

Article 5 of the (current) Japan-U.S. Security Treaty, revised in 1960, states that

each Party recognizes that an armed attack on either side in the territory under the administration of Japan would endanger its own peace and security, and declares that it will act to deal with the common danger in accordance with its own constitutional provisions and procedures.

This text means that an armed attack on territory under Japan's control is recognised not only by Japan but also by the United States as 'endangering its own peace and security,' and that the United States is, therefore, to 'act to cope with the common danger'. In other words, the United States considers an armed attack on Japan to be equivalent to an armed attack on the United States, compelling it to respond to such an attack. This is the principal basis for extended deterrence by the United States.

When the Japan-U.S. Security Treaty was signed in 1951, the nuclear arms race between the United States and the Soviet Union had already begun, and it is believed that extended deterrence actually included the nuclear umbrella even at that time. But it was not until the 1960s that the Japanese government's policy of emphasising the nuclear umbrella became clear, and it has taken the form of political will, confirmed through exchanges at Japan-U.S. summit meetings and documents released after the meetings. In this way, the maintenance of the nuclear umbrella has long occupied a central position in the management of the Japan-U.S. alliance.

Nevertheless, anti-nuclear sentiment has remained consistent in Japanese society. While the Japanese government has made the policy judgement that U.S. nuclear deterrence is necessary, it also considers the anti-nuclear sentiment of many of its citizens. Although trapped in this painful dilemma, Japan had no realistic choice but to maintain the nuclear umbrella.

Japanese politics has responded to this anti-nuclear sentiment by making the aforementioned three non-nuclear principles a national policy based on the Prime Minister's policy statements and on resolutions of the Diet. In December 1967, then Prime Minister Eisaku Sato announced the three non-nuclear principles (non-production, non-possession and non-introduction of nuclear weapons) at a meeting of the Budget Committee of the House of Representatives and included them in his policy speech in January of the following year. In November 1971 and May 1975, resolutions supporting the three non-nuclear principles were adopted at plenary sessions of the House of Representatives and came to be treated as the national policy of Japan.

The first two principles state unequivocally that Japan shall neither produce nor possess nuclear weapons, and since Japan does not manufacture such weapons, it also means that their proliferation to other countries is impossible. The United States welcomes the first two principles, considering the prevention of nuclear proliferation in Japan and other countries as critical to its national interest. In addition, the principle that Japan would neither arm itself with nuclear weapons nor transfer nuclear weapons it has produced to other countries was consistent with the country's anti-nuclear sentiment.

The third principle is that Japan should not introduce nuclear weapons into the country. This was not necessarily in line with the U.S. policy of maintaining as free a hand as

possible regarding nuclear strategy. However, there was always a concern in Japanese society that U.S. military bases in Japan might be used for purposes of nuclear deterrence.

Under these circumstances, the Japanese government searched for realistic options to maintain the nuclear umbrella. As a result, the Japanese and U.S. governments chose to avoid a backlash of anti-nuclear sentiment in Japanese society by means of undisclosed 'secret agreements'.

The first originated with the negotiations during the revision of the Japan-U.S. Security Treaty in 1960, in which both countries agreed that the introduction of nuclear weapons to U.S. bases in Japan would be a matter of prior consultation between the two countries. However, there were differences of opinion as to the definition of 'introduction'. The U.S. policy was that the 'transit' of U.S. navy vessels to U.S. bases in Japan did not constitute an introduction and was not subject to prior consultation unless the weapons were unloaded on land. Since the 1960s, many tactical nuclear weapons have been deployed on U.S. Navy vessels, and the intention was to maintain a free hand regarding the transit of these vessels to U.S. military bases in Japan.

But Japan argued differently. At the time, before the Japanese government had formulated its three non-nuclear principles, there was strong opposition in Japanese society to the presence of U.S. navy vessels, as they could potentially carry nuclear weapons. Therefore, the Japanese government agreed to revise the Japan-U.S. Security Treaty, leaving the definition of 'introduction' ambiguous. Moreover, the Japanese government continued to overlook the fact that the U.S. side maintained its position in the exchange of opinions after the revision, viz., that transit to U.S. military bases in Japan did constitute introduction. As a result, this left open the serious possibility that vessels carrying nuclear weapons *were* being transferred to U.S. bases in Japan *without prior consultation*. Nevertheless, the Japanese government has repeatedly stated in the Diet that 'since there has been no request for prior consultation, it is considered that there is no introduction'. Even after the three non-nuclear principles became national policy, the government continued to make similar statements.

It is unclear whether or not nuclear-armed vessels have actually been present on U.S. bases in Japan. What is clear, however, is that the United States has been maintaining the nuclear umbrella through an unspoken and unofficial agreement that suits the U.S. side while avoiding any backlash from Japanese society.

Subsequently, during the Japan-U.S. summit of November 1969, then U.S. President Richard Nixon and Japanese Prime Minister Eisaku Sato signed a secret agreement stating that in the event of a grave emergency, the Japanese government 'understands the requirements of the U.S. government with respect to the reintroduction of nuclear weapons into Okinawa and will fulfil these requirements without delay if such prior consultations are held'. In other words, the two leaders promised not to adhere to the three non-nuclear principles if there were 'prior consultations' regarding the introduction of nuclear weapons into Okinawa. The Japanese Ministry of Foreign Affairs maintains that this was not an official 'secret pact' because it was not agreed to in an official diplomatic document. However, it was at least a valid document between the two leaders and was, in fact, another secret agreement.

This secret agreement was only officially revealed in 2010. Successive Liberal Democratic Party (LDP)-led administrations had denied the existence of the secret agreement. But when the Democratic Party of Japan (DPJ) came to power, then Foreign Minister Katsuya Okada ordered an investigation within the ministry, and the relevant documents were found. After a study by a committee of experts entrusted with verification, the

reality of the secret agreement became even clearer. The stance of successive administrations prior to the DPJ government was to maintain silence about the secret agreement with the United States regarding the introduction of nuclear weapons and port calls. This was a dishonest choice made by the Japanese government, which was caught between its position under the U.S. nuclear umbrella and the deeply rooted anti-nuclear sentiment in Japanese society.

As a result of the 2010 exposure and subsequent Japan-U.S. discussions, the secret agreement no longer exists. However, it is now well known that the interpretation of *introduction* between Japan and the United States remains at variance. The U.S. side has consistently taken the position that transit of a U.S. military vessel carrying nuclear weapons to a U.S. military base in Japan does not constitute nuclear introduction, while the Japanese have contended that such transit constitutes introduction and *is* subject to prior consultation. Thus, the Japanese side is well aware that, theoretically, U.S. vessels carrying nuclear weapons may call at U.S. bases in Japan without prior consultation.

The story of how the truth about the secret agreements emerged should end simply with criticism of the Japanese government for continuing to conceal them. There is no doubt that the Japanese government's policy is dishonest to the people and the Diet, but attention must be paid to the reality that the Japan-U.S. Security Treaty has unique characteristics, including (a) a bilateral security treaty between a victorious vs. a defeated nation and (b) the only bilateral security treaty in the world between a nation having used nuclear weapons and one having suffered nuclear attacks.

Considering these unique points, the nuclear umbrella must be maintained for Japan without causing a backlash in Japanese society or damaging the U.S. nuclear deterrence policy. If we consider the successive secret agreements that were concluded as a painful option to the simultaneous achievement of these two contradictory goals, we can say that the history of the secret agreements lies at the heart not only of Japan's deep dilemma over nuclear weapons but also to state-centric international relations with its excessive preoccupation with national military security.

Japan's 'Nuclear Dilemma' Part II

The dilemma over the prior consultation about the introduction of nuclear weapons is a major problem for the Japanese government and Japanese society not only in times of emergency but also in peacetime. But there is another dilemma that could become extremely serious in the event of an emergency: the differences between Japan and the United States concerning international humanitarian law.

International humanitarian law involves customary and treaty law, the former binding on all states and the latter on states parties. Convention law includes the four Geneva Conventions of 1949 (for the protection of wounded and sick soldiers, shipwrecked persons, prisoners of war, and civilians) and its Additional Protocol I (prohibiting the use of weapons that cause undue injury or needless suffering, as well as attacks on civilians and civilian objects), and these rules mirror those in customary law. The International Criminal Court (ICC) was established in 2002 to try individuals who violate international humanitarian law and bring them to justice.

In the 'Shimoda case' in 1963, residents of Hiroshima and Nagasaki (survivors) 'jointly brought an action against the government of Japan for the damages they and members of their families suffered as a result of the atomic bombings by the United States in August 1945'. And these survivors alleged that the dropping of the atomic bombs was an

unlawful act and that Japan's waiver of claims for damages under domestic and international law against the United States gave rise to an obligation for the government of Japan itself to pay damages.

Although this legal action was dismissed by the Tokyo District Court on December 7, 1963, the court held that

the aerial bombardment with atomic bombs of the cities of Hiroshima and Nagasaki was an illegal act of hostilities according to the rules of international law. It must be regarded as indiscriminate aerial bombardment of undefended cities, even if it was directed at military objectives only, inasmuch as it resulted in damage comparable to that caused by indiscriminate bombardment.

(International Committee of the Red Cross 1963)

However, even after this ruling, the Japanese government has not taken the position that the atomic bombings by the United States violated international law.

The advisory opinion by International Court of Justice (ICJ) has concluded that 'the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law'. On the other hand, it stated that

in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.

(International Committee of the Red Cross. n.d.-a)

Based on this advisory opinion and other applicable interpretations of international laws, Japan takes the position that the use of nuclear weapons is not always illegal.

Despite this history, Japan regards the rule of law in the international community as one of its diplomatic priorities and is a state party to the four Geneva Conventions and Additional Protocol I.³ If Japan were to use force, it would need to comply with these treaties. Japan is also a state party to the Rome Statute, which established the ICC. Thus, the key question for Japan is whether these international humanitarian laws would also apply to the use of nuclear weapons and how this would affect the nuclear umbrella provided by the United States. The United States itself has not ratified Additional Protocol I. Although it is apparently formulating its nuclear strategy and targeting strategy with *awareness* of international humanitarian law, it ultimately maintains a position of minimising legal restraints, desiring to keep as free a hand as possible in the conduct of war.

And what about U.S. allies in Europe? In becoming parties to Additional Protocol I, the United Kingdom and France, as nuclear-weapon states,⁴ have declared that the protocol does not apply to the use of nuclear weapons. The United Kingdom, France, Germany, and Italy have also declared that in the event of an attack on their own civilians in violation of Additional Protocol I, they are not denied the right to 'avenge' (a counterattack by a state that has suffered an attack that is illegal under international law in order to force the aggressor state to cease and desist). The debate continues as to the legal meaning of such a declaration. However, considering the political intent of the Declaration, it can be said that the nuclear powers, the United Kingdom and France, are responding in consideration of the impact on their own nuclear deterrence, while Germany and

Italy, non-nuclear-weapon states in the North Atlantic Treaty Organization (NATO), are responding in consideration of the impact on extended nuclear deterrence.

What about Japan? It is not clear to what extent Japan deeply examined the relationship with the nuclear umbrella when it made its decision to sign and ratify these international humanitarian laws. What is clear from the record is that Japan acceded to the Geneva Conventions and Additional Protocol I without any reservations about the rules governing the use of nuclear weapons.

This raises the serious question of how to deal with the differences between Japan and the United States. While the United States is not legally bound by the rules of Additional Protocol I regarding the use of nuclear weapons, its ally Japan has taken the position of being legally bound without *reservation*. Japan is a member of the ICC, but the United States is a non-signatory. Although this protocol has bearing only in the event of a crisis situation in which nuclear weapons are used, how would Japan assess the differences with the United States over international humanitarian law, and how would it respond?

For example, suppose for some security reason, the United States, based on the Japan-U.S. Security Treaty, in consultation with Japan, counterattacked with U.S. nuclear weapons against a nuclear attack on Japan by a nuclear-weapon state. If a nuclear counterattack on a military target agreed to by Japan in the Japan-U.S. talks resulted in a violation of Additional Protocol I, inflicting excessive injury or needless suffering, or causing indiscriminate attacks with significant collateral damage, Japan would not be completely immune from liability, even as a result of a counterattack on a nuclear first-strike.

Moreover, if Japan were to be involved in the decision-making process concerning the nuclear counterattack, it is quite conceivable that the ICC prosecutor might initiate an investigation into the suspected violation of Additional Protocol I, given that Japan is a signatory. Depending on the outcome of such an investigation, it is conceivable that senior Japanese government officials involved in the decision-making process could be charged with war crimes.

With these issues of international humanitarian law in mind, for the sake of the next question, let us assume a case in which the United States offered Japan the option of retaliating with nuclear weapons. Taking into account the risk of being accused of war crimes and based on the perspective of international humanitarian law, could Japan object to the nuclear strike strategy proposed by the United States? If a gap emerged between the United States—which places a high value on having a free hand—and Japan—which is bound by its obligations under Additional Protocol I—it could seriously affect the alliance relationship in case of an emergency. Thus, although difficult to see in peacetime, the nuclear umbrella between Japan and the United States has a latent asymmetry, given the anticipated differences in the enforcement of international humanitarian law between Japan, a party to Additional Protocol 1, and the United States, which is not.

Although a situation in which nuclear weapons are used must be avoided as much as possible, the nuclear umbrella is built on the assumption that the United States *could* conceivably use nuclear weapons. On the other hand, it is appropriate for Japan, as the only country having suffered a nuclear attack, to have joined the four Geneva Conventions and Additional Protocol I without any reservation concerning the use of nuclear weapons. So, in deciding whether or not to use nuclear weapons under the nuclear umbrella, will Japan use international humanitarian law as a basis for persuading the United States to desist from using nuclear weapons? Or will Japan encourage or agree to the use of nuclear weapons by the United States, even though this would be in possible

violation of international humanitarian law and the general law of war? This represents another serious nuclear dilemma that Japan faces.

Japan's 'Nuclear Dilemma' Part III

The two dilemmas that I have described concerning the three non-nuclear principles and international humanitarian law have structural causes. The structure of these dilemmas can be summarised as follows.

For Japan, Article 9 of the Japanese Constitution is essential to the fundamental idea of the 'rejection of war'. On the other hand, Japan signed a treaty *on the same day*, recognising *both* the restoration of its sovereignty and the Japan-U.S. Security Treaty, authorising the stationing of U.S. military bases in Japan. In doing so, a basic framework was formed in which Japan's foreign and security policy was henceforth to rely on Article 9 of the Constitution *and* the Japan-U.S. Security Treaty. As a result, a structure was created in which Japanese society faced multiple dilemmas between the idea of *rejection of war* contained in Article 9 and the nuclear umbrella provided by the Japan-U.S. Security Treaty.

How was this structure formed? From a historical perspective, Japan's Constitution and the Japan-U.S. Security Treaty were basically created under the leadership of the GHQ during the occupation. Nevertheless, the Japanese government and Japanese society have accepted both and preserved them as the basic framework for Japan's post-war foreign and security policies. More specifically, this framework consists of two pillars: (a) maintaining Article 9 of the Constitution, which contains the renunciation of war and the non-retention of military force, and limiting Japan's ability to defend itself to the minimum necessary, and (b) at the same time, ensuring Japan's security through the U.S. commitment to defend Japan under the Japan-U.S. Security Treaty.

This system is also known as the Article 9-Security Treaty Regime, and it was Prime Minister Shigeru Yoshida who mapped this basic course, choosing a strategy of prioritising economic growth—by entrusting Japan's security to the Japan-U.S. Security Treaty—while carefully avoiding full-scale rearmament under Article 9 of the Constitution. This basic line of thinking was carried forward by subsequent Japanese Prime Ministers and became entrenched as the Yoshida Doctrine, at least until the end of the Cold War.

In the post-Cold War era, there was a growing movement to expand Japan's international contributions not only in the non-military area but also in the military sphere. Moreover, in response to changes in the security environment, such as the build-up of military power (including nuclear weapons) by China and the nuclear armament of North Korea, the argument for revising Article 9 of the Constitution became stronger than it had been during the Cold War. For example, former Prime Minister Yasuhiro Nakasone (LDP), who was a proponent of constitutional reform, asserted,

This constitution, which was framed by MacArthur's command during the occupation, lacks a view of the nation based on the history and traditions of the people. Article 9, which states that Japan shall have no armed forces, is based on the protection of the U.S. military under the Security Treaty, and this imposes too great a restriction on Japan's autonomy. It is time for us to create a constitution that is in tune with the times and appropriate for the 21st century.

(*Dialogue between Former Prime Minister Yasuhiro Nakasone and Kiichi Miyazawa* 1997)

There is no doubt that the revision of Article 9, taboo during the Cold War, became easier to talk about after the Cold War. Nevertheless, the argument that the revision of Article 9 is unnecessary still holds sway in Japan. For example, former Prime Minister Kiichi Miyazawa (LDP), a defender of Article 9, responded to Nakasone's argument by saying,

Japan has made a terrible mistake in the past by having an army. Since the Self-Defense Forces can do what they can do under Article 9, it would be foolish to have an army or use force in foreign countries anymore. Japan has made good use of this Constitution since the end of World War II, and we should cherish it.

(‘Dialogue between Former Prime Minister Yasuhiro Nakasone and Kiichi Miyazawa’ 1997)

Although the LDP, which has maintained its position as Japan's ruling party for most of the post-war period, has become much more vocal in its opposition to the revision of Article 9 than it was during the Cold War, Japanese society as a whole is still dominated by a constitutionalist majority, similar to that of Prime Minister Miyazawa.

Looking back over the history of Japan, it is clear that the original Yoshida Doctrine has undergone minor revisions as times have changed, but the Article 9-Security Treaty Regime itself has not been reformed.

Thus, in entrenching the Article 9-Security Treaty Regime, a nuclear dilemma was created, giving rise to a conflictual relationship between the rejection of war—with its anti-nuclear stance as a central pillar—and the nuclear umbrella provided by the Japan-U.S. Security Treaty. Although there is a growing tendency in Japanese society to accept the Japan-U.S. Security Treaty, this does not necessarily mean acceptance of the nuclear umbrella. Historically, and even today, there has been a certain range and transformation in the idea of rejection of war. Opposition to the Japan-U.S. Security Treaty emerged strongly between the 1950s and the 1970s, whereas recent national public opinion polls show that both Article 9 of the Constitution and the Japan-U.S. Security Treaty have gained the support of more than a majority of the Japanese public.

This change in Japanese society became a factor in the acceptance of the Article 9-Security Treaty Regime. However, even though the Japan-U.S. Security Treaty is accepted, anti-nuclear consciousness remains firmly grounded in the idea of rejection of war. Many Japanese accept the Japan-U.S. Security Treaty for the pragmatic reason of national security. But many Japanese also feel that support for the Japan-U.S. Security Treaty and acceptance of the nuclear umbrella are not one and the same. As a result, realism regarding national security and anti-nuclearism in rejecting war have become confused in the minds of many Japanese.

Clearly, under the Article 9-Security Treaty Regime, the idea of rejection of war is more or less dependent on the Japan-U.S. Security Treaty. As mentioned earlier, former Prime Minister Miyazawa spoke in defence of Article 9, saying, ‘[T]he Self-Defense Forces have been able to do what they can do under Article 9, so it would be foolish to have an army or use force abroad anymore’. This is a logical development given the existence of the Japan-U.S. Security Treaty. In other words, Article 9 is supported by the Japan-U.S. Security Treaty. As a result, the idea of rejection of war, which is inseparable from the existence of Article 9, is more or less dependent on the Japan-U.S. Security Treaty, including the nuclear umbrella. Since the anti-nuclear consciousness remains deeply rooted in the idea of rejection of war, the structure of Article 9—supported by the Japan-U.S. Security Treaty—has encouraged a structure that generates a conflictual relationship.

For these reasons, the clash between reliance on the nuclear umbrella and anti-nuclearism continues under the Article 9-Security Treaty Regime and continues to reproduce Japan's nuclear dilemma. It is hard to imagine that this situation could have been foreseen when the SFPT and the Japan-U.S. Security Treaty were signed in 1951. In reality, among the post-World War II allies of the United States, only Japan, the only country exposed to atomic bombings, has continued to face this nuclear dilemma in its history.

How, then, will the Article 9-Security Treaty Regime affect the idea of rejection of war? It is difficult to predict the distant future, but as long as Article 9 of the Constitution exists, the Article 9-Security Treaty Regime will continue to keep Japan within this conflicted framework premised on the U.S. nuclear umbrella.

Because of this framework, a new dilemma has emerged: the Japanese government's policy towards the 2021 Treaty on the Prohibition of Nuclear Weapons (TPNW). The Government of Japan continues to oppose it. This supreme irony exists because Japan's participation in a treaty, which would immediately outlaw nuclear weapons *while nuclear threats exist in the vicinity of Japan*, would undermine the legitimacy of nuclear deterrence by the United States and put the lives and property of its citizens at risk. The Government of Japan has even decided *not to participate as an observer* in the first meeting of the Conference of the Parties to the TPNW. The representative of the Government of Japan explained its reasons for this decision by saying, 'To change reality, the cooperation of nuclear-weapon states is necessary, but none of them is participating in the TPNW. Our country will continue to make practical efforts (towards nuclear disarmament)'.

It is realistic to conclude that nuclear abolition through the TPNW is impossible unless the nuclear-weapon states themselves participate. However, there was also a diplomatic option of utilising the existence of the TPNW to encourage nuclear-weapon states to pursue nuclear disarmament. In fact, NATO members Germany, Norway, the Netherlands, and Belgium joined in the first meeting of the Conference of the Parties as observers; Australia, a U.S. ally in the Pacific region, made a similar choice. While pointing out the drawbacks of TPNW, they stressed the need for nuclear disarmament.

The Government of Japan refused to even participate as an observer. This decision was clearly based on the presence of the United States, which had turned its back on the TPNW, and it represents a clear policy choice in favour of the nuclear umbrella in the face of the nuclear dilemma. From a different perspective, Japan's decision not to participate as an observer can be seen to result from its caution that if it were to join, support for the TPNW would grow in Japan, and criticism of the nuclear umbrella would intensify. As the TPNW case strongly suggests, it will be extremely difficult for Japan, given its special relationship with the United States, to overcome the tension arising between the U.S. nuclear umbrella and anti-nuclearism at the heart of the strong anti-war sentiment.

International Implications of Japan's Non-nuclear Policy

What are the implications of Japan's continuing to internalise anti-nuclearism in Japanese society while maintaining Article 9 of the Constitution in the face of the nuclear dilemma under the Article 9-Security Treaty Regime?

First is the restraining effect on the argument in favour of a nuclear-armed Japan. According to the Japanese government's interpretation of Article 9 of the Constitution, Japan can arm itself with nuclear weapons, as long as it is within the scope of a non-aggressive defence policy; in other words, the Japanese government can maintain and

exercise nuclear capabilities for self-defence. However, nuclear weapons possessed within the scope of a nonaggressive defence policy are an effective deterrent.

Moreover, even the smallest nuclear armaments would be deemed to violate the Non-Proliferation Treaty (NPT). Even if Japan were to acquire 'constitutional' nuclear arms domestically, internationally it would be seen as a betrayal of the NPT and subject to economic sanctions. Because nuclear arms would not be militarily commensurate and would cause Japan to lose standing internationally, the Japanese government has deemed it politically wise not to move towards nuclear arms under the restrictions of Article 9. Furthermore, Japan's three non-nuclear principles, designed to satisfy its citizens' anti-nuclear sentiment, have restricted its ability to manufacture or possess nuclear weapons, and overturning these principles would risk domestic political disapproval.

Preventing Japan from going nuclear is of vital concern to the United States, which wants to maintain its military bases there. Moreover, under the Article 9-Security Treaty Regime, Japan's dependence on the U.S. nuclear umbrella and the U.S. legal right to maintain its forces on an ongoing basis are required for the U.S. Asia-Pacific strategy. It is, therefore, desirable to prevent Japan from going nuclear and shifting to an autonomous armaments policy to prevent a new source of instability for U.S. forces in Japan. Clearly, it is deemed in the best interests of the United States if Japan's nuclear armaments are suppressed through the Article 9-Security Treaty Regime.

Given these factors, the continuation of Japan's nuclear-weapon-free policy will have a positive effect on security in Northeast Asia. In China and South Korea, where the historical traces of the Sino-Japanese War and Japan's colonisation of the Korean Peninsula still linger, there is a deep-seated wariness of a nuclear-armed Japan. Given such regional misgivings, the continuation of Japan's nuclear-weapon-free policy is seen as a sign that the Article 9-Security Treaty Regime is fulfilling its function as a public good for regional security.

The second implication of the Article 9-Security Treaty Regime is Japan's contribution to nuclear disarmament and nonproliferation policies based on the NPT. Japan's Ministry of Foreign Affairs (MOFA) recognises that, as the only country to have experienced atomic bombings, Japan has a responsibility to lead the international community's efforts to achieve a world without nuclear weapons. MOFA has cited as one of its achievements the fact that it has submitted a resolution on nuclear abolition to the United Nations General Assembly every year since 1995, and that the resolution has been adopted. The August 2022 NPT Review Conference and the September 2022 United Nations General Assembly were held simultaneously. Prime Minister Fumio Kishida, a Hiroshima native, attended both events and delivered speeches, symbolic of the high priority Japan places on nuclear disarmament and nonproliferation.⁵

Beyond the NPT Review Conference and the United Nations General Assembly, Japan's MOFA has contributed to the international community policy recommendations for nuclear abolition. In response to the 1998 nuclear tests by India and Pakistan in defiance of the NPT, MOFA organised the Tokyo Forum on Nuclear Non-Proliferation and Disarmament, which was attended by international experts. In 1999, the Forum called for

a rapid and concerted effort to reverse this dangerous trend or risk undesirable changes in nuclear disarmament and nonproliferation over the next few years. Unless concerted action is taken promptly to reverse this dangerous trend, treaties on nuclear nonproliferation and nuclear disarmament will be meaningless instruments.

In 2017, in response to the deteriorating security environment, especially in North Korea, and the emerging conflict of opinion between the nuclear-weapon states and those not possessing nuclear weapons over how to proceed with nuclear disarmament, then Foreign Minister Fumio Kishida announced the launch of the 'Eminent Person's Council for Substantial Progress on Nuclear Disarmament'. This Council of international experts was commissioned to compile a report in 2019 and identify gaps between claims from security and humanitarian perspectives and the difficult issues that must be confronted in order to achieve nuclear abolition. In 2019, the council Chairman reported on these issues and proposed steps that states and civil society could take.

As explained earlier, the contribution of the Japanese government to nuclear disarmament is based on the recognition that 'as the only country to have experienced atomic bombings, Japan has a responsibility to lead the efforts of the international community toward the realisation of a world without nuclear weapons'. At present, this is premised on the Article 9-Security Treaty Regime, a practice still overshadowed by the nuclear dilemma. Even so, Japan's contribution is considered an indispensable public good for the international community to be proactive in nuclear disarmament and nonproliferation policies while aware of its moral high ground.

But this raises yet another significant question: will Japan remain mired in the nuclear dilemma as long as it relies on the Article 9-Security Treaty Regime? Immediately after Russia launched its invasion of Ukraine, President Vladimir Putin made a statement threatening the use of nuclear weapons, sending shock waves through Japanese civil society. At a citizens' rally against war in Nagasaki, one participant said,

If a third A-bombed city is created, it will be a seed in the chain of nuclear weapons use. We must not only pray for Nagasaki to be the last A-bombed city, but also continue to tell the world what will happen if nuclear weapons are used.

One of the *hibakusha* said,

(Intimidation with nuclear weapons is) a blasphemy against those who died in the atomic bombings of Nagasaki and Hiroshima. It is the duty of the *hibakusha* to continue to raise our voices so that war will not be waged in the days of their children and grandchildren.

The Japanese government has continuously criticised Putin's nuclear threats. After the G20 summit in Bali, Indonesia, Prime Minister Fumio Kishida, a politician from Hiroshima, made the following comments at a press conference.

In the (G20) Summit Declaration, the majority of countries strongly condemned the war in Ukraine, and in the G20, the threat or use of nuclear weapons is also inadmissible. ... Japan strongly urged that the threat or use of nuclear weapons should be condemned in the strongest possible terms, as it is an act of hostility against humanity. I greatly appreciate that the inclusion of this phrase was a major step leading to next year's G7 Summit in Hiroshima in 2023. I would like to lead the discussion as the chair of the G7 Hiroshima Summit.

After the war in Ukraine broke out, some Japanese politicians expressed the idea that Japan should also discuss nuclear sharing with the United States. However, Japanese

media reacted negatively to this, and the Japanese government stated that it would not consider this as a policy. Maintaining a policy that respects the strong anti-nuclear awareness in civil society while assuming the existence of the U.S. nuclear umbrella remains unchanged even today in the midst of a challenging security environment.

It is unrealistic and unlikely that the situation will change dramatically in the near future, although from a long-term perspective, the landscape we may see in the future may be very different. In fact, there is a way to resolve the nuclear dilemma while moving closer to the ideals of Article 9 of the Constitution, and Japan is progressively moving towards that goal: to realise a ‘world without nuclear weapons’ in the future and completely close the nuclear umbrella between Japan and the United States. If such a world is to be realised, a new security theory and international security system will have taken root, and the role and scale of U.S. forces in Japan will have been reduced. If this can be achieved, it will be because the security policy has shifted away from the Article 9-Security Treaty Regime towards an Article 9-led policy.

If the Article 9-Security Treaty Regime could be reformulated, it would give new life to the idea of rejection of war that emerged after World War II and to the Preamble and Article 9 of the Constitution. If we can approach the ideals of a ‘world without nuclear weapons’—even though it has been a long time since the Declaration of Surrender was made with the risk of destruction by nuclear weapons in mind—we can expand our chances of translating the words of the Hiroshima Mayor’s 1948 Peace Declaration into concrete policy.

However, a bright scenario is not guaranteed. As long as Article 9 of the Constitution exists, the Article 9-Security Treaty Regime will also be prolonged. If Article 9 were to be revised, Japan would become a normal state militarily under the Constitution. In this scenario, it is feared that the argument *for* independent nuclear armament would become stronger than it is today and that modifications to the three non-nuclear principles or cancellation of them could become a reality. These options, if implemented, would greatly undermine the characteristics of Japan as the only country to have suffered nuclear warfare. And as regards international humanitarian law, these options would also increase the likelihood that compliance with Additional Protocol I would be put on hold in the event of a national security emergency.

Revision of Article 9 of the Constitution would also be a major blow to the idea of rejection of war. Despite various debates, since the Peace Constitution was established shortly after the end of World War II, it has remained intact, based principally on the disastrous experience of the Japanese people in the atomic bombings and the hydrogen bomb tests (Yukawa 1989). If Article 9 of the Constitution were to be revised, it would mean that Japanese society has changed such that the idea of rejection of war has weakened, and anti-nuclear awareness regarding nuclear weapons has also lost strength. The *hibakusha* are ageing every year, and it is highly probable that the number who will be able to testify publicly about their experiences of the atomic bombings in ten years will be very limited. The ‘oblivion of history’ is inexorably progressing, and this may become a hotbed for the revision of Article 9 of the Constitution and would have a major negative impact on the world’s nuclear disarmament and nonproliferation policies.

Will the abolition of nuclear weapons lead to the rebirth of the Article 9-Security Treaty state in such a state of historical oblivion? Japan is at a major crossroads, but the implications for Japan are not limited to Japan alone. Were Article 9 to be revised in Japan, making the country a normal military state, and the message from Hiroshima and Nagasaki weakened, the norm towards nuclear abolition would be seriously eroded,

creating a major negative factor for nuclear disarmament and world peace. It is no exaggeration to say that the future choices of Japanese society will have historic, global implications.

Whether Japan can change its Article 9-security regime to an Article 9-guided one is, in fact, closely related to the future development of global governance regarding nuclear disarmament. In the search for a Japan-U.S. alliance that does not depend on the nuclear umbrella, improvement of the regional security environment is an essential prerequisite. On the other hand, such improvements will depend to a large extent on the future of global governance on nuclear disarmament. Thus, synergy between Japan's efforts to shift the Article 9-security regime to an Article 9-guided regime and the development of global governance on nuclear disarmament will be closely interlinked. While Japan, with its historical memory of Hiroshima and Nagasaki, will demonstrate its significant moral and normative power in the development of global governance on nuclear disarmament, the development of global governance on nuclear disarmament will, in turn, improve the security environment in the Northeast Asian region, spurring a shift to an Article 9-guided security regime in Japan. The creation of such a positive cycle will be a powerful driving force towards a world without nuclear weapons.

Notes

- 1 For example, Dr. Tsuyoshi (Yamaguchi, Yoshida and Compel 2019) considers '(n)either the first bomb on Hiroshima nor the combined two bombs had any immediate impact on Japan's decision to surrender'.
- 2 For a review of the medical aftermath of Hiroshima and Nagasaki, see Tomonaga 2019, who writes,

The damage to their (*hibakusha*'s) health has continued, in three phases of delayed effects: the appearance in 1949 of leukaemia, the first malignant disease; an intermediate phase entailing the development of many types of cancer; and a final phase of lifelong cancers for *hibakusha* who experienced the bombing as children, as well as a second wave of leukaemia in elderly *hibakusha* and psychological disorders, such as depression and post-traumatic stress disorder. Thus, the human consequences of the atomic bombings have not ended. Because many are still dying of radiation-induced malignancies, it is too early to estimate the total death toll. The *hibakusha* have faced a never-ending struggle to rebuild their lives and families, while living with the fear of disease.
- 3 The International Committee of the Red Cross explains this as follows: (1) 'International humanitarian law (IHL), also known as the law of armed conflict or the law of war, is a set of rules that seek, for humanitarian reasons, to alleviate the effects of armed conflict'; (2) 'IHL protects persons who are not, or who are no longer, participating in the hostilities, such as civilians and wounded or captured combatants. It also protects civilian objects (i.e., objects that are not military objectives)'; (3) 'IHL does not specifically prohibit nuclear weapons. Nevertheless, their use in armed conflict is regulated by the general rules of IHL, which restrict how weapons may be used and outline measures to be taken to limit their impact on civilians and civilian areas' (International Committee of the Red Cross n.d.-b).
- 4 Nuclear-weapon states are China, France, Russia, the United Kingdom, and the United States.
- 5 Representing Nagasaki and Hiroshima and the Group of Mayors for Peace, Nagasaki Mayor Tomihisa Taue attended the NPT Review Conference as a non-governmental organisation (NGO) member and delivered the following message. (1) 'Decades of effort can be undone if just one nuclear-weapon state decides to use all of its power to tyrannize other states. We were subjected to such a risk when Russia implied the use of nuclear weapons during the Ukraine invasion; (2) more convinced than ever before, I hereby make the following appeal to every state including the nuclear-weapon states: nuclear weapons must never be used. Abolition is the only way for humanity to avoid the dangers of nuclear weapons; (3) as reaffirmed in the final

document of the First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons (TPNW), the NPT and the TPNW reinforce each other and, together, they are both integral to the realization of a world without nuclear weapons'. Mayor Taue's message reflected the general views of Japanese civil society which favour nuclear disarmament. It was a great disappointment for Japanese civil society that, owing to Russian opposition, the NPT Review Conference failed to adopt a final document, and thus failed to lay the groundwork for a new relationship between the NPT and the TPNW.

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7 Rethinking the Geopolitics of a Collective System for Armament Regulation

Binxin Zhang

Article 26 of the UN Charter (1945) tasked the Security Council with formulating plans ‘for the establishment of a system for the regulation of armaments’. A comprehensive system has never been developed. What we have are piecemeal arms control regimes, bilateral or multilateral, on particular types of weapons, more often than not negotiated outside of UN auspices. These regimes do contribute to maintaining international security to varying degrees, but arms races, especially between great powers, have not ceased. Ironically, it is precisely these great powers, the strongest in the world, who feel constantly threatened, and who deem it ‘necessary’ to devote large resources to weapons acquisition to ‘defend’ themselves. The international environment is characterised by the ‘security dilemma’, based on a logic of mistrust and paranoia, according to which all parties have to prepare for worst-case scenarios, and a desire to be secure ends up leading to ‘a spiral of insecurity’ (Browning 2013: 20; Jervis 1978: 167–214).

This is, inevitably, a downward spiral, despite best efforts and various achievements in the disarmament field. Just when everyone was talking about the decline of full-scale interstate wars, Russia invaded Ukraine. When the war was still occupying the front pages, Nancy Pelosi’s visit to Taiwan provoked a tense response from the Chinese authorities and widespread calls to ‘fight’ on Chinese social media, rising tensions in the Taiwan Strait and between the United States and China. All these were happening amidst a global pandemic that had claimed over six million lives in the space of only two years. In the same year, summer heat again hit record levels in many parts of the world. Across the northern hemisphere, major forest fires were burning in the United States, in Europe and in China. The mistrust that leads to the security dilemma is at the same time blocking urgently needed efforts to deal with these threats of pandemic and climate change, which are global by nature and can only be dealt with globally.

This chapter does not intend to propose a comprehensive new system as envisaged by Art. 26 of the UN Charter. Instead of specific regimes of armaments regulation, the chapter focuses on the presumptions of antagonism and competition, and the resulting fear and insecurity which have so far been taken for granted when designing these regimes. It argues that these fundamental presumptions and beliefs need to be challenged, without which changes in specific regimes will not bring long-lasting results. The chapter starts with an analysis of these presumptions as reflected in binary thinking of world politics (Part I). It then moves on to examine the role of international law in reinforcing such binaries (Part II). Part III proposes some changes in narratives that might start to challenge and change these presumptions and beliefs.

Part I: Fundamental Problems with Current Systems: Distrust, Fear and Binaries

When we talk about ‘armament regulation’, we might be talking about many different things simultaneously: multilateral treaties, bilateral agreements, initiatives led by international organisations, notably the United Nations or regional organisations; or voluntary multilateral mechanisms, such as the Proliferation Security Initiative; or informal arms control structures. These mechanisms differ in nature (binding or non-binding), in scope (what kind of weapons are covered), in content (is it about research and development, proliferation, stockpiling, use, about limitation or total prohibition, etc.) and in specific measures to take. In a word, there is no one system of armament regulation as envisaged by Article 26 of the UN Charter.

Because of this lack of a general system, the current arms control regimes are fragmented and provide only piecemeal solutions. As such, each time new challenges emerge, new efforts have to be made to put in place a new regime of regulation. The process is often a replay of old problems, obstacles and power struggles. Such processes take years or even decades to yield some results or no results at all, wasting huge amounts of time and energy that could be devoted to other causes that directly benefit people, while at the same time, the weapons concerned continue to cost lives or threaten international stability.

Take, for example, the negotiations on the regulation of the Lethal Autonomous Weapons System (LAWS) under the framework of the Convention on Certain Conventional Weapons (CCW). The negotiations have been ongoing since 2014, but to this day, there is no concrete result. Among the great powers, the United States is adamant that it is not going to stop the development and potential use of LAWS and argues that LAWS, and military use of artificial intelligence (AI) generally, might be beneficial for better implementation of international humanitarian law (IHL) and for better protection of civilians.¹ Under the consensus mechanism of the CCW, this alone is enough to block any attempt to ban LAWS, although it seems that the majority of states support a ban.² The story seems just too similar to what led to the Ottawa Process, the Oslo Process and the Arms Trade Treaty.³ Similar stories will happen again and again if this piecemeal approach continues.

What is even more fundamental behind this repetitive pattern is a psychology of fear and distrust. Even the strongest nations are not immune from such fear. For example, the United States, although clearly surpassing any of its perceived adversaries in terms of technology and military capacities in cyber and outer space, ironically sees its advantages also as its vulnerabilities. It considers itself particularly vulnerable to cyber-attacks because of its high dependence on cyberspace and sees cyber warfare as asymmetrical and more advantageous to weaker parties than traditional warfare (see, e.g., Betz and Stevens 2011: 90; Lynn 2010: 97–108). Similarly, it considers itself particularly vulnerable to attacks on outer space facilities because it has a particularly high degree of dependence upon them.

A combination of such fear and the availability of material means thus only leads to a false belief that one could and should pursue absolute ‘security’. For that purpose, the United States seeks absolute domination, which is, in turn, perceived by others as a security threat, thus creating an international cycle of fear and distrust. The U.S. Department of Defence Cyber Strategy of 2015 states that ‘DoD should be able to use cyber operations to disrupt an adversary’s command and control networks, military-related critical infrastructure, and weapons capabilities’ (United States Department of Defense 2015).

In China, such statements have been interpreted as ‘clearly hegemonic’ and aggressive, thus prompting the latter to respond by developing their own equivalent cyber capacities (Li 2016: 148).

Existing armaments regulation efforts recognise this fear and distrust and see them as natural and inevitable. Meier and Daase (2012) argued that the end of the Cold War saw a paradigm shift in arms control, with the new paradigm of coercive arms control relying on ‘coercion rather than cooperation, on suspicion rather than trust, inequality rather than reciprocity’ (Meier and Daase 2012: 3). However, even what they called a ‘cooperative’ notion of arms control, reflected in the definition of arms control as the ‘cooperation between antagonistic pairs of states in military affairs’ (Bull 1976: 22), takes for granted the antagonism between states. Moreover, this antagonism, fear and distrust is believed to exist particularly between countries that hold different ‘values’, which might be due to different ‘civilisations’ or different types of political regimes. Thus, not only fear and distrust are naturalised, but differences between countries are essentialised. Such essentialisation goes hand in hand with a way of binary thinking characterised by a series of ‘world political binaries’, from the 19th-century civilised and barbarian divide to the present-day divide between liberal and illiberal, essentialised as the West versus the non-West (Austin 2017).

Employing a sociological approach to look into democracy and human rights projects, Guillhot (Guillhot 2005) remarked that ‘[d]emocracy and human rights, once weapons for the critique of power, have now become part of the arsenal of power itself’ (Guillhot 2005: 8). He argued that the United States promotion of democracy abroad had been

mostly thought and designed as a *cultural* if not as an *ideological* policy. ... The moral appeal of democracy and human rights, therefore, makes them perfect instruments for organising a broad national and international consensus regarding policies that are thus pursued and extend to the existing world order.

(Guillhot 2005: 15, emphasis in the original)

As such, democracy and human rights—or rather, the language of democracy and human rights—become the standard of an international ‘moral order’, which reminds us of the 19th-century categorisation of ‘civilised’, ‘semi-civilised’ and ‘uncivilised’ nations, and the ‘exporting’ of democracy, as termed by Guillhot, resembles a dangerous new version of the ‘mission of civilisation’.

The resort to cultural explanations essentialises these divides. China, for example, is often viewed through the lens of a vague conception of ‘Confucius culture/tradition’ or/and ‘communist/authoritarian regime’ that seem able to capture all and explain all. This essentialised divide and presumed differences in state behaviours are so entrenched that we often fail to look at the empirical evidence for such behaviours. Austin (2017) conducted precisely such an empirical inquiry when he compared the Argentine torture regime and ‘Death Flights’ programme and the post-9/11 U.S.-led ‘extraordinary rendition’ programme. The result, Austin suggested, was that ‘differences in the forms of violence enacted in these two cases... were *not* related to the democratic or ‘civilised’ status of the United States and the authoritarian or fascist-cum-barbarian status of Argentina’, thus calling into question the ‘great divide’ between the ‘authoritarian’ and the ‘democratic’ (Austin 2017: 49, 69, emphasis in the original). U.S. behaviour patterns in terms of disarmament as compared to authoritarian states like Russia and China would probably be quite similar, while the latter’s behaviour patterns might be drastically different from that of smaller authoritarian states such as Algeria or Laos, for example.

That said, these essentialised dichotomies are by no means just Western manoeuvres to maintain dominance and superiority in the existing world order. In China, such dichotomies are mobilised to forge and maintain a Chinese identity. Zhang (C. Zhang 2020) calls realist authoritarianism a Chinese ‘political identity’, as opposed to ethno-racial identity, which constructs the Chinese as pragmatic, realistic, focusing on economic growth and social stability. This identity is further linked to the historical narrative of China’s ‘five millennia of civilisation’, which portrays the ‘Chinese people’ as ‘a timeless and abstract category who ‘have seen everything’ and are most aware of the rules of power politics’ (C. Zhang 2020: 104). In fact, this linkage to the Chinese ‘civilisation’ and tradition already suggests that the line between the ‘political’ and ‘ethno-racial’ identities might not always be too clear. The latter, often resorting to culturalist claims, tend to merge with the former, particularly when political dichotomies are essentialised along cultural lines.

Another historical narrative that is essential in the construction of Chinese national identity is the ‘Century of Humiliation’, key to understanding Chinese behaviours in international affairs. The Century of Humiliation is the official and dominant narrative in China of Chinese modern history. It recounts a story of Chinese suffering and ‘humiliation’ at the hands of Western and Japanese invasions starting from the First Opium War in 1840, which is at the same time a story of heroic resistance of the Chinese people against foreign invaders. The climax of the story is the establishment of the People’s Republic of China (PRC) in 1949, marking the victory of China against foreign invaders and ending the Century of Humiliation.

The importance of this narrative in Chinese nationalism and in Chinese foreign policy has been thoroughly discussed (see, e.g., Callahan 2010; Gries 2004). The national past and the way it is remembered and narrated have a significant influence on how China and the Chinese public approach contemporary world affairs. Constantly reminding the story of Western invasion and Chinese resistance, this narrative often contributes to essentialised binary thinking of perceiving the West as ‘aggressive’ and China as ‘peace-loving’, the West as the malicious Other that constantly tries to contain China and China as an innocent victim that is nonetheless fearless of foreign encroachments even in a weaker position. As Callahan (2010) pointed out, Chinese foreign policy is not just about material interests but also, and very significantly, about a search for respect and status (*ibid.*), which could also be said of Chinese public sentiments. Thus, any perceptions of Western disrespect are likely to provoke strong reactions in China. Yang Jiechi’s speech at the China-United States Summit in March 2021 (The Paper 2021), unusual in formal diplomatic settings and shocking for a Western audience, yet enthusiastically acclaimed by a domestic one, is a vivid illustration of these dynamics.

There is no need to survey every country in the world to become aware that such depictions and beliefs of rivalries, of competition and antagonism, such entrenched binary thinking based on essentialisation of the differences between countries, cultures, political regimes, or ‘civilisations’, are the norm, rather than the exception. Once these divisions are essentialised, they are taken to explain everything, and thus they end up dictating everything. Our current regimes, international instruments or institutions to deal with arms control and other security issues are all based on these beliefs and such binary thinking. It is argued here that on a fundamental level, it is this sort of binary thinking that needs to be discarded if any meaningful mutual understanding and a collective system could be built.

Part II: World Political Binaries and International Law

International law, despite its claim of universality, often reflects such political binaries, as mentioned earlier, and through its functioning reinforces them, thus deepening the divides between states situated at different ends of these political dichotomies, countering its own claimed purpose of unifying. Faced with the crisis of the liberal international order, even potential outcome appears to be binary: either the triumph of liberal internationalism or succumbing to illiberalism. Yet in a recent call for the ‘disordering’ of international law, Kelsall (2022) points out the problem of characterising the world as governed by a ‘liberal international legal order’ to begin with. She asks, ‘Could it be that the legal order we inhabit is in fact best described as neither liberal nor illiberal but, rather, as something beyond these binary depictions?’ (Kelsall 2022: 757–58).

To go beyond binaries, Kelsall proposed to learn from ‘non-liberal understandings of law and the international’, and ‘to integrate non-liberal and largely non-Western norms, conventions and principles’, ‘without fear of becoming illiberal’ (Kelsall 2022: 732, 758). I argue that one of the first tasks in doing so is to take seriously critiques of double standards and hypocrisy in interpreting and applying international law.

Looking into the emergency special session of the Human Rights Council following the global movement under the banner of ‘Black Lives Matter’, Achiume (2021) notes how appeals to liberal democratic norms and institutions were mobilised to shield U.S. domestic racial subordination. She asserts that the ‘language and commitments of international human rights are quintessentially liberal, and within this frame liberalism is good (illiberalism and non-liberalism are bad), and liberal democracy is implicitly and explicitly the means through which this good is realised’ (Achiume 2021: 379). Such language establishes a sharp contrast between liberalism and illiberalism and puts them in hierarchical positions in a ‘moral order’. This ‘moral order’ has served as ‘the foundations of Western neo-interventionism’, justifying Western interventions into Third World and non-liberal contexts based on moralising languages (Dexter 2007: 1058).

It is this kind of experience that has led to the perceptions and claims of Western ‘double standard’ and ‘hypocrisy’. Commenting on Putin’s attempt to justify the invasion of Ukraine as a response to Western states’ record of prior violations of international law, Milanovic (2022) noted,

This type of critique DOES have some impact, for all its whataboutism and lack of moral substance. Prior violations of international law by Western allies DO make it more difficult for them to persuasively criticise Putin, and they corroded the Charter prohibition on the use of force. ... It is striking how prior violations of international law are rhetorically weaponized by Putin.

There is no doubt, legally or morally, that violations of international law by Western states do not justify violations by Russia. However, this type of ‘whataboutism’ critique cannot be dismissed lightly because the perceptions of ‘double standard’ and ‘hypocrisy’ have real consequences. In China, support for Putin’s logic is widespread on social media, which is arguably even more alarming than official ambivalence. In a recent critique of the U.S.-advocated concept of the ‘rule-based international order’, South African jurist John Dugard (2023) opines that double standards, exceptionalism and hypocrisy must be condemned. Citing U.S. exceptionalism with regard to Israel, Dugard asserts that the

amorphous ‘rules’ of the ‘rule-based international order’ ‘make it easier for a state to provide special treatment to another state and to condone its violations of international law’ (Dugard 2023: 6).

Furthermore, it should not be forgotten that these perceptions of double standards have historical roots. Critical approaches to international law have provided ample analysis of the imperial and colonial roots of international law (Anghie 2005; Eslava, Fakhri and Nesiah 2017). The historical role of international law in the colonial project is not just a matter of the past. As illustrated in Part I, historical narratives and collective memories of Chinese early modern history have a significant influence on Chinese foreign policy and popular nationalism today. Similarly, Chinese international law scholars have argued that China’s past experiences with international law, such as its failed attempt to use international law to protect its interests at the Paris Peace Conference and in the League of Nations, cast a long shadow and have shaped contemporary Chinese distrust of international law (He and Sun 2015: 88; Zhang 2016: 176). The ‘whataboutism’ is thus not just politically expedient finger-pointing, but has real social-psychological roots and effects. The underlying perceptions of double standards, if not addressed seriously, will only confirm and widen the ‘us-them’ divide and create substantial negative effects to efforts of dialogue, trust-building and cooperation between countries that are considered essentially different.

Apart from the binaries of liberal-illiberal and West-East, there are also those of the Global North and the Global South, the developed and the under-developed world. When examining different approaches of international law and questioning whether international law is truly ‘international’, Roberts (2017) powerfully demonstrated the disproportionate influence of Western, and especially Anglo-American, approaches in defining what counts as the ‘international’. Very often, this dominance is not directly imposed but taken for granted by practitioners, scholars and students of international law, and as such reinforced by their often unconscious reproduction of this inequality.

Efforts towards equality and inclusivity need to recognise the significance of practices of international law—its formation, interpretation and implementation—in the Global South. These different approaches to international law do exist and are manifest in international legal practices day in and day out, although they remain unrecognised in the mainstream storytelling about international law. One example is the right to development, first proposed by the Senegalese jurist Keba M’baye (1991: 211–22), first given legal recognition in the African Charter on Human and Peoples’ Rights, and also featured in various Asian soft-law instruments of human rights (ASEAN 2012: Arts. 35–37; SAARC 2004: Art. II(2)(xii)).

While the normative contents of the right to development are not entirely clear, its right holders might include not only individuals but also groups and even states, and it requires not only states acting individually but also collectively.⁴ Indeed, the difference between developing and developed countries concerning the duty to cooperate is one of the major debates concerning the right to development and one of the reasons why it remains largely a soft-law notion and why its normative contents remain vague (Uvin 2007: 598). Developing countries see the right to development as a legal basis for an equitable global economic system and advocate for the need for international cooperation to rectify global inequalities in development (Ibhawoh 2011: 83, 91). Developed countries, on the other hand, fear that the right to development would entail concrete obligations on their part towards other countries and peoples (Ibhawoh 2011: 97; Kerchmeier 2006: 12). In 1986, 146 states voted for United Nations General Assembly

Resolution 41/128, adopting the Declaration on the Right to Development, and the only opposing state was the United States, with eight other developed countries abstaining (Subedi 2021). A drafting process of a binding treaty on the right to development is now ongoing under UN auspices,⁵ and similar debates are likely to resurface in any future negotiation processes.

Not only are the voices of the Global South less reflected in international law-making, but they are also not the main addressees of the institution of international law. In analysing how the International Criminal Tribunal for Rwanda (ICTR) represented its legacy, Kendall and Nouwen (Kendall and Nouwen 2016) observed a shift of narrative and focus towards the end of the tribunal's lifespan. When the tribunal was created, it emphasised contributing to 'the process of national reconciliation and to the restoration and maintenance of peace' (UN Security Council 1994) in Rwanda; yet towards its closure, the emphasis shifted to a broader narrative of contributing to the international legal order. This shift, they argued, 'has been accompanied by a shift in focus on audience' (Kendall and Nouwen 2016: 230). In other words, instead of directing its legacy claims to Rwandans, the tribunal directed them to global policymakers and funders. After all, international law's sites of production and power centre are not in Rwanda, but in The Hague and other Western capitals. It is true that these tribunals have their inherent limitations, and 'national reconciliation and ... restoration and maintenance of peace' might be a goal far beyond what these tribunals could practically achieve, but to find ways to achieve those goals, the concerns and voices of local communities must be heard, and they must be the ultimate addressees of the work of these international institutions.

On the whole, it is argued here that international law needs to go beyond political binaries and become more inclusive and equal. Exceptionalism and hypocrisy need to be addressed, as they discredit the entire system and have been fuelling dangerous nationalisms in many parts of the world. International law needs to address the concerns of the Global South, of women, of indigenous peoples, of islanders, and, in large part, of East and Southeast Asian, Central and South American and African Peoples. This also entails exceeding the traditional state-centric approach and involving multi-stakeholders. In the field of disarmament, civil society has already been playing a significant role (see, for example, Whall and Pytlak 2014). Such trends should be encouraged, with conscious efforts to include more meaningful participation from the Global South and particularly underrepresented communities.

Part III: The Way Forward: Changing Mindsets and Narratives

The importance of narratives in shaping political reality has already been acknowledged by many scholars. Shepherd (2015) challenges the dichotomy of discourse and practice, focusing on the 'iterative practices through which 'things' become meaningful' (Shepherd 2015: 890). In fact, it has been argued that words and images not only shape reality and are not mere reflections of existing realities; rather, they constitute realities in global politics (Hasen 2006; Milliken 1999; Shepherd 2015: 890).

Indeed, all political and legal systems have their underlying narratives. The current armament regulation regimes are often accompanied by narratives of humanitarianism, of reducing human sufferings or managing risks to human lives, etc. These narratives have significantly contributed to the various achievements in disarmament, but they are still based on the fundamental presumption that wars and conflicts are inevitable, that countries are bound to act in a logic of fear and insecurity. To dismantle this fundamental

presumption, we need new narratives. Many such narratives already exist. For example, a narrative of urgency, emphasising global challenges such as climate change that all nations are facing together and that require global cooperation, might help reset global priorities. In this section I propose two narratives that tackle directly the presumption of the inevitability of war and a competitive mindset: (a) imagining a world without war and (b) dismantling the masculine culture of military competition and pride.

Dare to Imagine a World without War

This might seem an unbelievable statement in the middle of the war in Ukraine. However, continuing to view war as inevitable will only provide easier excuses, if not justifications, for waging wars. The implicit assumption that human beings are selfish and aggressive and that war is simply a manifestation of these attributes must be seriously challenged. At a time like this, it is even more important to remember that war is avoidable and that there is absolutely no sense in waging wars.

The mainstream narrative about the inevitability of war tends to link the history of war to the history of humankind itself. However, scholars and activists have already begun to challenge this idea that war is a ‘natural’ part of social life and argue for a paradigm shift from viewing killing as a natural human condition to ‘a problem to be solved’ (Paige 2009: 127). According to anthropologists who study peaceful societies, human history is actually not as violent as depicted in mainstream narratives; warfare is, in fact, a recent phenomenon in human evolution (Sponsel 2014: 35–36). They refute the assumption that violence is an inherent part of human nature but instead argue that human beings have the potential to be peaceful as well as violent, and how the society understands and portrays human nature would shape our social institutions (*ibid.*).

Narratives matter. How we see the world depends on what stories we choose to tell. So far, we have chosen to tell the darker story: that war is ancient, universal, natural, normal, and inevitable. Douglas P. Fry (2007: 6–7) ascribes this choice to a cultural bias that includes Western assumptions about human nature. Sponsel (2014: 39) argues that, particularly in the United States, there is a ‘persistent systemic bias privileging attention to ... violence and war’ over peace and nonviolence.

A ‘cultural bias’, however, might not be the culprit for this choice, as it is not limited to Western culture. Confucian culture has often been considered as putting an emphasis on peace and harmony. Chinese scholars sometimes resort to traditional Chinese notions and systems like *tianxia* (all under heaven) or a historical narrative of good neighbourliness in the ancient Sino-centric East Asian world to interpret contemporary Chinese approaches to international relations and international law as inherently peaceful and non-interventionist (Xue 2012; Zhao 2009). The Chinese official rhetoric of ‘a human community with a shared future’ is often imbued with a cultural undertone. At the 2021 Communist Party of China and World Political Parties Summit, President Xi invoked the concept as an antithesis to a competitive world view. He stated,

From the perspective of ‘my nation first’, the world is narrow and crowded and there are ‘fierce competitions’ everywhere. Yet from the perspective of a shared future, the world is wide and broad and there are opportunities for cooperation everywhere. We ought to ... promote coordination and cooperation between nations ... and walk towards the direction of building a human community with a shared future.

(Xi 2021)

Yet in its opening section on the ‘international security situation’, the 2019 Chinese White Paper on National Defence unmistakably announced that ‘global military competition is intensifying’ (The State Council Information Office of the PRC 2019). This echoes the previous discussion on the narrative of the Century of Humiliation. Wang (2020) argued that the most significant ‘lesson from past’ required to be learned from this narrative is the dictum ‘the backward will be beaten’, which attributes the nation’s humiliation experiences to economic, military and technological backwardness (ibid.). This dictum has entered into official discourse and institutionalised in memory politics since the end of the Cultural Revolution. It indicates a pessimistic and social-Darwinist view that sees the world as a battlefield: the weak will be suppressed, bullied or invaded militarily, just as happened to China in the past. It betrays the state’s anxiety over national security in what is perceived as an essentially competitive world with hierarchies based on material power. It should come as no surprise that this mentality justifies the need for self-strengthening, including military build-up (ibid.).

The presumption of the inevitability of war is based on a logic of distrust and competition; however, whether and whom we trust depends on the stories we choose to tell and believe. It is thus important to be reminded that behind this general presumption of distrust and competition, there are deeper ‘us-them’ divides, based on political regime, nation, culture, ‘civilisation’, value, or whatever imagined categories have become real and solidified through education. These divides are real because, and only because, people believe in them and act accordingly. They are created and maintained by human beliefs and practices and are not ‘natural’ and inherent.

To change this status quo, new stories have to be told, or old stories told in a different way. The potential in human nature to be peaceful should be emphasised over that of violence, and stories of cooperation should be stressed over those highlighting competition. More fundamentally, narratives and education should avoid essentialised ‘us-them’ divides but strive to cultivate a common, global identity. This will surely be a long journey before these new narratives can be accepted and believed by elites and publics, yet ours is a time that offers great opportunities as well as many challenges. Social media culture and the instantaneous circulation of information on a global scale allow the spread of misinformation and conflicting narratives, sometimes exacerbating existing cleavages. But these same tools also make it possible to connect people globally and create bottom-up storytelling, which might be crucial for efforts towards changing the narrative and building a global identity.

Changing the Masculine Culture: A Gender Perspective

Just as wars strengthen patriarchy, the dismantling of patriarchy might help create an environment conducive to peace and cooperation. War can play to the ‘masculine ego’ (Lopez-Claros, Dahl and Groff 2020: 1890). In our contemporary world, we are also witnessing the rise of ‘strongman’ politics in every corner of the world. In China, Xi’s aggressive and unyielding stance, exemplified by so-called warrior-wolf diplomacy, is winning public support. Images featuring Putin literally showing his muscles circulate widely on the Internet, and his muscular body evokes pride and awe. Accompanying this ‘masculine ego’ is a mindset of competition and of winning by force and power.

This is an appropriate moment to recount an interesting precedent, where femininity was presented as a signal of peace in a diplomatic forum. In 1954, when Zhou Enlai, then Prime Minister and Minister of Foreign Affairs of the newly established PRC,

travelled to Geneva to attend the conference intended to settle outstanding issues resulting from the Korean War and the First Indochina War, he brought with him something that seemed irrelevant to the conference agendas: the film *Romance of Liang Shanbo and Zhu Yingtai*. The film was a representation of an ancient Chinese tale, a love story between Liang and Zhu that ended tragically because of opposition from their families. It was presented in the form of *Yue* opera, a traditional art form in which all characters were played by women artists. Zhou tactfully used the screening of the film to establish ties with Southeast Asian countries. In his correspondence to the central leadership of the PRC, Zhou reported that the screening had promoted ‘obvious change’ in the attitudes of the Southeastern Asian representatives.⁶ Apart from private screenings, the film was also screened publicly in Geneva. It was presented as a signal of peace to show that the Chinese people were fond of a feminine, touching love story instead of ‘hydrogen bomb or atomic bomb ... or heroes of white men conquering black men’ (C. Zhao 1954). By comparing the film to such masculine images of weapons, heroes and conquerors, the message was that ‘the Chinese people love only peace. We have no taste for excitement’ (*ibid.*).

Certainly, this precedent was a tactful diplomatic choice rather than a consistent strategy of a feminist approach, but it shows how femininity is linked to love and peace, as opposed to the masculine image of ‘heroes and conquerors’, war and competition. And in this diplomatic setting, it was used as a means to convey intentions of peace and cooperation. Today, feminist foreign policy (FFP) exists as a diplomatic approach, and a growing list of countries have endorsed it.⁷ Although the FFP means quite different things in different countries, it generally prioritises peace over conflict in international interactions and calls for more meaningful participation of women in decision-making processes. According to one definition, FFP ‘takes a step outside’ the traditional foreign policy thinking’s ‘focus on military force, violence, and domination by offering an alternate and intersectional rethinking of security from the viewpoint of the most vulnerable’ (Centre for Feminist Foreign Policy 2023).

Women are significantly underrepresented in international peace and security arenas. From 1992 to 2011, only 9 per cent of peace negotiators were women, and 3 per cent of UN military peacekeepers were women (Howard 2018). Women are also underrepresented in executive government positions and in national parliaments.⁸ Many have realised that the participation of women is essential for the promotion of international peace and security. Security Council Resolution 1325 (2000) on women, peace and security recognised ‘the important role of women in the prevention and resolution of conflicts and in peace-building’ and urged ‘Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict’. One main goal of an FFP is to increase the representation of women in international peace and security processes and decision-making. This might change the male-dominated culture and mindset in the field of international security.

In the long run, however, changing the narrative and our current culture of masculine military competition is even more important than the involvement of women in international security decision-making because in the end, the ‘masculine’ or ‘feminine’ cultures referred to here are not about the gender of any individual, but about the mindset and values. What matters is to promote a narrative and a culture in which the values and approaches of cooperation, of nonviolence and of caring for the vulnerable are stressed over those of competition and military force.

Conclusion: Beyond Binaries and Antagonism

Instead of revisiting the specifics of armament regulation, this chapter focuses on the underlying presumptions of binary attitudes and antagonism that constitute the very basis of current armament regulation and, indeed, the very logic of international security arrangements. Changes at the material and institutional level towards a collective system, even if well-designed and agreed upon, cannot be efficient and sustainable if they are not accompanied by fundamental changes of mindset. For such a fundamental change, we need courage and imagination, and we need new narratives, new educational programmes. The world needs to work together. This chapter has stressed the constructed nature of world political binaries which have been taken for granted and often essentialised in cultural terms. International law, hailed as a symbol and instrument of universality, has instead often served to entrench such binaries, divides and hierarchies and to solidify existing unequal power relations. To go beyond these binaries and divides towards a future system based on inclusivity and non-dominance, the major powers—the antagonism between which often constitutes the basis for constructing these binaries—need to recognise the intersubjective nature of their respective presumptions and approaches and make an effort to truly listen to and understand each other; the voices of the Global South and of marginalised peoples and groups need to be heard and carry more weight.

Notes

- 1 For U.S. policy on LAWS, see Congressional Research Service 2022.
- 2 According to the Campaign to Stop Killer Robots (2019), as of 2019, 30 states have called for a prohibition on fully autonomous weapons. The Non-Aligned Movement and its 125 member states have been calling for a ban since 2018.
- 3 The Ottawa Process is one of treaty negotiations that led to the adoption of the Convention to Prohibit the Production, Use, Transfer, and Stockpiling of Antipersonnel Landmines, which took place outside of a UN forum, and after repeated attempts to negotiate a treaty on antipersonnel mines within the CCW framework failed. Similarly, the Oslo Process, which led to the adoption of the Convention on Cluster Munitions, also happened outside of a UN forum, after several years of failed attempts within the CCW framework. The process that led to the adoption of the Arms Trade Treaty did take place under UN auspices, but the two diplomatic conferences that operated on a consensus-based approach could not adopt the treaty due to the objection of a handful of states, including the United States. The text was finally adopted by vote in the United Nations General Assembly.
- 4 See United Nations General Assembly 1986: arts. 1 and 2, on the collective nature of the right; arts. 3, 4 and 6 on a duty of international cooperation; Human Rights Council 2020: art. 13.
- 5 For the progress of the process, see Working Group on the Right to Development 2023.
- 6 People's Republic of China (PRC), Ministry of Foreign Affairs Archives: Zhou Enlai's telegraph to Mao Zedong, Liu Shaoqi and the Central Committee on Inviting the Representatives of Laos and Cambodia and Pham Van Dong (June 24, 1954), File No. 206-Y0050; Zhou Enlai's Telegraph to Mao Zedong, Liu Shaoqi and the Central Committee on Interactions with Various Parties (July 23, 1954), File No. 206-Y051.
- 7 By July 2022, this list includes Sweden (2014), Canada (2017), France (2019), Mexico (2020), Spain (2021), Luxembourg (2021), Germany (2021) and Chile (2022); see UN Women 2022.
- 8 As of January 1, 2023, out of the 193 member states of the UN, there are only 31 countries where 34 women serve as Heads of State and/or Government, and only 26.5 per cent of parliamentarians in single or lower houses are women. For more information, see UN Women. Beyond international security, women are also underrepresented in the corporate world and lack equal opportunity in education, work and other fields, with proven negative implications for economic performance. For more data and discussions on this topic, see Lopez-Claros, Ellis and Halperin 2022.

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Part II

Governance for Peace and Security

International Disputes, Peacemaking and
Peace Enforcement



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8 Enhancing Global Governance

Richard Falk

A Concerning Standpoint

Not since the Cuban Missile Crisis of 1962 has the world been reminded that a major war fought with nuclear weapons could spiral out of control, as the war in Ukraine evolves, not only as a devastating armed struggle but also as a geopolitical encounter being shaped by the behaviour of both Moscow and Washington. On the Russian side, aside from launching an aggressive war that has featured battlefield miscalculations and setbacks, it has been compelled to respond to a robust NATO response that was likely unexpected.

There are ominous intimations that nuclear weapons could be introduced by Moscow into the war in Ukraine if security threats to Russia's homeland cross thresholds of perceived further danger. Russia can be further faulted by its refusal to admit the military miscalculation embedded in its aggression against Ukraine and reverse course without causing further carnage. The United States/NATO has imposed comprehensive punitive sanctions combined with a seeming refusal to explore diplomatic paths leading to a political compromise that would admittedly face formidable obstacles.¹ This posture is reinforced by a public insistence by NATO governments on a Ukrainian victory, 'no matter how long it takes'. Such an outlook means prolonging and escalating the combat phase of the war. This hard line is underscored by continuously increasing NATO commitments of massive economic and military assistance to Ukraine of ever more technologically advanced weaponry.

Adding to concerns about the global context are signs of worsening United States-China relations, although somewhat relaxed by some intimations of a mutual pullback from confrontation. Yet China has made menacing official assertions about their resolve to reincorporate Taiwan into China, by force if necessary. Such sentiments likely prompted the United States to make several hostile provocative moves with respect to China while the Ukraine crisis was unfolding, most dangerously with respect to its commitment to defend Taiwan, whatever the consequences. Such provocations were reinforced by the adoption of a series of anti-Chinese economic policies against the background of the earlier formation in 2021 of a new alliance arrangement joining Australia, the United Kingdom, and the United States (AUKUS), which is clearly aimed at China. It is widely regarded around the world as prompting China, in turn, to test the American political will by taking a mixture of provocative diplomatic moves of its own, blended with a less defensive deterrent posture. Given the interactive global governance processes bearing on war/peace issues, such developments in the past have often been preludes to geopolitical confrontations, crises and even mutually destructive warfare.

While this geopolitical drama continues to develop, humanity, if conceived of as a collective unity, is numbly experiencing a deepening biological-ecological-economic-ethical-political-spiritual crisis on a global scale that poses interrelated threats of species extinction that have never before clouded human existence on the planet. The war in Ukraine is an alarming symptom of several dimensions of this crisis, including a geopolitical mentality among foreign policy elites, ill-equipped intellectually and bureaucratically to cope with such a novel challenge in a manner commensurate with the unprecedented severity and complexity of the threat.

Against this background, the short-sighted focus of political leaders and their most influential advisers on the immediate, short-term challenges is also symptomatic of the broader underlying crisis. It seems that political leaders are ill-equipped to react responsibly, which would require taking into fuller account these longer-range structural challenges and concerns. It raises the bio-political question never seriously posed earlier in human history as to whether there exists a species will to survive as a species of sufficient strength to address this constellation of issues now confronting humanity (Falk 2016: 253–62).

This chapter focuses on whether the current sub-systemic dominant mental and behavioural structures of state-centric global governance possess a realistic potential for unified systemic guidance given present conditions. And further, will policy guidance be in forms respectful of ecological sustainability and human rights, as well as being attentive to risks of species survival? There is a need to promote inter-societal equity if cooperative problem-solving on regional and global scales is to succeed in the spirit of working towards achieving a delicate balance between power and justice in world politics.

The Enigmas of Global Governance

Global governance provides a way of describing the various types of order that prevail when the world is conceived holistically, yet used with precision so as to avoid creating impressions that the institutionalist globalising terminology implies advocacy of a ‘world government’. In this sense, global governance encompasses existing systemic norms, processes and institutions of global reach, as well as sub-systemic norms, processes and institutions at all levels of social and political interaction, including at global and local levels. As matters now stand, the world, as conceived from a systems’ perspective, is sub-system dominant—that is, in general, the parts prevail over the whole when addressing global-scale problems to be solved. Existentially, it is a system in which only a few of the parts, conceived of as leading political actors, exert systemic influences.²

This pattern of interaction, exhibiting both state-centric and the hierarchical/hegemonic quality of current forms of global governance, was illustrated by the behaviour of leading states in 2020–22 during the COVID-19 pandemic. This behaviour was shaped by national rather than global interests. Additionally, it was protective of intellectual property rights in vaccines. As such, governments failed to fashion a restorative global response to the pandemic that was people-based and responsive to both the interconnectiveness of the disease’s transmission and the inequalities among states when it came to relevant medical knowledge, equipment, facilities, and treatment.

Prior to the emergence of nuclear weapons and the advent of climate change, this defining condition of sub-system dominance, while humanistically troublesome, did not fundamentally threaten the future of humanity when conceived of as a species or the planetary viability of a sustainable ecological habitat.³ While the threat to the human species is

given prominence in most commentary, the current bio-political crisis is also endangering the survival of non-human species and the viability of their ecological habitats.

Throughout most of modern history, diverse imperialisms have subjected territorial sovereignties and the majority of humanity to a variety of arrangements designed to subordinate and exploit the interacting parts on the basis of hierarchy and hegemony (Mazower 2012).⁴ In modern times, the development of technological innovations, especially those relevant to warfare and connectivity, has played a decisive role in shaping these sub-systemic hierarchies, but without much impact on the overall systemic structure.⁵

Increasingly, humanity is bound together by what David Held called 'a community of fate', without the corresponding systemic or sub-systemic adaptations and normative dispositions to address mounting global-scale threats by effective, legitimate and equitable means.⁶ These dysfunctional structures at the systemic level reveal several of the root causes of the underlying dilemmas of global governance.

As the first such crisis in world history, the political class lacks experience in and knowledge about such matters. The response over the years to the advent of nuclear weapons is not encouraging, which transitioned from near panic immediately after World War II to the contrivance of a new structure of normalcy based on a hegemonic hierarchy commonly known as 'the nonproliferation regime'. Mechanisms of holistic solidarity and systemic cooperation exist but are too weak and superficial, and hence easily distracted. What mechanisms exist have clearly exhibited their disutility when it comes to overcoming the multidimensional crisis identified earlier.

These structural features suggest incongruities between the hybrid state-centric/geopolitical managed world order, historically generated by European experience, including its hegemonic and colonial expansions far beyond continental boundaries, and contemporary challenges of global-scale problem-solving. It is these challenges that have become imperative to address in the 21st century. Such challenges were to varying degrees detected earlier, but not in ways that led to adaptive responses, especially when it comes to governance (Talbot 2008).

To transcend the systemic crisis presupposes a sufficient political commitment and understanding to support the establishment of appropriate mechanisms for the promotion of the global public good. Such mechanisms are needed, first of all, to promote global public interests in relation to the vital question of upholding traditional security interests of states and the ecological stability of the world, as well as much increased efforts to take due account of such secondary causal factors intensifying these primary dangers as contagious disease, extreme poverty, food insecurities, energy supplies, and price volatility.

The United Nations is not completely impotent in the face of these mounting challenges. Within the last 40 years, it has usefully set forth at least a preliminary normative agenda responsive to many of these concerns, although evading such fundamental issues as demilitarisation and denuclearisation, first, in the eight Millennium Development Goals, and more recently in the more ambitious 17 Sustainable Development Goals, which were agreed upon in the UN Department of Economic and Social Affairs as the centrepiece of the UN 2030 Agenda for Sustainable Development. These articulations of goals, presumed to be shared, can be seen as tentative gestures towards the need for enhanced global governance, limiting state behaviour, at least as it pertains to development, widely regarded as embodying the priorities of the Global South.

Sceptics point to the avoidance of the war/peace agenda and the marginality of such rhetorical devices as being more accurately regarded as aspects of the problem rather

than signalling the start of a solution. At present, the dangers are acknowledged, and rudimentary mechanisms for appropriate responses exist, but only in embryonic and essentially voluntary forms that leave implementation to the discretion of ambivalent sovereign states. This response structure is not in keeping with the magnitude or urgency of the problem-solving challenges, as evidenced by the worsening of global warming and the chilling reminders of the frightening reality of nuclear dangers, whether catastrophically activated by accident or deliberate policy. By separating 'development' from 'peace', the United Nations indirectly acknowledges deference to geopolitics when it comes to war prevention and global security, which can be interpreted as an abandonment of the core pledge of the Charter Preamble.

Effective Global Governance Does Not Imply World Government

As suggested by Strobe Talbott (2008), a former high-ranking government bureaucrat, it seems selfishly important for government officials and advisers to distinguish 'global governance' from 'world government' to avoid the taint attached to the latter in policymaking circles. As he also suggests, the preference for euphemisms, such as 'multilateralism', does not do the job when in government. Although Talbott favours collective decision-making beyond the state, he does not identify mechanisms needed and orientation advocated for the maintenance of 21st-century international peace and security, given the persistence of hegemonic and hierarchical state-centrism.⁷

The approach adopted here to global governance is one that does not view world government as a likely, desirable or necessary solution in the foreseeable future, even granting the range of unprecedented dangers facing the existing quasi-anarchic international society that is fragmented in multiple respects and organised hierarchically and hegemonically.⁸ In the years after both world wars of the last century, there were influential persons in the West who insisted that world government was the indispensable solution to the then-perceived challenges of global governance arising from the persistence of warfare between major states, fought with ever more destructive weaponry, alongside acute worries in the years after 1945 that a third world war was possible, given the sharpening rivalries between the West and the Soviet Bloc. If such a war were to occur, it would almost certainly be fought with nuclear weapons and produce systemic catastrophe. A secondary yet still crucial concern is to manage the post-war economic recovery in ways that do not bring about a new economic depression of the sort that agitated the pre-World War II global setting in the 1930s and brought widespread hardship to civilian populations almost everywhere.

This dual approach to global governance focused on the prevention of a future world war and the avoidance of a second Great Depression. It has never become sensitive enough to the priorities of the Global South. The elites of countries, especially those recently achieving political independence and sovereign statehood, possessed policy imaginaries that were dominated by memories, past and present, of anti-colonial struggles, anti-imperialism, and by a variety of post-liberation challenges of national development. This latter struggle was accompanied by the widespread belief that the world economy was rigged against the modernising development of the South when it came to trade and investment.⁹

Even in the West, radical centralising schemes of global governance reform faded from serious consideration when it became evident that no political traction existed for downgrading territorial sovereignty in favour of a more adaptive post-Westphalian or

post-statist innovative reconfiguration of international order along World Federalist lines. Such proposals that were forthcoming conformed to Western liberal ideas of constitutionalism and were compatible with transnational market-driven, private-sector interests.¹⁰

Despite this dominant trend, plausible and more globally oriented ‘governmental’ proposals continued to be made as late as the 1960s, but again without generating enough public enthusiasm or policy relevance to make them happen, or even to put them forward as worthy of consideration in most influential policymaking circles.¹¹

A more constrained version of global security governance resting on somewhat increased, yet cautious reliance on institutional centralisation can be found in a book of mine published in the mid-1970s.¹² Such an approach is more sceptical about entrusting the United Nations with meeting the global governance challenges that were at the time beset by Cold War confrontations and growing North-South tensions associated with the collapse of colonialism in Asia and Africa. It substitutes the less specific framework of ‘central guidance’ as a proposed legitimate and effective way of overcoming the obstacles to global reform associated with state-centrism as shaped by geopolitics while not encroaching upon the territorial sovereignty priorities of social, economic and political development in the Global South or risking global tyranny as a mode of dystopian governance arising from a premature transition to world government.¹³ In this regard, see the books contributed to the World Order Model Project (WOMP) by Rajni Kothari and Ali Mazrui (Galtung 1980; Kothari 1974; Mazrui 1976; Mendlovitz 1975). Recent academic articles have suggested that this may be a time to revitalise WOMP, which has stimulated some effort by still active WOMP participants to explore the viability of such an option (Falk 1975; see also Lopez-Claros, Dahl and Groff 2020).

It is somewhat ironic that the most transformative institutional attempt to unify global governance followed from the Western geopolitical victory in the Cold War, the longest ‘war’ of the past century. It did not lead governments or arouse civil society to seek a safer, more equitable and sustainable approach, but it did lead U.S. policymakers to seek a militarised form of unified global governance, with unipolarity replacing bipolarity and filling the geopolitical vacuum occasioned by the Soviet implosion in 1991. Possibilities for the emergence of a more benign unipolarity exist, perhaps in response to increasing pressures exerted by unsolved global challenges. This post-Westphalian approach to governance is explored in the following section devoted to an exposition of this ‘global state’ prospect, which is at sharp variance with the Westphalian notions of territorial sovereign states and a state-centric world order.

In summary, despite the emergence of global-scale problems of severity that require urgent attention and major resource allocations, world government is neither feasible nor desirable at this stage of world history. It is not feasible because there is no political traction supportive of such a centralised globalisation of governmental authority, even in minimalist forms.¹⁴ It is not desirable because present political elites are too often motivated by nationalist priorities, recently increasing in a range of authoritarian formats. Beyond this, political leaders are generally committed to retaining geopolitical prerogatives as integral to the protection of their sovereign rights. A prominent example of such prerogatives is the right of veto granted to the five permanent members of the Security Council, which is further reinforced by provisions throughout the UN Charter. In an extension of legalising geopolitical primacy, the Security Council is the *only* organ within the UN system with the authority to make decisions on matters of peace and security, as distinct from the United Nations General Assembly’s limited authority to issue recommendations and offer advice.

These prerogatives, within and outside the United Nations, are disruptively manifested by the behaviour of the three current geopolitical actors with global ambition (United States, China, Russia). For the foreseeable future, global governance solutions, to have realistic prospects of enactment, will have to be fashioned within the constraints of the Westphalian framework. This framework is a hybrid form of world order combining state-centrism and an overlay of geopolitics whose significance is often under-appreciated even in the academic literature on international relations (IR).¹⁵ The relevance of normative globalism by way of international law prohibitions on the use of force and other restraints is accorded a transformative potential by a small, legalistic minority of international jurists (Hathaway and Shapiro 2017).

At present, this geopolitical overlay is creating a high risk of global breakdown in the form of a major war. This risk arises from the post-Cold War unipolar circumstances that led the United States to establish a loosely linked non-territorial global security state, which amounts to an untested approach to global governance. It seeks legitimacy and effectiveness by a combination of fear, respect, leadership, and benevolence that rests on its worldwide projection of full spectrum military superiority, a neoliberal world economy and coercive diplomacy, exacted through sanctions, covert operations, arms sales, and boycotts. Sustaining unipolarity was sometimes criticised as too costly and ineffective, yet seldom hostilely contested in the West until China emerged as an all-too-credible geopolitical rival and Russia mounted a further challenge on its borders by attacking Ukraine. No longer is a geopolitical war for global dominance or shaping a new structure of geopolitical alignment a remote fear.¹⁶

Situating the United Nations

Except for my own contribution to WOMP, the other participants did not accord major attention to the United Nations as either a political actor or as an important part of their agenda of policy priorities. Instead, they stressed such normative goals as permanent sovereignty over natural resources, the right to development, a new international economic order, a new international information order. The United Nations was viewed as a site of struggle on North/South issues rather than a venue notable for conflict resolution and multilateral cooperation. Even for economic policy, Global South countries placed their emphasis on national plans and regional coordination. Global governance was not seen as a matter of great concern, as the Global South was keenly aware that geopolitics—even after the successes of the global anti-colonial movement—remained within the exclusive control of the United States and the Soviet Union and their close allies, especially on matters of war and peace.

To what extent has this marginalisation of the United Nations been overcome in the present period due to the ending of the Cold War and rising global concerns relating to climate change, and the challenges to global hegemony being mounted by the Global South? It would seem that the Treaty on the Prohibition of Nuclear Weapons (TPNW), negotiated under UN auspices and ratified by countries in the Global South, represents a rare overt challenge to the hegemonic aspects of the nuclear dimensions of global security that have prevailed in international society and are reflected in the design and operation of the United Nations since its founding. The leader of Turkey, Recep Tayyip Erdogan, never tires of pointing out that ‘the world is greater than five’, a mantra targeting the dominance of the five veto powers in the Security Council. This slogan can be understood as an expression of exasperated frustration with the UN hegemonic approach to global governance.

It is still important to recognise that despite these fundamental shortcomings, the United Nations makes useful and numerous contributions to global governance in numerous ways that affect positively the daily lives of hundreds of millions of people. Although the United Nations has not been sufficiently empowered to address the fundamental challenges imperilling the future of humanity and the eco-viability of the earth's natural habitats, these life-enhancing contributions deserve appreciation and increased funding.

At the same time, even with the opportunities existing at the end of the Cold War to promote global reforms bearing on war prevention, nuclear weaponry, arms trade through support for a stronger, more independent United Nations, positive adjustments were not forthcoming. It seems that the architectural design of the United Nations as the principal means of global governance in 1945 was deliberately configured to be virtually reform-proof or, to put it differently, that geopolitical dominance persisted in the 1990s, making efforts to curtail the veto power or endow the United Nations with greater financial and administrative independence still lacking in political traction, perhaps even more so than in 1945. The victorious side in the Cold War prevailed without prevailing in an actual war and proceeded to claim sole legitimacy for itself as providing the world with a globally governing orientation nationally, politically and ideologically.¹⁷

As noted, the principal weaknesses of the United Nations were built into its design, as confirmed by the operational experience of the UN system in relation to peace and security, world economic policy, human rights, and other policy issues. The United Nations had no effective control over the political and economic behaviour of its major member states that remained sovereignty-oriented, especially the permanent members of the Security Council possessing a right of veto. This has meant that the most contentious issues in international life are not often resolvable by compromise, judicial assessment and respect for international law. Political leaders have proven incapable of producing solution-oriented diplomacy that depends on the willingness of parties to a conflict to accept cooperation, constraint, compromise, and accountability as a desirable alternative to threat diplomacy, arms races and actual coercion. And in the security domain, the traditional means of seeking order and stability is to rely on the discretion and good judgement of those who execute policy on behalf of geopolitical state actors, with adjustments reflecting the new security environment created by weaponry of mass destruction and speed and accuracy of delivery.

For management of the economy, the governance structure of the world was institutionalised in World Bank, the International Monetary Fund (IMF) and, later, the World Trade Organisation (WTO), institutions conceived and controlled by global capitalist states and mindful of free market economics rather than the normative complaints of the Global South. In this sense, post-1945 global governance of the world economy was managed by Western interests quite separately from the United Nations in organisations collectively known as the Bretton Woods institutions (for reliable elaboration see Ikenberry 2001, 2011). These institutional settings were largely free from Cold War tensions yet were deemed crucial to avoid a recurrence of the Great Depression with its devastating effects on human security. It is revealing that the West was willing to accept a deeper engagement with internationalism in the economic sphere than the political sphere and made some effort to entice Soviet Union participation. The Soviets did play an active part in the founding negotiations at Bretton Woods but withdrew, later rejoining in 1992, not as a separate state but as 15 distinct republics.

In summary, these five permanent members of the Security Council enjoy a right of exception to all Security Council decisions in the form of the veto, and by this

dominance, they limit the United Nations's role with respect to peace and stability. Such control is differently institutionalised by way of weighted, veto-free voting procedures of the Bretton Woods institutions framing of world economic policy. Strategic reliance on this veto power has resulted in relegating the United Nations to the role of being a virtual spectator when it comes either to preventing and resolving major conflicts or to regulating important security arrangements from the time of the Cold War to the present multi-dimensional crisis arising out of the war in Ukraine. This UN design also freezes the hierarchy of power as it existed in 1945, thus diminishing the legitimacy of the United Nations as representing the peoples of the world more than 75 years later. This power-ranking misrepresents the actual distribution of power, given that three of the five permanent members belong to the West (United States, United Kingdom, France), no African or Latin American country elevated to this elevated rank of UN membership, and only China from Asia. In country terms, the 1.2 billion people of India are under-represented in the Security Council, as are such important countries as Indonesia, Nigeria, Brazil, Pakistan, Japan, Germany, and South Africa.

Although the Security Council is the only component of the UN system with the authority to reach decisions authorising the use of force and to impose punitive sanctions on states, it is not by any means the whole story when it comes to evaluating UN past, present and future contributions to global governance. The same goes for the world economy with its control under the combined auspices of Bretton Woods and major market-oriented states often alleged to be acting in concert with the large multinational corporations.

Within the spheres of health, development, environment, human rights, disaster relief, multilateralism, and the dissemination of knowledge, the United Nations plays vital roles throughout much of the world, roles which are ignored by the media but not by people widely scattered geographically, whose lives have been bettered in many ways due to UN local activities.¹⁸

A variety of proposals through the years have surfaced to circumvent the impasse at the United Nations, resulting from tensions between major states, especially those with geopolitical status. Most recently, the Liechtenstein Initiative of 2020 has been put forward as a way to inhibit reliance on the obstructiveness of the veto in the Security Council under certain conditions (Abrams 2022; Donaldson 2022). This proposal would be unlikely to enhance the legitimacy or effectiveness of the governance capabilities of the United Nations, but in the current atmosphere would tend to make the organisation a Western geopolitical tool in rivalry with China and Russia with respect to conflictual behaviour, whether of an interstate or intrastate character.

This kind of reform motivated by partisan geopolitics helps to explain the impulse to support a one-sided Western interpretation of global crises in the event of the outbreak of violent forms of geopolitical conflict such as has unfolded in Ukraine. Such an approach to reforming the role of the United Nations as the institutional mainstay of global reform, if implemented under crisis conditions, would almost certainly lead to either the withdrawal of states likely to be the targets of a veto-free United Nations or at best their refusal to fulfil punitive obligations imposed by the majority. This pattern of pure state-centrism (that is, excluding geopolitics) explains the demise of the League of Nations, which was reduced to impotence because it could not obtain or retain the participation of such major actors on the global stage as the United States, the Soviet Union and Germany). The United Nations, by obtaining and maintaining near-universal participation, has succeeded where the League failed. Admittedly, this has come at the cost of

virtual irrelevance for the United Nations that has accompanied the war in Ukraine and, indeed, every major occasion where the policy of a permanent member (or its close allies) seemed to challenge the norms of the UN Charter.

Any view of global governance that regards the rivals of the West as the wrongdoers and the West as the upholder of a 'rule-governed' world order is misleading. Adherence to the UN Charter and international law by the United States and NATO is presumed, and a searchlight of disapproval is shone on disruptive behaviour by geopolitical rivals. This one-sidedness based on double standards overlooks the experience of the United Nations during its existence. The United States and its principal allies have repeatedly evaded international law and UN Charter provisions without occasioning any adverse consequences, not even censure. The United States has resisted strong expressions of consensus among the membership whenever its strategic interests were at stake, including when domestic political implications were at play, as with Israel on one side and Cuba on the other. This pattern of disruptive behaviour is evident, going back to the Vietnam War and more recently in the attacks and occupations of Libya, Iraq, Afghanistan, and support for Saudi Arabia's armed intervention in Yemen.

State-Centric Coalition Formation

The Brazilian jurist Roberto Mangabeira Unger, a founder of Critical Legal Studies at Harvard Law School, has written a stimulating, highly original short book outlining an approach to global governance by way of coalition building on a grand scale (Unger 2022; see also Mazower 2012). Unger's point of departure is to affirm the necessity of accepting, even affirming, the sovereign state and state system as constituting the permanent structure of world order. Hence, he opposes views that seek to transcend or transform Westphalian structures and processes. Unlike most serious discussions of attainable and preferred responses to the crisis of global governance, Unger does not consider the Westphalia framework an obstacle to a benevolent future for humanity but as the foundation for constructing a more stable, effective and cooperative system of world order, which when and if successfully realised might appropriately be known as 'Westphalia +'.

Unger dismisses cosmopolitan speculation and the World Federalist approaches as not only lacking in political traction but also as undesirable. Such reformist ideas are undesirable because Unger believes that the statist framework, as currently operative, is the most efficient way to uphold the various forms of sub-system diversity encountered throughout history. Unger presents territorial sovereign states as socio-political spaces that are free to experiment within their borders according to diverse societal imaginaries. Unger is not at all insensitive to the detrimental aspects of political fragmentation when it comes to contemporary problem-solving on a global scale, especially with regard to war/peace and human security concerns. He rests his hopes for a better future for humanity on incremental and selective forms of coalition building that include geopolitical actors as participants rather than exempting from accountability those states that used to be called great powers in the international relations literature.

It is not that Unger opposes a role for the United Nations and international institutionalism in meeting the challenges of global governance, but his assessment is that the United Nations, as seen from a functional perspective, has so far failed because of the primacy of the Security Council and the irresponsible behaviour of its permanent members. The United Nations has not taken advantage of obvious opportunities to strengthen the

organisation's effectiveness. In this regard, the end of the Cold War in 1992 and the millennial year of 2000 were deeply disappointing.

At present, the three dominant states display a high level of willingness to build security coalitions against real or imagined rivals and almost no serious willingness to search for peace-building coalitions and to engage in agreements with adversaries, even when it is perceived by the relevant governments to serve mutual or common interests. Unger believes that such myopic behaviour can be changed.

One attractive feature of Unger's approach is its extreme flexibility, combined with the encouraging belief that the only way to work towards satisfactory forms of global governance is to accept the norms and procedures of a statist world order as they currently function. He did, however, combine this with the dubious acceptance of international law as authoritatively setting limits on the behaviour of states.

Despite the suggestiveness of his central argument, it rests on a number of questionable assumptions. The United States, China and Russia are not presently prepared to subscribe to a world order that precludes their pursuit of clashing strategic ambitions and retention of geopolitical freedom of manoeuvre, above all with respect to border security and nuclear weaponry. Secondly, these current great powers manipulate international law in peace and security contexts, deploying it to a certain extent as a partisan policy tool by which to inflame public opinion against adversaries while refusing to be bound by international law if its norms obstruct behaviour in support of their strategic interests. Such double standards seem most deeply embedded in the political consciousness of Western foreign policy elites and seem dauntingly difficult to overcome. Thirdly, there is little indication that these geopolitical actors are unhappy about the governance weaknesses of the United Nations. Despite such important world public order achievements as the Law of the Seas Treaty (1982), the arrangements agreed upon were interpreted to allow nuclear weapons testing in the oceans and to permit navies to have freedom of the high seas as a permissive justification for the pursuit of dangerous ambitions distant from territorial homelands, and at the expense of other weaker polities whose populations were exposed to severe harm in the form of health hazards.

'Global State' Solution

'To the extent that there is an American hegemony or empire of global scope, then the United States, however ambivalently, incompletely, incompetently and temporarily, is a de facto world government of some sort' (Deudney 2007: 244–45).

What Deudney labels as 'de facto world government' I choose to call a (non-territorial) 'global state' that is neither a world government (some form of global constitutionalism) nor a world empire (formally subordinating existing sovereign states). It is more accurately understood as a dynamic *sui generis* arrangement which currently partakes of both governmental and imperial features, and is under multiple challenges from geopolitical rivals, and less directly from the Global South.¹⁹

While the challenges of global governance are not currently susceptible to generating positive responses in forms qualifying as global government, there is more plausibility for the prospect of unitary control of global problem-solving under the aegis of 'a global state', although with limited functions and distinctive properties that are very different from existing national states. The United States has invested heavily in establishing the security infrastructure for such a unification of problem-solving authority and capacity to

implement global security goals but oriented towards national and private-sector interests rather than being responsive to global interests.

In part, the heightened stakes of the war in Ukraine reflect the superimposition of geopolitical rivalry on Westphalian dynamics of international conflict. The United States is currently making a major effort to repulse the Russian military challenge to its unipolar position while also responding to the Chinese challenge that, up to now, has taken the form of economic and technological competition. If the United States succeeds in repulsing these challenges, it will occupy a unique position at the pinnacle of the international order. As indicated earlier, such an arrangement is not likely to achieve legitimacy or be recognised as an acceptable form of 'global governance' by most sovereign states and the most populous nations in the world. At best, such a political arrangement will be passively accepted but more probably exist under constant challenge and hence be unstable in relation to war prevention.

This type of global state rests disproportionately on militarist ascendancy, based on a global network of foreign bases, alliances, navies patrolling the five oceans, arms sales leverage, cyber warfare capabilities, and dominance of space.²⁰ Such ascendancy rests on claims of 'full spectrum dominance', achieving credibility by its presumed capability to meet all international and internal threats to the political status quo posed by adversary forces. Although there is no doubt about the realities of this unprecedented military destructive capability, it has repeatedly failed to deliver political outcomes in accord with the aims of U.S. foreign policy. This draws into question whether military power currently possesses the historical agency to allow a global state of this character to administer mechanisms for the solution of global-scale security governance challenges. This includes threats posed by nuclear and other weapons of mass destruction, as well as by non-military developments, of which climate change and ecological devastation are the most pervasively dangerous.

It is not only the short-sightedness of militarism and claims of moral superiority as the proper response to the problems of global governance but also the muddled ideological approach taken to give an aura of legitimacy to this unipolar geopolitical stance.

Biden articulates the American global vision as providing leadership for a coalition of democracies against an array of autocracies. The alliance of democracies is portrayed as alone capable of providing humane and effective varieties of governance for the world. Such polarisation is at odds with the *de facto* claims of political unity and operational behaviour associated with the global state claims as underpinning global security governance. Furthermore, the proffered ideological alignment is not reflected in existing alliance relations that are one of the pillars of support for the militarised geopolitics that the United States has favoured since the end of the Cold War.

Biden identifies China and Russia as exemplars of such autocratic governance patterns but passes over the fact that there are now very few genuine democracies in the world, and some of the more repressive countries are routinely included in the ideological coalition that the United States purports to be leading. Such selective advocacy of democracy and human rights has been reduced in practice to state propaganda aimed at the Euro-Atlantic countries. It functions to mobilise support for the pursuit of aggressive geopolitics and the re-Westernisation of the post-colonial world. In this form, the structures and administrative capabilities of an American-led global state cannot contribute positively to the need for global governance mechanisms capable of generating sufficient global public goods in the context of human and ecological health, climate change, food, energy, equitable economic arrangements, migration, and demilitarisation, which together fulfil the requirements of human security that global governance structures are tasked to achieve.

It is possible, although seemingly remote from the standpoint of the present, that if the United States manages to maintain geopolitical ascendancy in the face of Russian and Chinese challenges, then it might also experience a benevolent transformation of its own identity to offer the world generally positive leadership to meet such urgent collective goods problems as it arguably did with respect to the economic reconstruction of Europe and Japan in the period after World War II. Such an option is not visible or plausible on current political horizons, but future stresses may induce a radical reordering of priorities, including the partial demilitarisation of the current U.S.-led embodiment of a global state in response to reformist demands from within the United States and transnational pressures from without and from below. Civil society activism has a potentially influential role to play in reshaping the U.S. global role and is likely to be self-mobilised by a deteriorating set of ecological circumstances and nuclear dangers that call attention to risks imperilling species survival that seem certain to be increasingly evident in the years ahead.²¹

This more benevolent version of the global state would probably reflect internal moves in the direction of what the Quincy Institute in Washington advocates under the rubric of ‘responsible statecraft’, which could include a framework of constraint shaped by adherence to international law and backing off claims that benign world order depends on the ideological triumph of countries friendly to the West. Such adherence might facilitate geopolitical accommodation with China, and even Russia, and include certain elements of demilitarisation starting with annual percentage military budget cuts, stricter regulation of arms sales, a No-First-Use Declaration for nuclear and other weapons of mass destruction, a graduated closing of many foreign military bases, and even adherence to the 2021 agreement negotiated for several years at the United Nations, the TPNW.

Against such a background augmented by dire warnings from climate scientists and ecologists, the kind of solidarity needed to reach agreements among diversely situated and governed sovereign states might become feasible, possibly under the auspices of the United Nations, but not necessarily (Unger 2022). At an earlier time, the public order of the oceans was negotiated in a global setting that led to a series of negotiated bargains between developed and less developed states, as well as between states with varied access to ocean navigational and other resources.

In other words, where the political will existed to achieve a consensus and effective leadership in arranging trade-offs between states with vastly differing interests (e.g., offshore resources vs. navigational transit for navies), a generally satisfactory result that served global interests and human security proved quite often reachable. The word ‘generally’ might bring the Charter into closer accord to geopolitics, which has operated dysfunctionally with respect to the pursuit of international peace and security. It is Unger’s view, discussed earlier, that the processes of inter-governmental coalition formation would likely supersede the United Nations, rendering it irrelevant, at least with respect to the big problems facing humanity. Unger also suggests that successes of coalition building could stimulate reformist energies within the United Nations, especially among the permanent members of the Security Council, to avoid institutional marginalisation. Such considerations might even prompt moves within the United Nations to amend the Charter to eliminate or greatly limit the veto power, grant more authority to the secretary-general while removing funding from the control of member states and enhance the role of the ICJ and of international law generally. In effect, if the United Nations can be reconfigured to overcome the geopolitical primacy that has so often paralysed it in the past, and instead accept guidance from and respect for international law, it could play a

coordinating role for coalition building by a variety of groupings of political actors working on a range of global governance issues, widening its central activities to encompass human security and lessening its preoccupations with the maladies of clashing national security claims of member states.

The Geopolitical Management of Power, Authority and Global Problem-Solving

There is another approach to global governance that may be worth scrutinising because, in comparison with more idealistic alternatives, it is immediately attainable and, to some extent, already provides order to international society, which retains its anarchic character; this, despite the contemporary complexities of interdependence and digital interconnectedness, as well as the overall economic performance in the face of predatory forms of capitalism. This approach can be best described as ‘the geopolitical management’ of power, authority and global problem-solving. This geopolitical approach to global governance has two principal modes of expression:

- a unipolar management model that is historically represented by the United States as the first ‘global state’ in world history, as discussed in the previous section;
- a multipolar management model in which the geopolitically leading states act in concert both transactionally and in a growing shared commitment to global public goods.

Despite its relative ease of attainability, there are serious drawbacks to the acceptance of such a multipolar managerial approach, including resistance in the Global South. In an important sense, the war in Ukraine will be remembered as much, or more, for how it influences geopolitical alignments and practice as for its effects on the future of Ukraine. To the extent that the geopolitical level of conflictual engagement does not extend the unipolar mandate, there are many reasons why a managerial, de-ideologised approach among either the three geopolitical actors or high levels of bipolar cooperation between China and the United States holds promise for an era of geopolitical cooperation.

This scenario for the future presupposes that Russia—after its invasion of Ukraine—curtails its geopolitical ambitions sufficiently to neither need nor want to act as a full partner in this altered framework of geopolitical leadership. It also depends on altered outlooks in both Washington and Beijing that envision the benefits of promoting a cooperative international order that outweighs the current mood of implacable rivalry. If this were to happen, it might roughly resemble a globalised reframing of the Concert of Europe (1815–1914) that maintained continental peace and stability for much of the 19th century. If any such rearrangement materialises, it would likely upset the 190 or so countries currently on the outside looking in. Tensions could be reduced only by reassurances relating to equity, common cause and a strengthened global rule of law and a firm commitment to pursuing peaceful settlements of all international disputes.

The most plausible sequence would be to start such a process in an area where the need for cooperative action of global scope is obvious to all, where the complexity of the overall challenges lends itself to compromises and trade-offs and where ideological factors are not intrusive. Climate change and sustaining biodiversity would be an obvious starting point, but other challenges involving human trafficking, the criminal drug trade, migrations, demilitarisation, and denuclearisation also could be mutually attractive under certain conditions.

Concluding Remarks

The inadequacy of present structures and processes is evident from the inability to act responsibly in relation to problem-solving challenges of global scope. At the same time, the Westphalian blend of state-centrism and geopolitics seems firmly entrenched, even within the UN framework. Under these circumstances, both the political leadership of the world and civil society movements are increasingly under pressure to serve the global public good or be confronted by catastrophic, multidimensional risks of the greatest gravity.

Traditional ways of behaving persist, although dysfunctional, and world leaders and publics seem easily distracted by immediate short-range concerns and ideological differences. In such circumstances, it combines rationality and humility to acknowledge the dependence of humanity on ‘a politics of impossibility’. Such a politics has a non-utopian relevance due to two empirical realities: the future is unknowable and has generated ‘impossible’ political outcomes within lived historical memory: for instance, the Soviet implosion, the peaceful dismantling of apartheid in South Africa, the Arab Spring. Waiting for the impossible is not a counsel of despair because the impossible only happens when enough people act fervently to attain what they view as necessary and desirable. In the end, sustainable global governance in the 21st century is dependent upon finding and keeping a balance in the international order between justice and stability.

Notes

- 1 For Ukraine and NATO, the most formidable obstacle would be to acknowledge any kind of Russian territorial gains stemming from its recourse to aggressive war by launching an attack on Ukraine in 2022. For Russia, formidable obstacles include obtaining assurance that Ukraine would never join NATO and securing a reliable protective UN presence for ensuring the human rights of the inhabitants of the Donbas region. Despite these obstacles, ending the war diplomatically seems the best available option for all sides and for world peace and security.
- 2 For a classic work on a systems approach to world order, see Kaplan (1957).
- 3 A central conclusion drawn from Jared Diamond’s (2004) important work.
- 4 See McCoy (2021) for the ebb and flow of this imperial form of control; also Kennedy (1987).
- 5 Since the late 18th century, there have been periodic attempts to reduce the role and severity of war by agreement, political arrangements and international institutions, of which the United Nations is the latest and most ambitious iteration. For a notable, although in the end unconvincing, attempt to regard the Pact of Paris in 1928, outlawing aggressive war as itself a system-transforming happening, see Hathaway and Shapiro (2017).
- 6 When geologists pronounced the present era as ‘the Anthropocene’, it reflected a scientific assessment that the salient characteristic of late modernity was the degree to which human activity, for better or worse, impacted the fundamental features of the natural habitat on planet earth.
- 7 Talbott (2008) examines the history of attempts to overcome the limitation of statist forms of world order but fails to advance a preferred model other than prudent geopolitical management.
- 8 As influentially depicted by Bull (1977), whose approach is reevaluated by others 40 years later in Suganami, Carr and Humphreys (2017).
- 9 See Reves (1945) for a more comprehensive academically framed account of the long history of world government advocacy and critique; see also Lu (2021) and Cabrera (2010).
- 10 For one set of proposals for such reform, see Falk (1971, 1975). Instead, the national security elites of leading states opted to continue relying on their own national security arrangements in the Nuclear Age—based on national military capabilities adapted to the new weaponry and conflict constellations, regional alliances and nuclear deterrence postures—to provide national security, which proved dangerously precarious during the Cold War decades, especially when hostility morphed into patterns of geopolitical confrontation between the two nuclear superpowers; compare Sherwin (2020) with Mearsheimer (2001).

- 11 Perhaps the most notable effort along these lines was developed by Grenville Clark and Louis B. Sohn (1966); sympathetically assessed in Lopez-Claros, Dahl and Groff (2020); compare more modest and partial institutional innovations that do not transform structures of sub-system dominance but contest geopolitical primacy from below; also Falk and Strauss (2011).
- 12 My contribution to WOMP attempted to construct ‘a central guidance system’ as an alternative to both the existing Westphalia framework or a World Federalist–preferred solution (Falk 1975).
- 13 Views were presented along these lines by non-Western participants in the World Order Models Project (WOMP). WOMP was a transnational network of scholars drawn from all parts of the world who subscribed to shared values but who were otherwise free to participate according to their own ideas about a future preferred world and how to make the transition in the period 1960–90.
- 14 Authoritatively depicted in Deudney (2007), a fine treatise on republican ideas about upholding security in various historical time periods.
- 16 A notable example of normative transformation is the importance given to the Pact of Paris (1928) prohibiting non-defensive recourse to war by (Hathaway and Shapiro 2017).
- 15 For exceptions see the British School associated with work of Bull (1977) and Wight (1966) and the non-defensive uses of force.
- 16 See Falk (2023) for advocacy of recognition of geopolitical fault lines to safeguard peace and stability.
- 17 See an influential, triumphalist interpretation of the outcome of the Cold War by Fukuyama (1992); for an even more succinct view, see the opening sentence by President George W. Bush of the cover letter to an official strategy document: ‘The great struggles of the twentieth century between liberty and totalitarianism ended with a decisive victory for the forces of freedom—and a single sustainable model for national success: freedom, democracy, and free enterprise’ (Bush 2002; Wight 1966). Note particularly the words ‘a single sustainable model’, exhibiting the belief that only America works. Such a sentence would be rendered absurd a mere ten or so years later in view of China’s rise.
- 18 Seeking a more positive appreciation of the UN role by pointing to these activities that escape the media radar is a major objective of Falk and Von Sponeck (2023).
- 19 See also Michael Mandelbaum (2006) for a more ideological presentation of the United States as providing the world with the benefits of what amounts to world government. Mandelbaum provides a more historically grounded account of how the content of American exceptionalism shifted from a rejection of European imperialism and nationalism to the embrace of global supremacy. See also Wertheim (2020).
- 20 Estimates of American foreign military presence differ, but it is historically unparalleled. One helpful tabulation of military bases is the following: Overseas Base Realignment and Closure Coalition (2022). It lists 750.
- 21 A series of books in the early 1970s called attention to the dangers of exceeding ecological and other limit conditions, which caused a stir at the time, but was then ignored until the climate crisis. See Commoner (1971) and Meadows *et al.* (1972).

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9 Revitalising UN Collective Security

A Modest Proposal

*Ian Johnstone**

The collective security system embodied in the UN Charter has come under intense scrutiny for failing to live up to its original promise. The idea behind collective security is that an attack by a member of the group will be resisted by all other states. It is similar to collective defence in the sense that an attack on one will be treated as an attack on all, but in a collective defence system, the expectation is that the attack will come from outside the group, whereas a collective security system is designed to deal with threats from within the group.

The scheme embodied in the UN Charter, even as designed, is not an ideal collective security system (Roberts 2016: 353). To begin with, a collective response to aggression or threat to the peace is not obligatory; the UN Security Council must decide in each case. Second, the system has built into it the certainty that UN Security Council–authorised action will never take place against one of the five permanent members of the Council (P5).¹ Third, it leaves open the possibility of military action in self-defence without UN Security Council authorisation.

Nevertheless, the Charter does set out a system for collective measures to be taken in response to acts of aggression and threats to or breaches of the peace. The system is rooted in Chapter VII. The key provisions are Article 39, which is the threshold for Chapter VII action, and Articles 41 and 42, by which the UN Security Council can impose sanctions or authorise military action. Articles 52 and 53 are also important, as they allow regional organisations to address security threats within their regions on the understanding that any enforcement action they undertake must be approved by the UN Security Council.

Yet Chapters VII and VIII have never functioned as intended. There are at least two dormant provisions of Chapter VII. Article 43 stipulates that military action under Article 42 is to be taken by member states who provide forces pursuant to ‘special agreements’ negotiated with the Security Council. Article 47 states that a Military Staff Committee, composed of the Chiefs of Staff of the P5 and others they may invite to join, shall provide strategic direction to military operations. Because of the superpower rivalry during the Cold War, no Article 43 agreements were ever reached, and the Military Staff Committee has never been used as designed. The United States and the USSR started negotiating ‘special agreements’, by which each would place tens of thousands of troops on call to the Security Council. But by 1947, those discussions came to an abrupt halt. Pulling together any kind of military operation under UN auspices requires member states to volunteer. And while regional organisations such as the African Union, European Union, North Atlantic Treaty Organization (NATO), the Organisation for Security

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and Co-operation in Europe (OSCE), and various sub-regional African organisations have been important actors in managing peace and security, the Security Council has often called on ‘coalitions of the willing’ to undertake operations instead. The end of the Cold War seemed to present an opportunity to reinvigorate the UN-based collective security system, for example, by reviving negotiations on Article 43 agreements. Indeed, Secretary-General Boutros-Ghali proposed exactly that in *Agenda for Peace*, but for reasons outlined in the conclusion, the proposal was not taken up by UN member states.

Thus, both conceptually and as a matter of practice, Chapters VI to VIII of the UN Charter fall short of an ideal collective security system. While that has been clear from the start, Russia’s invasion of Ukraine has brought new attention to the seeming dysfunction of the UN Security Council. It is tempting to blame that dysfunction entirely on the veto power, but the point must not be overstated. The threat of a Russian veto is not what prevented a more militarily forceful reaction to the invasion: the United States and its allies could have mounted a full-scale defence of Ukraine on the basis of Article 51. Nor should we assume that the geopolitical tensions associated with Russia’s forcible annexation of parts of Ukraine—a breach of the most fundamental norm of world order (Brunk and Hakimi 2022: 689)—means the Council is completely paralysed. Even in 2022, it continued to renew the mandates of peace operations, extend sanctions regimes, address the proliferation of weapons of mass destruction, debate counterterrorism in Africa, and discuss Security Council reform.²

Yet multiple factors suggest that the time is right for a sober second look at the collective security scheme embodied in the UN Charter. The central argument of this chapter is that the current geopolitical climate does not lend itself to radical reforms now, but the level of dissatisfaction suggests there is scope for modest reform in the short term, paving the way to more far-reaching reforms in the future. It starts from the understanding that we are better off working with the institutions we have rather than abandoning those institutions and starting again from scratch. All of the factors that make reform of the UN peace and security architecture difficult would make rebuilding from the ground up even more difficult.

The remainder of this chapter is divided into four sections. In the next section, I identify multiple challenges facing the Charter-based collective security system. In the third, I provide a brief review of the conflict management tools the Council has developed, focusing on those that fall within Chapter VII. In the fourth section, I offer a modest (though politically difficult) proposal for institutional reform: an International Standing Civilian Protection Service. In the conclusion, I consider how that proposal could lay the political, if not operational, foundation for more radical reform. Specifically, I suggest revitalising Article 43 by negotiating ‘special agreements’ with member states that are prepared to lead peace operations or enforcement action and/or the creation of regional or sub-regional standby forces ready to deploy on short notice. In making these proposals, I recognise that none of the challenges identified in the first section can be resolved through institutional fixes. Yet, at a minimum, debate about concrete institutional reforms can concentrate the mind about what is politically feasible and what is not. At a maximum, it can shift the narrative and help to create the political conditions for those reforms.

Challenges to the Charter-Based Collective Security System

Contemporary challenges to the UN collective security system can be clustered into two categories: geopolitical tensions and the evolving nature of conflict and security threats.

Geopolitical Tensions

As noted, Russia's invasion of Ukraine is a shock to the system, but not in the way sometimes assumed. The structure of the United Nations has built into it the impossibility of authorising military action against any of the P5. Article 2(4), the prohibition against the use of force, applies to all members of the United Nations, of course, but the veto power means that violations of that prohibition cannot be met with UN Security Council-authorized enforcement action. Sometimes dismissed as the 'original sin' of the UN Charter, it is nevertheless the case that the United Nations would not have come into existence without the special status the veto affords the great powers at the end of World War II (not least because, out of concern for U.S. sovereign prerogatives, the U.S. Senate would not have ratified the Charter without it).³ Moreover, without the involvement of those great powers in the United Nations, it was thought that the ability of the organisation to manage international peace and security would be seriously compromised, as was the case with the League of Nations. Indeed, the UN Security Council is not designed to prevent the P5 from using force but rather to *enable* them to do so if and when they decide it is necessary for the maintenance of international peace and security. This extraordinary grant of authority was thought to be necessary to avert another world war. It was quickly put to the test with the outbreak of the Cold War when P5 unanimity was rare, but the Council was not completely paralysed and managed, for example, to establish a number of peacekeeping operations in the context of international and internal conflicts (Johnstone 2016: 773).

That being said, current tensions among the P5 are deeply concerning. The risk of a great power war is real. As of the time of this writing, Russia has not shown signs that it is prepared to back down in its campaign in Ukraine. Its use of a tactical nuclear weapon is not off the table. That or a direct attack on a NATO member may leave the United States with no choice but to get more directly involved. Meanwhile, tensions with China over Taiwan could grow in the years ahead, leading to unforeseen and perhaps unintended consequences. And other conflicts that do not directly involve the great powers could escalate to include them.

These great power tensions have not yet paralysed the Security Council, but they have started to have an impact on its work in other areas. Russia recently abstained on the extension of the UN peacekeeping mission in the Central African Republic (MINUSCA). The Russian Wagner mercenary group is complicating peace processes there and in Mali, from where France recently withdrew its counterterrorism forces. While the use of the veto since 1990 is at a slower pace than in the Cold War era, it is starting to see an uptick. Between January 1991 and December 2023, the United States vetoed 19 resolutions, mainly on Israel-Palestine. Russia cast its veto 35 times and China 15 times. Russia has used its veto eight times since December 2021, joined by China on three of those. The US vetoed two resolutions in the period.

These current tensions have compounded the sense of a loss of leadership in conflict management that characterised the Trump years. Multipolarity is now a fact of global life, which could have benefits for international peace and security (Grossman 2022),⁴ but if the world's great powers are unable or unwilling to use their diplomatic weight to help manage and resolve conflicts, they will fester and escalate. This vacuum of leadership is exacerbated by the nationalist form of populism that has taken hold in many countries, global and regional powers alike. An inward-looking, 'my country first' foreign policy translates into a lack of support for multilateral institutions. That lack of

support translates, in turn, to less effective institutions, resulting in a downward spiral that generates a loss of faith in global multilateralism. Of course, nationalist populism is not the only political force in the world. Indeed, European Union solidarity in response to Brexit and the Ukraine War suggests otherwise. However, the global multilateral institutions established in the wake of World War II, including the Bretton Woods institutions, are under considerable strain. Rival institutions are emerging (such as the Asian Infrastructure Investment Bank and the New Development Bank), as are new informal groupings of states (such as the G20 and Brazil, Russia, India, China, and South Africa (known as BRICS)). Most of these institutions are oriented towards economic relations and development, but some have security mandates, such as the Quad (the United States, India, Japan and Australia) and AUKUS (Australia, the United Kingdom and the United States).

Changing Nature of Conflicts and Security Threats

The second cluster of challenges concerns the changing nature of conflict. By some measures, war is less common and less lethal than in the past. The number of large-scale interstate conflicts has been relatively low since the end of the Cold War, and, Russia's invasion of Ukraine notwithstanding, it is not expected to rise again (IISS 2022).

However, that rosy picture is misleading for a number of reasons. First, the Uppsala Conflict Program Database defines war as 'a state-based conflict or dyad which reaches at least 1,000 battle-related deaths in a specific calendar year'. In 2021, 54 state-based conflicts were recorded in 35 countries, resulting in nearly 85,000 battle-related deaths (Palik, Obermeier and Rustad 2022). In 2022, among the 32 countries at war, three recorded more than 10,000 battle deaths (Myanmar, Russia and Ukraine), 14 between 1,000 and 10,000, and 15 with fewer than 1,000 (World Population Review 2023). While the number of people killed in combat declined between 2014 and 2020, there was an uptick in 2021 and 2022 due to the wars in Yemen, Ukraine and Ethiopia.

Moreover, many civil wars are 'internationalised', with neighbouring or other states involved on one side or the other. Between 2015 and the end of 2021, more people were killed per year in internationalised civil conflicts than in civil conflicts without international involvement (Palik, Obermeier and Rustad 2022). In 2022, Syria, Ethiopia, Yemen, Libya, the Democratic Republic of the Congo, Mali, Burkina Faso, and Somalia were among the conflicts that fit that description.

In addition to these state-based wars, the number of conflicts between non-state actors (i.e., the use of armed force between organised groups, none of which is the government of a state) has risen. Seventy-six non-state conflicts were recorded in 2021, a significant increase from 2012 when there were 49 such conflicts (Palik, Obermeier and Rustad 2022).

Second, there is an increasing range and diversity of non-state armed groups involved in conflict. Some are insurgents seeking political power. Some are violent groups with ideological aspirations that are not necessarily related to political power or territorial gain (jihadists, for example). Some are gangs who have an interest in controlling territory for criminal, not political gain. In many places, political, ideological, economic, and criminal agendas are intertwined, as in the Central African Republic and Colombia, for example. In Haiti, criminal gangs have their own motives for violence but have also been instrumentalised by political actors.

Third, while today's wars are of lower intensity, other consequences of war have become more dire. Sexual and gender-based violence is prevalent, with rape being used as a weapon of war. Famine has also become a weapon of war—for example, in Ethiopia

(de Waal 2018). More people are dying from indirect consequences of war, such as starvation and disease, than on the battlefield (Watson Institute of International and Public Affairs 2022). Economic disruption caused by the war in Ukraine has produced acute levels of food insecurity, not only in the conflict zone but also around the world. These indirect causes are felt disproportionately by women and children.

Mass displacement caused by war is on the rise. At the end of 2022, more than 100 million people were forcibly displaced (United Nations 2022). In September 2022, 7.5 million Ukrainians were refugees and another 7 million internally displaced. In mid-2022, the numbers for Syria were 6.8 million refugees and 7.2 million IDPs. Afghanistan had 3.5 million IDPs, while 2.8 million were still refugees. Ethiopia and the DRC both had over five million IDPs (UNHCR 2022).

Fourth, there is a growing range of drivers of conflict and new types of security threats. In addition to economic, political and ideological causes of war, nationalism and religious extremism seem to be making a comeback. We may see more resource wars in the future. Climate change and pandemics are now viewed as security threats, which, if not the cause of conflict, can exacerbate its impacts. The taboos against the use of weapons of mass destruction (nuclear, chemical and biological) are being eroded. The weapons of war now include autonomous weapons, hypersonic missiles and cyberattacks. Other disruptive technologies that may impact international peace and security in the future are artificial intelligence, biotechnology and quantum systems (Caves and Carus 2021). One cannot properly measure the costs of conflict without accounting for the risk of wars fought with weapons of mass destruction. Even if technological developments make it easier to avoid civilian deaths, they can generate instability and thereby increase the chances of escalation to nuclear war with catastrophic consequences.⁵

The Security Council's Chapter VII Conflict Management Tools

Although the UN Charter collective security scheme has never functioned as intended, there are a wide range of tools available to the Security Council to fulfil its responsibilities for the maintenance of international peace and security (UN Security Council Conflict Management Handbook 2023). These fall within Chapters VI, VII and VIII, either explicitly or implicitly. So, for example, Chapter VI contemplates 'negotiation, enquiry, mediation, conciliation, arbitration, [and] judicial settlement' as dispute settlement techniques. Chapter VII contemplates economic sanctions and military enforcement action. Neither chapter says anything about peacekeeping. Peacekeeping, described by Secretary-General Dag Hammarskjöld as falling within Chapter VI-and-a-half,⁶ was invented by the UN precisely because the various techniques listed in the Charter either could not be acted upon due to the superpower rivalry or were not suitable to address the sort of challenge peacekeepers were deployed to undertake.

That the United Nations could improvise in that way was affirmed by the International Court of Justice (ICJ) in the 1946 Advisory Opinion on *Reparations*. In that case, the Court stated that the United Nations could bring an international claim on behalf of one of its agents who suffered injuries in the performance of his duties (ICJ 1949). Since the United Nations must often rely on agents to carry out missions, and since those missions are often dangerous and politically sensitive, the United Nations must have the right to bring a claim on the agent's behalf in order that the functions may be carried out efficiently and without interference. The Court applied the so-called functional limitation

test: ‘Under international law, the Organization must be deemed to have those powers which, though not expressly provided by the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties’ (ICJ 1949). This implied-powers doctrine was later drawn on in the *Certain Expenses* Advisory Opinion when the ICJ declared the United Nations could establish peacekeeping missions (ICJ 1962.)

This chapter focuses on Chapter VII, but it is important to understand that many of the conflict management tools available to the UN Security Council are not under Chapter VII, either implicitly or explicitly. Thus, it can authorise fact-finding, mediation and political or peacekeeping missions under Chapter VI. It can call for ceasefires, demand humanitarian access, insist on respect for human rights, and encourage conflict parties to negotiate settlements. It can coordinate with the Peacebuilding Commission on peacebuilding strategies or with the World Health Organization in addressing infectious disease outbreaks. It can work with regional organisations in handling peace and security matters that are appropriate for regional action (Article 52). It can adopt thematic resolutions that provide normative guidance on everything from the role of women in peace processes to counterterrorism to climate change (Security Council Report, 2023).

The range of Chapter VII tools at its disposal is also broader than the words of the Charter suggest. The starting point for Chapter VII action is a determination that a threat to the peace, breach of the peace or act of aggression exists (Article 39). The UN Security Council has wide discretion in making that determination and in deciding what to do in response. Articles 40–42 list provisional measures, sanctions and military action as the options available to the Council. But each of those Articles has been interpreted broadly and, indeed, the Council has often acted in a manner that does not fall neatly within any of them. In the remainder of this section, I will briefly review the tools the Council has used.

Military Enforcement Action

Article 42 states the Council ‘may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security’. These operations were meant to be undertaken by forces put at the disposal of the Council on the basis of ‘special agreements’ reached under Article 43. Because no such agreements have been concluded, full-scale enforcement action (as opposed to ‘robust peacekeeping’—see below) authorised by the UN Security Council has been undertaken by coalitions of the willing, and it has been quite rare. The closest it came during the Cold War was in 1950, when the Council *recommended* that states furnish such assistance to South Korea as necessary to repel the attack from the North, essentially giving the U.S.-led coalition the right to fight the North under the UN flag. In response to Iraq’s invasion of Kuwait in 1990, the Council authorised another U.S.-led coalition to take military action to drive Iraq out of Kuwait following the former’s invasion of the latter (Resolution 678). That resolution, plus Resolution 687 (1991) and Resolution 1441 (2002), was later invoked by the United States and the United Kingdom as legal justification for a second war in Iraq, a highly contested interpretation of those resolutions (Johnstone 2004: 813). In 2011, the Security Council authorised (with five countries abstaining) military action to protect civilians against Libyan government forces.

Interdiction of Vessels

A Chapter VII tool that involves military action of a sort, though not the use of force, is authorisation to interdict ships and other vessels suspected of carrying internationally prohibited items or goods. In its Resolution 1929 (2010), the Security Council called upon all states to inspect ships to and from Iran if the state had reasonable grounds to believe the cargo contained prohibited items. The Council also allowed states to request inspections of vessels on the high seas with the consent of the flag state if there was information that the vessel was carrying prohibited items. By Resolution 2182 (2014), the Council authorised member states or multinational naval partnerships to interdict vessels in Somali territorial waters and on the high seas that may be carrying Somali charcoal (a sanctioned item) and weapons destined for Somalia. By Resolutions 1874 (2009) and 2094 (2013), the Council authorised the interdiction and inspection of vessels to or from North Korea suspected of carrying material that could be used in a nuclear programme. It adopted similar resolutions relating to Libya (in 2014) and Yemen (in 2015).

Sanctions

Article 41 reads:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions. ... These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

On the basis of that article, the UN Security Council has imposed multiple sanctions regimes. The earliest were against white-minority regimes in Rhodesia and South Africa. In the aftermath of the Gulf War, it imposed comprehensive sanctions on Iraq (Resolutions 661 and 687). Despite the exemptions that were built into that sanctions regime, the dire humanitarian consequences spelt the end of comprehensive economic embargoes. Since then, the Council has leaned towards more targeted or ‘smart’ sanctions:

- arms embargoes
- commodity restrictions (for example, on oil, diamonds or timber)
- financial sanctions (prohibiting any dealings with banks in a country)
- asset freezes of individuals and firms
- travel bans on countries (e.g., no flights in or out)
- travel bans on designated individuals
- diplomatic sanctions (denial of the right to participate in the General Assembly)

These sanctions have been applied to support peaceful transitions, deter non-constitutional changes of government, constrain terrorism, protect human rights, and promote nonproliferation. While the record of success of these sanctions is low if measured by the change of behaviour of the target state (Biersteker, Tourinho and Eckert 2016: 11–33),⁷ it is important to remember that sanctions have other purposes. Sometimes they are designed to *signal* condemnation of conduct and to stigmatise the target. Sometimes the purpose is to deter, not the target, but others contemplating similar action. It may be to create the conditions for diplomacy. Or to lay a foundation for military action: sanctions

as a first step that, if not successful, makes it easier to mobilise support for military action. Or the purpose may be to pacify domestic constituencies, who demand that ‘something be done’, a default policy option when words of condemnation and diplomacy do not seem to be enough, but when military action is not possible.

‘Robust’ Peace Operations

In its origins, peacekeeping was a Chapter VI enterprise. This was true for virtually all Cold War operations (with the exception of ONUC in the Congo, although it was not explicitly authorised under Chapter VII). However, with the end of the Cold War era, the nature of conflicts changed, and the nature of the missions changed. The conflicts were mainly internal, characterised by humanitarian crises and human rights abuses, sometimes a complete breakdown in law and order. Peacekeeping missions were deployed to monitor and provide extensive support to a peace process, often but not always based on a comprehensive peace agreement. Sometimes, these missions were deployed in permissive environments where the parties were truly committed to peace (such as El Salvador and Mozambique). More often, there was no reliable peace to keep, and so the operations had to be more militarily robust. Specifically, they were authorised to use force beyond self-defence for limited objectives, such as the protection of civilians. The mandates were either partially or fully on the basis of Chapter VII. Importantly, however, these missions were deployed with the ‘strategic consent’ of the host government, which is what distinguishes them from enforcement action (war), and they are not authorised or expected to defeat a designated enemy (United Nations 2008).

Robust peacekeeping straddles Chapters VI and VII or sometimes blends the two. It is not unusual to find resolutions authorising peace operations primarily under Chapter VI but with one or more paragraphs under Chapter VII. This began with Resolution 1270 (1999), in which the peacekeeping operation in Sierra Leone was authorised to

take the necessary action to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence, taking into account the responsibilities of the Government of Sierra Leone.

That was a compromise in the Council between those who wanted an entire Chapter VI mandate (to limit the degree of commitment the Council was making to guarantee security in the countries) and those who wanted a Chapter VII mandate because they thought the peace agreement reached was very fragile. The effect was to send a signal that the missions would act robustly but only for the specified purposes of protecting UN personnel and civilians, and only ‘within their capabilities’, thereby lowering expectations.

Another example is Mission des Nations Unies pour la stabilisation en Haïti (MINUSTAH) (prior to the earthquake in Haiti), which was deployed mainly under Chapter VI (because it had the consent of the government with a mandate to assist that government), but one long paragraph was under Chapter VII in order to give it authority to act robustly if necessary to provide a ‘secure and stable environment’. Other resolutions that straddle the chapters (and fudge the distinction) include UNMIL in Liberia and UNMISS in its early days in South Sudan (until 2013). Both operations were entirely under Chapter VII yet firmly consent-based, the main purpose of which was to assist the

legitimately established governments in each. In 2022, four UN peace operations had Chapter VII mandates in the Democratic Republic of Congo, the Central African Republic, South Sudan, and Mali.

While the practice of peacekeeping evolved, so did the doctrine. A turning point was the publication of the Brahimi Report in 2000, which endorsed a more forceful approach to peacekeeping in order to deal with so-called spoilers and to protect civilians (United Nations Department of Peacekeeping Operations 2000: paras. 21, 51, 62). In reacting to the Report, the Security Council requested the Secretary-General to prepare a 'comprehensive operational doctrine for the military component of UN peacekeeping operations' (United Nations Security Council 2000). The Special Committee on Peacekeeping (a General Assembly body with broader membership than the UN Security Council) was less enthusiastic and did not encourage the Secretary-General to launch into a new doctrinal exercise. Developing countries, the main contributors to UN peacekeeping operations, had two concerns. First, they worried that the new attention being given to peace operations would distract attention (and resources) from development. Second, a related but unspoken fear was that more robust peacekeeping or 'peace enforcement' was a Trojan horse for intervention by the Global North in the Global South.

Nevertheless, the Capstone Doctrine of 2008 did articulate more expansive interpretation of the 'holy trinity' of peacekeeping principles, in effect doctrine for robust UN peacekeeping (United Nations Department of Peacekeeping Operations 2008: 31–36). Like the Brahimi Report, it acknowledged that consent is often unreliable and may be withdrawn in a variety of ways. It distinguished the consent of *the main parties*, which was a defining feature of peacekeeping, from that of minor spoilers, whose consent and continuing cooperation were not deemed essential. Impartiality was defined to mean 'impartial in their dealings with the parties to the conflict, but not neutral in the execution of their mandate'. With UN Security Council authorisation, force could be used beyond self-defence 'to deter forceful attempts to disrupt the political process, protect civilians under imminent threat of physical attack, and/or assist the national authorities in maintaining law and order'.

Finally, it is important to note that the UN Security Council often assigns robust mandates to operations by regional organisations and coalitions as opposed to UN peacekeeping missions. Examples include the Unified Task Force in Somalia in the early 1990s, the Implementation Force (IFOR) in Bosnia in the late 1990s, the International Force East Timor (INTERFET) in 1999–2000, the Kosovo Force (KFOR) from 1999 to 2022, the International Security Assistance Force (ISAF) in Afghanistan from 2001 to 2015, and the African Union Mission in Somalia from 2007 to the present.

WMD Inspection Regimes

In addition to the imposition of sanctions, the Council has established inspection regimes to constrain the proliferation of weapons of mass destruction. In the aftermath of the 1991 Gulf War, Resolution 687 required Iraq to accept the destruction and long-term monitoring of its nuclear, chemical, biological, and long-range ballistic missile programmes (Johnstone 1994). The International Atomic Energy Agency was assigned primary responsibility for nuclear programmes. Because no comparable body existed for chemical and biological weapons, or ballistic missiles, the UN Security Council created the UN Special Commission (UNSCOM) to deal with those programmes in Iraq.

UNSCOM, later converted into the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), was established as a subsidiary organ of the Security Council under Article 29 of the Charter. It reported directly to the UN Security Council, not the Secretary-General, and in that sense was an unusual organisation, essentially a staff that worked directly for the members of the Security Council.

In Iran, following the signing of the Joint Comprehensive Plan of Action (JCPOA), the UN Security Council endorsed a monitoring programme that consisted of three tiers: (a) Iran's original safeguards agreement with the IAEA, (b) the Additional Protocol to that agreement and (c) additional verification measures that are unique to the JCPOA.

In 2013, an Organisation for the Prohibition of Chemical Weapons (OPCW)-UN Joint Mission for Eliminating Syria's Chemical Weapons was established in response to Syria's use of sarin, killing as many as 1,400 people in Aleppo. The mechanism succeeded in destroying most of Syria's declared weapons in a year, but lingering suspicions that it preserved some sarin and VX nerve agent—and its apparent use of chlorine gas as a weapon (a chemical that was not covered by the earlier mechanism)—prompted the dispatch of a new mission in 2015. The United Nations-Organisation for the Prevention of Chemical Weapons-Joint Investigative Mission (UN-OPCW-JIM) UN-OPCW JIM was established to identify who was responsible for the use of chlorine and other toxic chemicals as determined by an OPCW Fact-Finding Mission which had been set up by the OPCW in February 2015. The JIM functioned until November 2017 when renewal of its mandate was vetoed by Russia.

Quasi-Judicial and Quasi-Legislative Acts

In the early 1990s, the UN Security Council established under Chapter VII of the UN Charter two *ad hoc* international criminal tribunals, one for former Yugoslavia and one for Rwanda. ICTY was created in 1993 in response to widespread and systematic murder, rape and 'ethnic cleansing' in Bosnia. Its temporal jurisdiction extended into the future, so, in addition to the Yugoslav wars of the early 1990s, ICTY had jurisdiction over crimes committed in Kosovo in the late 1990s. ICTR was set up in 1994 after the genocide in Rwanda ended. Its temporal jurisdiction was limited to one year: January 1 to December 31, 1994. The Rwandan government, though initially supportive of the ICTR, did not cooperate with it fully, largely because it objected to its jurisdiction extended to the end of 1994 and because of its inability to impose the death penalty.

These two *ad hoc* tribunals stimulated international efforts to establish the International Criminal Court (ICC), whose Statute entered into force in July 2002 after 60 states had ratified it. The Statute empowers the Security Council to refer 'situations' to the ICC, a power it has used twice: Darfur in 2005 and Libya in 2011.

Finally, the UN Security Council has adopted several 'quasi-legislative' resolutions under Chapter VII. These resolutions are 'legislative' in that they impose general obligations on all states in a broad issue area for an indefinite period. This is qualitatively different from the Council's normal crisis management role, which entails action targeted at a particular state. The first of these was Resolution 1373, adopted a few weeks after the 9/11 terrorist attacks. By a unanimous vote, under Chapter VII of the UN Charter, the UN Security Council decided, among other things, that all states shall 'prevent and suppress the financing of terrorist acts', 'freeze financial assets of persons who commit

terrorist acts, and deny safe haven to those who finance, plan, or support terrorist acts'. The Council did it again in April 2004 when it adopted Resolution 1540, which requires all states to adopt laws designed to prevent weapons of mass destruction from falling into the hands of terrorists. And then again ten years later with Resolution 2178 (2014) on the movement of foreign terrorist fighters.

This descriptive account of the Council's conflict management tools raises many questions about efficacy that go beyond the scope of this chapter. Are coalitions of the willing authorised by the UN Security Council but with minimal oversight able to fulfil collective purposes, or do they simply serve the interests of the most powerful members of the coalition? How well do 'smart sanctions' targeting individuals work? Has the Security Council adequately addressed the due process concerns they raise? (Johnstone 2008). Do 'robust' peace operations squeeze out the search for political solutions?⁸ Are the quasi-legislative actions of the Council tantamount to 'hegemonic law' (Alvarez 2003; Vagts 2001)? On the one hand, the Council's ability to adapt and innovate (interpreting the Charter as a 'living tree') is laudable. On the other hand, an expansive application of its implied powers opens the door to abuse.

A Modest Proposal: International Standing Civilian Protection Service

As the previous section highlights, the UN Security Council has been innovative in acting on its Chapter VII powers, yet it has fallen well short of the vision of the UN founders. There was a brief post-Cold War period when the end of the relative paralysis of the Council generated hopes for a 'new world order'. The response to Iraq's invasion of Kuwait in 1990 seemed to vindicate those hopes when the Security Council imposed sanctions and authorised military action. The enforcement action was undertaken by a coalition of the willing, led by the United States, not by a UN force. (The United Nations lacked the capacity to muster, let alone manage, a force of more than 500,000 troops). While there was little objection to 'sub-contracting' enforcement action at the time, it later became a source of great controversy when the United States and United Kingdom claimed the authority to intervene in Iraq again in 2003, based in part on the UN Security Council resolutions dating back to 1990 and 1991.

Meanwhile, hopes for more effective conflict management by the Council foundered in the wake of the tragedies of Bosnia, Somalia and Rwanda in the early 1990s. While the Council has remained active ever since, recent events in Ukraine, Iran and Ethiopia have generated the sense that the Council is facing a new existential crisis. This crisis is rooted in part on how the UN Security Council has acted to maintain international peace and security. Equally, if not more important, is its failure to act. There is a real risk that, through inaction, the Council will fade into irrelevance.

In this section I make a proposal for the creation of an International Standing Civilian Protection Service (ISCPS). I do so not because I believe it answers the central challenges the United Nations faces in managing international peace and security; the proposal is too modest for that. My purpose rather is to suggest an ambitious yet possible avenue for reform that, if it proves its worth, can lay the foundation for more extensive reform or, at a minimum, generate debate and concentrate the mind on what is feasible. I begin the section by outlining why an ISCPS is needed. A brief review of past proposals for a standing UN peace force follows. I then outline the proposed functions and structure of the Service. In the conclusion of the chapter, I consider what more ambitious proposals might look like.

Why Is a Standing Civilian Protection Service Needed?

First, the protection of civilians has become a priority for peace operations.⁹ There is widespread political, legal and moral support for that proposition. Virtually every UN peacekeeping mission established since 1999 has been given that mandate; African Union operations engage in protecting civilians; the European Union has deployed emergency operations solely for that purpose; NATO is developing a policy on it.

Moreover—and this is equally important—it is now well understood that a holistic ‘whole-of-mission’ approach is needed to effectively protect civilians (United Nations Department of Peacekeeping Operations 2018). Physical protection through the use of military force is sometimes necessary, but often active police patrolling, human rights monitoring, and community engagement will be more effective.

Second, there are obstacles to operationalising protection in peace operations. Existing approaches tend to be more reactive than preventive, and the United Nations and regional organisations have struggled to craft techniques that are tailored to the circumstances where operations are deployed. There are often logistical constraints, such as a lack of mobility. A lack of contextual knowledge and situational awareness that effective protection requires is also a problem.

Third, the future of large-scale military peace operations is in doubt. There has been a slow decline in the number of UN peacekeepers deployed around the world since 2014. Several of the United Nations’ largest missions have been terminated in the last four years, including in Côte d’Ivoire, Haiti, Liberia, Darfur, and Mali. Others are scaling down—for example, in the Democratic Republic of the Congo. And no major new UN operation has been established since the mission in the Central African Republic in 2014, whose mandate extension Russia recently abstained on.

Yet the need for civilian protection continues. Sudan illustrates the point. UNAMID, the joint UN-African Union peacekeeping operation, was terminated in December 2020. It was replaced by a much smaller, entirely civilian, mission called UNITAMS. Yet understanding that the threat to civilians in Sudan remained, UNITAMS was given a protection-of-civilians mandate to be carried out in a very different manner from how UNAMID operated. While the demand for large-scale multidimensional operations will not disappear, alternative mechanisms for protection in high-threat environments must also be developed.

Past Proposals for a Standing UN Force

Proposals for a UN standing army have a long history. As noted, the UN Charter itself calls for armed forces to be put at the disposal of the UN Security Council on the basis of ‘special agreements’ to be signed by the UN Security Council and member states (United Nations 1945: art. 43). In the immediate post-War period, the United States was prepared to offer over 300,000 troops, a large naval force, 1,250 bombers, and 2,250 fighters (Urquhart 1993: 3). The USSR, insisting that the great powers must all make equal contributions, was unwilling to commit to a force of that size. The Cold War intervened in 1947, and negotiations between the United States and USSR on the special agreements ground to a halt. With the world’s two most militarily powerful states unable to take the first step, no agreements were ever signed.

Since then, other ideas have surfaced, starting with Trygve Lie’s proposal for a UN Guard of 5,000 in 1948. It was envisaged not as a substitute for Article 43 forces but

rather to perform more limited functions, such as administering truces and providing security for plebiscites (Lopez-Claros, Dahl and Groff 2020: 155). That was seen as far too ambitious by the Soviet Union, and even the United States, United Kingdom and France had reservations. All were concerned about empowering the United Nations to take military action, reflected in the reaction of the U.S. representative that it ‘did encroach somewhat on the military theme’ (Roberts 2008: 102). In the end, even a scaled-down force of 800 was not accepted.

In 1993, Sir Brian Urquhart, who had just retired as the United Nations’s most distinguished and experienced peacekeeping official, revived Trygvie Lie’s idea (Urquhart 1993). Having witnessed UN peacekeeping struggles in Cambodia, Angola, Somalia and especially Bosnia, he proposed a ‘volunteer force’ of about 5,000, costing about \$380 million per year (in 1993 dollars), which compares favourably with the \$1.4 billion peacekeeping budget and \$950 billion in global military expenditure at the time. It would not take the place of peacekeeping or large-scale enforcement action but rather fill a ‘peace enforcement’ gap identified by Boutros-Ghali in *Agenda for Peace* (Boutros-Ghali 1992: para 44). Under the authority of the UN Security Council and the day-to-day command of the Secretary-General, its volunteers would be trained in the techniques of peacekeeping and negotiation ‘as well as in the more bloody business of fighting’ (Boutros-Ghali 1992). In a variation on the theme, Urquhart later proposed an armed UN Humanitarian Security Police Force to protect United Nations and non-governmental organisation (NGO) personnel engaged in UN humanitarian operations (Childers and Urquhart 1994: 118). He argued that such a force would have been useful in Eastern Zaire after the Rwanda genocide to provide security for refugees and workers in the refugee camps, which were controlled by the former Rwandese forces and militia that had committed the genocide.

Grenville Clark and Louis Sohn (1966) had a much more ambitious vision. In *World Peace Through World Law*, first published in 1958, they set out a blueprint for reform of the United Nations through amendment of the UN Charter or, if that proved to be impossible, creation of a new organisation. About the invention of nuclear weapons, Sohn (1955–56) wrote,

For the first time in its history, mankind is confronted by a threat of total annihilation. It is characteristic of the human mind that it does not bow to the inevitable but is willing to gamble on the possibility of finding a solution in time to prevent the catastrophe.

(711)

This belief translated into the edifice of *World Peace Through World Law* (WPWL), whose core elements included the elimination of all national armed forces within 12 years and a UN peace force of 200,000–600,000 personnel, as well as supranational powers for the UN General Assembly and a new Executive Council.

Augusto Lopez-Claros, Arthur Dahl and Maja Groff (2020) picked up on and elaborated on that idea in 2020, proposing an International Peace Force of 800,000, with double that number in reserve (168–78).¹⁰ Cognisant that this would be a complex undertaking, they nevertheless sought to de-mystify the proposal by identifying some of the practical considerations that would need to be borne in mind in order to make it operational (Lopez-Claros, Dahl and Groff 2020: 169). With a mission to ‘enforce certain decisions made by the Security Council in service of international peace and security, and

to generally ensure compliance with Charter obligations and international law', Lopez-Claros and his collaborators provide impressive detail about technical aspects, such as the recruitment of personnel, terms of service, administration of the force, its budget, logistics, types of weaponry, and disciplinary jurisdiction. And while the cost is high (estimated at \$150 billion per year), they point out that this sum is dwarfed by global military expenditure (which had reached \$2.1 trillion by 2022).

A middle ground between the 5,000 suggested by Lie and Urquhart and the more ambitious proposals of Clark/Sohn and Lopez-Claros, Dahl and Groff is Peter Langille's (2015) call for a UN Emergency Peace Service of 13,500 military, police and civilians. This multidimensional force would perform four primary roles: prevention of armed conflict and mass atrocity crimes, protection of civilians, prompt start-up of demanding peace operations, and addressing humanitarian needs. It would be capable of diverse assignments with specialised skills for security, humanitarian and health and environmental crises. It would not replace existing UN or regional peacekeeping forces but rather serve as a first, rapidly deployable responder. Langille estimates start-up costs of about US\$3 billion, with annual recurring costs of approximately \$1.5 billion and incremental costs for field operations of approximately \$1.2 billion.

The notion of a UN standing army (or police force) of any size bumps up against a deep reluctance to empower the organisation in that way. The principle of state sovereignty is still clung to by most member states, from the Global North and Global South equally. The world is not ready for a standing force of even 5,000 let alone 800,000.¹¹ Nevertheless, there may be a willingness to entertain less ambitious proposals.

The Structure, Composition and Functions of an ISPCS

The ISPCS would be a standing service established under the auspices of the United Nations designed to provide an integrated, well-trained, highly mobile, elite capacity for the holistic protection of civilians. The total size would be about 2,400 personnel, composed of 20 Joint Protection Teams of approximately 120 civilians, police and military each. Depending on the circumstances, anywhere from one to ten teams could be deployed to a particular conflict-affected state. Normally, they would be tasked with reinforcing an existing UN peacekeeping or political mission. The teams could also be made available to regional organisations that lack adequate capacity for civilian protection.

A typical Joint Protection Team would consist of the following elements, with indicative numbers suggested for each:

- A leadership unit (10 people)
- Civilians with expertise in mediation, civil affairs, human rights, sexual violence, child protection, etc. (about 50 people)
- Lightly armed or unarmed civilian police (24 officers)
- One formed police unit (24 officers)
- Two special forces units (12 military personnel each)
- Two transport helicopters and crew (8 people)

They would be based in six to 10 hubs scattered around the world. At those hubs, they would be trained in generic protection-of-civilian tasks, as well as the particular dynamics and context of conflicts to which they could be deployed. The teams would establish liaison arrangements with regional organisations and NGOs. That would enable them to

acquire the necessary knowledge and situational awareness to maximise their effectiveness when and where deployed. By creating this standing capacity, the teams would train together, acquire generic expertise on civilian protection, and rapidly acquire context-specific expertise when it became apparent that they were about to be called on.

The precise tasks the Joint Protection Teams would undertake would depend on context, but the overarching concept of operations is a multidimensional approach to civilian protection that is tailored to the particular conflict environment. The teams would be capable of performing a range of protection functions in high-threat environments, including the following:

- Dialogue and community engagement
- Negotiating conflict resolution at the local level
- Support for community-based early warning
- Advising and supporting local law-enforcement institutions
- Proactive support to vulnerable groups, such as women collecting firewood
- Active patrolling to create a deterrent presence
- Temporarily securing key sites
- Arrest and detention of perpetrators of violence against civilians (if mandated by UN Security Council)
- The use of force to provide physical protection when needed

Such small teams would not be tasked with the full range of protection functions. For example, they would not be expected to engage in what the UN Department of Peace Operations calls the third tier of protection—namely, ‘establishing a protective environment’ (United Nations Department of Peacekeeping Operations 2018: 16–17). That entails high-level political engagement to get at the root causes of conflict and longer-term activities such as security sector and justice sector reform. The Joint Protection Teams would perform more targeted interventions to deal with protection crises, leaving the political process management and peacebuilding to other actors.

Conclusion

From the point of view of the security challenges the world faces, this is a modest proposal. From the point of view of the practical and political realities of multilateral institution-building today, the proposal is ambitious. It would require not only political will but also financial and human resources, and managerial capacity to stand up and sustain such a service. It is not unreasonable to imagine this capacity could be built in the United Nations over time. If the political will for an ISCPS can be mustered, and the concept proves its worth through a record of accomplishment, it could generate momentum for more far-reaching future reforms to the Chapter VII architecture.

What might those more far-reaching reforms entail? Two possibilities can be envisioned. The first is to revitalise negotiations on Article 43 special agreements. As noted earlier, negotiations between the United States and USSR came to an abrupt halt in 1947. The idea lay dormant throughout the entire Cold War period until 1992, when Secretary-General Boutros-Ghali stated in his *Agenda for Peace* that the time may be right to revisit the idea. He wrote that the function of Article 43 forces would be to respond to acts of aggression, not necessarily a threat from a major army, but rather from a ‘military force of a lesser political order’. The forces would be ‘on call’ on a permanent basis,

meaning that member states who had entered into the agreements would be obliged to provide them if called upon by the Security Council (Boutros-Ghali 1992: para. 43). That the idea did not gain traction at the time is partly the result of uncertainty about the direction Russia would take following the breakup of the Soviet Union and partly because the members of the Council were occupied in trying to manage conflicts on a case-by-case basis (in Iraq, Bosnia, Somalia, Angola, Mozambique, El Salvador, Cambodia, and elsewhere). The 'new world order' heralded by Presidents Bush and Gorbachev was being constructed incrementally, one piece at a time; the political will to engage in a more far-reaching reform did not exist in the early 1990s. Moreover, as noted earlier in the context of peacekeeping reform, many countries in the Global South were sceptical about the idea of peace enforcement.

Is the moment right now? The United Nations has still not developed adequate capacity for rapid reaction despite building what was first called the UN Standby Arrangements System (UNSAS), later supplemented by the Standby Forces High Readiness Brigade (SHIRBRIG) and later re-named the Peacekeeping Capability Readiness System (PCRS). Moreover, these are not 'standing' forces. UN member states voluntarily put a designated number of troops on standby for use in peacekeeping operations within an agreed response time. They can facilitate speedier deployment, but governments retain the final say as to whether their troops that are part of the system will be deployed in a particular case. At the time of the Rwanda genocide in 1994, 19 governments had signed on to the standby system, and all of them said no when asked to contribute troops to reinforce the mission. A year later, when the United Nations was seeking 5,000 troops to provide security in the refugee camps in what was then Zaire, 60 countries were asked—many, part of the system—and all of them said no.

Meanwhile, enthusiasm for large-scale peacekeeping operations is on the decline, but the need for quick deployment of highly capable forces to deal with an emergency remains. If a handful of states were prepared to commit a limited number of military and formed police (say 1,000 of each), it could help to nip crises in the bud before they escalate to full-scale conflict or genocide, as occurred in Rwanda. The advantages would be many. It would be more reliable than a voluntary, standby system and would not be subject to the 'ebb and flow' of national politics; it would enable speedier deployment; it would be a credible tool in the hands of the Security Council; if parties to a conflict knew a well-trained force was ready to move at a moment's notice, it might even serve as a deterrent; it would be seen as more impartial than 'coalitions of the willing' since it would not depend on an interested state volunteering to take the lead; and it would alleviate command and control and interoperability problems, given that the troops and police could train together.

The UN membership is not ready to countenance this today for a variety of reasons. It would be expensive. It would empower the Security Council at a moment when its legitimacy is being questioned. It would pose selectivity problems since potentially multiple crises would have to be addressed simultaneously, meaning that the force would be used selectively, adding ammunition to those who complain about double standards. There is the risk of 'mission creep': it could quickly be overwhelmed and, as a result, draw member states into a conflict to rescue it. None of those problems are insurmountable, however. If geopolitical circumstances change and faith in the United Nations is restored, it is not inconceivable that a small-scale Article 43 'on-call' force could be established.

Another option—not necessarily mutually exclusive—is to establish regional standby forces for service in UN missions and/or UN-authorized missions. Loosely modelled on

the African Union's (not fully functional) African Standby Force (ASF), the idea would be for each region of the world to dedicate a set number of troops, police and perhaps civilians who train according to a common doctrine and procedures. The regions would pledge to put the personnel on standby, deployable at the request of the Security Council. The ASF is meant to be composed of 15,000 troops, 3,000 from each of five African sub-regions.¹² The global equivalent could be 10,000 personnel from each of ten regions. Where a regional organisation with a security mandate exists, the standby forces could be established by the regional organisation. Where no such organisation exists, they could be established by a regional coalition of states. Adopting a modular approach, with different units available to be deployed to meet different contingencies, they could be used in a variety of scenarios: purely political tasks; Chapter VI-style observer missions; more robust peacekeeping; large-scale peace enforcement; and post-conflict peacebuilding.

Even these more ambitious proposals are not a full response to the challenges posed by rising geopolitical tensions and the increasing risks of conflict with catastrophic consequences. Yet it is precisely because those tensions are so high that radical institutional reform is not politically feasible: there are no easy institutional fixes to geopolitical problems. On the other hand, geopolitics are not an immutable reality beyond the reach of human agency. The practical challenge for reformers, therefore, is not to imagine some ideal world order and hope for the best but to identify achievable steps that can lead to realisation of that ideal. Such incrementalism may be frustrating, especially given the magnitude of the risks we are facing. But if addressed with a sense of urgency, incremental steps of the sort proposed here can change the normative and political climate, generate momentum and open the door to deeper reforms that currently seem out of reach.

Notes

- 1 Sometimes described as the 'original sin' of the UN Charter, the veto power is clear evidence that the major powers were unwilling to give up a core attribute of sovereignty by subjecting themselves to the possibility of collective military action authorised by the Security Council. Indeed, Cord Meyer (1947), a member of the U.S. delegation to the San Francisco Conference, claimed this state of affairs, plus the accumulation of arms by the major powers, meant 'war was not only possible, but inevitable'.
- 2 High-level meeting of the UN Security Council organised by India during its presidency, December 2022.
- 3 I am grateful to Augusto Lopez-Claros for highlighting the point about Senate ratification.
- 4 Grossman argues that India's positioning on Russia's invasion of Ukraine, neither condemning nor supporting it, is actually a stabilising force. As he puts it, 'India appears to be seeking to enter this new multipolar world by avoiding great power competition entirely—instead forging its own, nonaligned path. Although India's nonalignment is viewed by many in Washington as fence-sitting, its position may actually be stabilizing for today's international system: With India in no one's camp, the grand strategic prize that no bloc can win diminishes each side's collective power against the others and thereby dampens the prospects for conflict. This, too, seems a net positive for upholding the international order' (Grossman 2022).
- 5 I am grateful to Richard Falk for this insight.
- 6 Hammarskjöld literally called it that as a shorthand way of connoting the idea that peacekeeping falls somewhere between Chapters VI and VII. If the UN Charter used Arabic numerals, Dag's words would be 'Chapter 6.5'.
- 7 According to Biersteker *et al.* (2016), if the purpose of UN sanctions is to coerce or constrain behaviour, they succeed 22 per cent of the time.
- 8 This concern was expressed by the High-Level Independent Panel on Peace Operations (United Nations Department of Peacekeeping Operations 2015: paras. 43–48).
- 9 This section draws extensively on my blog post.

- 10 Lopez-Claros *et al.* (2020) model their proposal on Clark and Sohn's (1966) proposal for a UN Peace Force of 200,000 to 600,000.
- 11 Shortly after producing his 1993 article, Brian Urquhart said in an interview that he did not think his idea of a volunteer force was ever practical. His idea in writing the article was 'to try highlight the fact that national governments have reached the limit of sending their own armies into situations that are dangerous and not of genuine national concern. And that therefore, unless you begin to think about an international capability, you are not going to be able to do much to prevent or stop these conflicts' (Urquhart and Rieff 1997).
- 12 Originally conceived in 2004, the ASF is still not fully functional—for both operational and political reasons.

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10 Global Governance and Human Security

Mary Kaldor

During the 1990s, there was great optimism about the future of global governance. The United Nations greatly expanded its role, as did regional organisations such as the European Union and the African Union, especially in the context of conflict. The global consensus that made possible a series of peace agreements and a great expansion of multilateral peacekeeping operations undoubtedly contributed to a reduction of violence (Human Security Report 2005). However, the very dramatic failure of the United Nations in 1994 to prevent the genocide of at least half a million Tutsis and moderate Hutus in Rwanda and to protect the UN-declared safe haven of Srebrenica in Bosnia-Herzegovina in 1995, which resulted in the massacre of 8,000 men and boys, greatly weakened the perception of the United Nations as a security provider.

In the ensuing years, unilateral behaviour by the United States and other powers as well as growing geopolitical contestation have constrained the opportunities for multilateral action. But even without taking these factors into account, the point remains that if international organisations are to act with authority, they need political legitimacy and not just formal legitimacy. And central to the political legitimacy of such institutions is the effective implementation of human security—a genuine sentiment among people affected by existential threats that international organisations can actually help them. It is said that human security is the ‘foundational principle’ (Mine and Mute 2022) of the United Nations, but it is not just a principle; it has to have real everyday substance.

The legitimacy of political authority, the readiness of people and organisations to comply with laws or regulations issued by that authority, is intrinsically bound up with security. We trust our institutions if we believe they keep us safe. For states, this has to do with national security, by which we mean protecting national territory from external enemies, and the visible manifestation of national security consists of armed forces. For municipalities, this refers to everyday law and order, something we might call civic security. And for international and regional organisations, it has to do with preventing war and addressing the global challenges of climate change, pandemics, famines, transnational crime, or extreme poverty. This is what is meant by human security—protecting individuals and the communities in which they live from a range of existential threats. If we are to construct an effective system of global governance, then human security is the foundation both in principle and substance. At present, the practice of global institutions is far from this ideal as a consequence both of the geopolitical and nonaccountable behaviour of states, as well as inadequate resources.

Japanese scholars talk of the ‘conceptual resilience’ of human security (Mine and Mute 2022). Coined by the United Nations Development Programme (UNDP) in 1994, the

term has evolved in meaning and has been increasingly adopted by multinational institutions and national governments. The original UNDP concept is often known as the ‘broad’ version of human security, which refers to the inclusion of economic, environmental, cultural, and social dimensions of security. Yet the most recent applications of the term have to do with the role of traditional security providers, especially the military.

My argument is that this last aspect of human security is essential if human security is to be effectively implemented. This does not mean that I support the so-called narrow version of human security. Rather, the role of traditional security providers has to be understood as one essential element of the broader version. In other words, a broad version of human security that addresses the full range of existential threats would require an overall change in spending priorities from excessive expenditure on military establishments, especially nuclear weapons, to spending on the environment, health or overall economic and social development. But it would also involve a fundamental shift in the role of the military, from fighting to the protection of people from both external aggression and massive violations of human rights, an emphasis on community policing instead of the use of the police as tools of repression, and a change in the role of peacekeepers from separating ‘sides’ to upholding human rights, as well as increased spending on poverty, climate change, health, and so on. Some of these changes have already happened or are in the process of happening. Such a transformation would also mean a change in the nature of states, from more or less unilateral actors to nodes in a system of global governance.

The war in Ukraine; the continuing violence in Afghanistan and Iraq; the wars in Syria, Yemen, Libya, and Palestine, in Central and East Africa; and the spread of both the drone campaign and jihadism, combined with growing economic crisis, not to mention climate catastrophe, suggest that the world is entering a very dangerous phase. In this chapter, I ask whether the concept of human security helps us to ponder ways of navigating the new dangers.

In developing this argument, I start with an outline of the evolution of the term ‘human security’, including the ways in which the term has been integrated into international and regional institutions. I then briefly describe some of the radical critiques of human security that were put forward in the early 2000s. And in the last section, I focus on the recent resurgence of human security, especially in unexpected quarters such as national militaries and the North Atlantic Treaty Organization (NATO), and what it could mean for traditional security providers.

The Evolution of Human Security

The story of human security usually starts with the UNDP Human Development Report of 1994. Yet the ideas and practices that came together under the umbrella term ‘human security’ had a much longer trajectory.¹ Indeed, the reiteration of ‘freedom from want’ and ‘freedom from fear’ in the UN Secretary-General’s 2005 follow-up to the Millennium Summit (United Nations Secretary-General 2005) is a deliberate echo of President Roosevelt’s Four Freedoms address in 1941 and the preamble to the 1948 Universal Declaration of Human Rights (UDHR).² Likewise, the preamble to the UN Charter commits the United Nations to end war and to support human rights and ‘social progress and better standards of life in larger freedom’. Even earlier, Jane Addams, a member of the American delegation to the Women’s Peace Congress in The Hague in 1915 and the 1931 winner of the Nobel Peace Prize, wrote in 1922 of ‘two of men’s earliest instincts ... the first

might be called security from attack, the second security from starvation' (Addams 2002: p. 116, citing Sharp 2015).

As it developed during the last decades of the Cold War, the concept can be said to have emerged from two strands of thinking that became increasingly salient in this period. One strand of thinking had to do with disarmament and development. It was expressed through concern with the burden of the East/West arms race and the idea that resources devoted to the amassing of arms could be better directed towards solving social problems such as those of poverty and disease. This preoccupation was the subject of a series of reports undertaken by the United Nations, as well as a number of independent commissions that all tried to broaden the concept of security and provide a blueprint for human survival (Brandt Commission 1980, Palme Report 1982, Brundtland Report 1987, Nyere Report 1990). The term 'human security' was used a year before the 1994 Report in the press release for UNDP's 1993 Human Development Report, which was primarily about people's participation. The press release drew attention to

new concepts of human security that stress security of the people not just nations and territory. This means accelerated disarmament using defence cuts to boost development. It also means a new role for the United Nations, increasingly intervening to provide human security in areas such as the former Yugoslavia and in Somalia, where people are fighting within countries rather than between countries.

(Bosold 2011)

For UNDP, the emphasis was on material security, even though it insisted on the link between freedom from fear and freedom from want. The 1994 Report lists seven types of security (economic, food, health, environmental, personal, community, and political), of which only one, 'personal security', referred to physical safety from violence. There was an underlying assumption that deprivation and income inequality are the main causes of war, and, through development, the problem of war and violence could be solved.

This version of human security has been followed through by UNDP with a series of human security reports focusing on different regions and countries and is also widely used within the broader UN system. Ten years later, in May 2004, a Human Security Unit was established within the Office for the Coordination of Humanitarian Affairs (OCHA) to administer the Japanese-funded UN Trust Fund for Human Security and to mainstream human security within UN activities. The fund has undertaken a series of human security projects that largely but not exclusively focus on material insecurity. A human security adviser to the Secretary-General was appointed in 2010 who is responsible for regular reporting on the implementation of human security.

In 2012, the United Nations General Assembly passed resolution 66/190, providing a definition of human security that emphasised the development orientation of the concept, and while it explicitly recognised the link between development, peace and human rights, it also ruled out 'the use or threat of force' and distinguishes itself from Responsibility to Protect (R2P), which is associated with the second strand of thinking. In 2014, a Framework for Co-operation for the System-Wide Application of Human Security' was established by the Human Security Unit. And, most recently, in 2022, UNDP produced a new report on human security stressing the importance of solidarity (UNDP 2022).

The second strand of thinking drew on the growing influence of human rights in international affairs and the link that came to be made between security and human rights. The UN Human Rights Covenants (International Covenant on Civil and Political Rights

and International Covenant on Economic, Social and Cultural Rights) adopted in 1966 and which came into force in 1976, gave legal weight to and furthered the emerging human rights movement, particularly in Eastern Europe and Latin America. Within the former, a key moment was the Helsinki Agreement of 1975, which ushered in a period of East-West détente. The three baskets of Helsinki (security, economic and social cooperation and human rights) essentially constituted a human security concept even though the term was not used at the time. This human rights focus became especially influential in both Canada and Australia, where innovative foreign ministers (Lloyd Axworthy and Gareth Evans) pioneered the idea of human security.

The high point of this strand of thinking is often considered the International Commission on Intervention and State Sovereignty (ICISS), established by the Canadian government and chaired by Gareth Evans and Mahmoud Sahnoun. This was the report that developed the concept of R2P (Right to Protect)—the idea that the international community has a responsibility to intervene, even to the extent of using military force, in cases of genocide, ethnic cleansing and massive violations of human rights, where states fail to act (ICISS 2001).

The concept of R2P was adopted in the report by the UN Secretary-General's High-Level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, which was supposed to consider how the United Nations could be reformed, and it was approved by the United Nations General Assembly in the World Summit Outcome document of 2005. As Secretary-General, Ban Ki-Moon appointed special advisers on genocide prevention and R2P. He also established a \$2 million R2P Fund supported by Sweden, the United Kingdom and Australia and produced a series of reports on the implementation of R2P.

An R2P operation was authorised in Libya by the United Nations in Resolution 1973 in 2011; neither China nor Russia vetoed the resolution. As it turned out, the NATO forces who were responsible for implementing the resolution carried out air strikes, which are not an appropriate instrument for protecting civilians and, in effect, changed the mission to regime change rather than protection of civilians, bringing the concept into disrepute. The intervention did prevent an attack by Gaddafi on newly liberated Benghazi and may have reduced overall casualties because of the destruction of the regime's air capabilities compared with Syria, for example. But although the airstrikes minimised civilian casualties, they also provided support to opposition armed groups trying to topple the regime, who were then to be embroiled in many years of violence, and this did result in many civilian casualties (Chinkin and Kaldor 2017).

The idea that human security is linked to R2P and is primarily about the right to life is also reflected in the Human Security Reports and Briefs produced at Simon Fraser University in Canada, which reports on trends in armed conflict. The Human Security Report Project (2005) defines human security as 'the combination of threats associated with war, genocide, and the displacement of populations. At a minimum, human security means freedom from violence and from the fear of violence'.

This strand of thinking is also reflected in what are sometimes known as the human security treaties—a series of treaties on banning land mines, cluster munitions and, above all, the International Criminal Court, which were promoted by Canada and like-minded countries, with considerable participation from civil society in the early 2000s.

These two strands of thinking produced a debate about the narrow versus the broad version of human security. Those who favoured the broad version argued that the narrow version was too focused on military intervention, while those who favoured the narrow

version argued that the broad version was indistinguishable from development and covered too much to be analytically useful; moreover, it was argued that the broad version risked securitising development. The debate about the broad versus narrow version was to some extent reconciled by the report of the Commission of Human Security, 'Human Security Now', chaired by Sadako Ogata and Amartya Sen. The report developed what has become known as the threshold approach to human security. The definition of human security contained in the report was 'to protect the vital core of all human lives in ways that enhance human freedoms and human fulfilment. Human security means protecting fundamental freedoms— freedoms that are the essence of life'. This notion of the 'vital core of all human lives' implied that human security comprises both human rights and human development but is concerned with what Amartya Sen called the 'downside risks'.

Worth noting is the emphasis put by Sadako Ogata in the Japanese version of human security on empowerment. Ogata emphasised the bottom-up character of human security and the idea that human security is both about protection and empowerment.

A third strand of thinking also formulated in the period 2003–04 is that of the Study Group on Europe's Security Capabilities (later renamed the Human Security Study Group). The version of human security put forward by the study group had its roots in the experience of the Helsinki process in Europe but could not be construed as the 'narrow version' of human security, as manifested in the R2P, nor the approach of the UNDP. Rather, it added a new component to the definition of human security. As well as the usual elements of human security—focus on the individual as opposed to the state and on the link between 'freedom from fear' and 'freedom from want'—it put particular emphasis on the link between human security and law, the blurring of the difference between internal and external security, and what it would mean to implement human security.

Human security, according to the Human Security Study Group, is about the kind of security that individuals expect in rights-based, law-governed societies. In a rights-based, law-governed national society, it is assumed that the state will protect individuals from existential threats and that emergency services—among others, ambulances, firefighters, police—are part of state provision. In the approach of the Study Group, human security is about extending individual rights, political and civil, as well as economic and social, beyond domestic borders and about developing a capacity at a regional or global level to provide those kinds of emergency services to be deployed in situations where states either lack capacity or are themselves the violators of rights. What this means is that national security cannot be assured unilaterally, that security in any part of the world depends on a global or human security system. Thus, instead of military forces designed to fight wars against other states, security capabilities would be designed to contribute to global emergency services. A capacity for global intervention in emergencies is not the same as military intervention, though there may be a role for military force but only used for the direct protection of civilians. Classic military interventions are often justified in humanitarian terms, as was the case in both Iraq and Afghanistan, but unless the military is directly used to protect people from violent attacks, they cannot count as human security, as will be developed in the last section.

Unlike earlier enunciations of human security, the Barcelona Report (and its follow-up, the 2007 Madrid Report) focused on the practical implementation of human security and on recommending the kind of capabilities required to operationalise this understanding of human security. It was proposed to establish human security forces composed of both military and civilian officers under civilian control and with substantial participation of women. This coming together of military and civilians for human

security is only possible if they both conform to certain principles, which guide the way they are used and operate.

Human security, in its various guises, has been taken up by regional organisations, especially the European Union and the African Union. The thinking of the Study Group on Human Security did have an influence on the development of the European Security and Defence Policy (ESDP) and on the role of ESDP missions—for example, the anti-piracy mission in the Gulf. The term is now routinely used in European Union documents such as the 2016 Global Strategy and the 2021 Strategic Compass. The study group approach was echoed in the State of the Union address by Ursula von der Leyen in 2021:

The European Union is a unique security provider. There will be missions where NATO or the UN will not be present, but where the EU should be. On the ground, our soldiers work side-by-side with police officers, lawyers and doctors, with humanitarian workers and human rights defenders, with teachers and engineers. We can combine military and civilian, along with diplomacy and development—and we have a long history in building and protecting peace.

(von der Leyen 2021)

Human security also played a central role in the establishment of the African Union in 2002, which replaced the Organisation of African Unity (OAU). Human Security was promoted by the Kampala movement, an initiative of civil society groups that met in Kampala in the early 1990s, and by newly emerging African elites, including Nelson Mandela and Salim Ahmed Salim, the Tanzanian Secretary-General of the OAU, who were interested in promoting pan-Africanism. A key role was played by the newly established Peace and Security Council and by the African Citizens Directorate (Tieku 2014). Various initiatives have been undertaken, including a proposal for a Human Security Index based on UNDP's seven types of security and a recent initiative entitled 'Silencing the Guns'. The African Union is responsible for peacekeeping missions in Somalia, Sudan, Chad, and the Sahel. Nevertheless, Africans experience deep human insecurity, and the idealism of the early years of the African Union has been constrained both by a combination of recent developments, including the war on terror, the return of authoritarianism and geopolitics and the continued emphasis of African states on state security.

In Latin America, the emphasis of the Organization of American States (OAS) is on human rights rather than human security per se, with a significant role played by the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights. In Asia, the term has largely been taken up by individual countries. The important role of Japan has already been mentioned. There has also been considerable interest in China, where the concept is understood rather differently as applying to the collective term 'humanity' or 'humankind' rather than to the individual human, and the focus is on socio-economic development (Breslin, 2015). The term was also promoted by Swin Pittsuan, the former Foreign Minister of Thailand and former Secretary-General of ASEAN (Mine and Mute 2022).

Critiques of Human Security

According to David Chandler (2011), the heyday of human security was during the decade of the 1990s. In the early 2000s, the human security discourse was integrated into international institutional apparatuses, and 'the radicals appeared to be on the

other side, critiquing human security as the ideological tool of biopolitical, neoliberal global governance' (Chandler 2011). This was also the period of the war on terror and the interventions in Afghanistan and Iraq, as well as the Russian intervention in Georgia. These were classic military interventions despite the use of humanitarian language. The combination of radical critiques and the renewed use of military force, it can be argued, narrowed the emancipatory space for human security. The use of humanitarian language to frame geopolitical interventions can be said to have played into the radical critiques.

The radical critiques of human security were drawn from feminist and postcolonial scholarship and covered roughly three lines of argument. The first set of arguments had to do with what it is to be human. Feminist scholars point out, not necessarily critically, that humans cannot be conceived as autonomous individuals. They are social beings intimately connected through networks of social relationships (Robinson, 2011). Human security, it is argued, often fails to recognise the culturally contested and embedded nature of individual identities. Calling something a humanitarian emergency is said to strip 'people of their history, culture and identity' (Alt 2011).

A second set of arguments has to do with the meaning of securitisation. The idea of 'securitisation' developed by what is known as the Copenhagen School (Buzan, Waever, de Wilde, 1997) is that by calling something a security issue, it does something. What it does, however, depends on how the term security is understood. One meaning of security is safety. This is the sense in which it was used by those who formulated the original version of human security. For them, calling something a security issue meant that it was important. And so, by calling development a security issue, they wanted to draw attention to its importance. Understood in this way, the significance of securitisation is rather trivial, and the charge that the broad vision of security securitises development is unserious; indeed, it may have positive consequences, as the originators of human security believed.

However, security is also often understood as referring to security services (the police, the military, intelligence services, etc.). Used in this sense, securitisation is about the way in which security services expand their remit to cover fields formerly addressed by social services or development agencies. This sense of securitisation is evidently very relevant and especially worrying in understanding the effect of extensive counterterror measures.

But it is yet another meaning of security that preoccupies the critics of human security. This is the understanding of security as having to do with a supreme emergency, which is intrinsically linked to sovereign power. In this sense, securitisation is defined as the 'speech act of labelling an issue a "security issue" [which] removes it from the realm of normal day-to-day politics casting it as an "existential threat" and justifying extreme measures' (Robinson 2011). Sovereignty, from a Schmittian perspective, is all about the ability to decide what is an 'existential threat'. Carl Schmitt (1985) is famous for the dictum: 'Sovereign is he who decides on the exception'. What he means by this is that the ability to act is revealed at moments of crisis or emergency when normal laws can be suspended. Thus, the U.S. Patriot Act of October 26, 2001, and the subsequent 'Military Order' issued by President Bush on November 13, 2001, gave the President far-reaching powers to suspend the rule of law and, in particular, permitted the indefinite detention and trial of non-citizens suspected of involvement in terrorism. Effectively, it established a 'state of exception'; indeed, Agamben argues that a state of exception has become normality for contemporary states. A more recent example is the harsh penalties imposed by the Russian government for protesting against the Ukraine War.

Critics of human security suggest that if sovereignty is constructed through the exception, then human security represents a way of establishing global sovereign power. The ICISS argued that R2P applies in ‘cases of violence which so genuinely ‘shock the conscience of mankind’ or which present such a clear and present danger to international security, that they require coercive intervention’ (Doucet and De Larrinaga 2011). According to Doucet and Larrinaga,

In this the concept of human security plays a central role in identifying and defining those extreme and exceptional circumstances that not only set the conditions for the suspension of the law but also for its refounding in the language of new international norms on intervention.

A very similar argument is put forward by Anne Orford (2011) in relation to R2P; she suggests that R2P is the way in which the United Nations acquires executive power.

Even if it were the case that international institutions had the capacity to act decisively in emergencies and were not constrained both by their member states and by lack of resources, this reading of sovereignty is at variance with the idea of conditional sovereignty that underpins a human security approach. What conditional sovereignty means is that the sovereignty of states (and international institutions) depends on respect for the framework of international rules including human rights. Sovereignty, on this reading, is constructed through a social contract negotiated at national levels but supplemented by negotiations in the international arena on which the international rules are based. Any human security intervention has to operate within the framework of rules, just as would be the case for emergency services in domestic settings. This is what makes a human security intervention different from a military intervention. The rules of war do represent a suspension of ‘normal’ laws. This cannot be the case for human security. Nevertheless, this argument offers an important insight that human security is potentially associated with the executive power of the United Nations, although this is currently constrained by the Security Council veto.

The third set of arguments has to do with the Foucauldian idea that human security and the multilateral operations responsible for implementing human security, which Mark Duffield (2001) calls ‘strategic complexes’, constitutes a form of biopower. Biopower refers to the form of power that focuses on the population rather than territory. It has to do with technologies of health and welfare rather than with coercive technologies; it is about the ‘power to make live’ rather than the ‘right to kill’. Duffield, who pioneered this approach, suggested that biopower can be regarded as a social mechanism used to maintain stability in what he describes as the uninsured part of the world—a way to maintain the quarantine of rich countries and salve their consciences. The strategic complexes of human security constitute a new paraphernalia of international intervention—a technology of power that preserves the submission of conflict-ridden parts of the world to an unequal world order.

But actually, to describe human security as a global extension of biopower is not necessarily a critique. Of course, human security is about power. Power is intrinsically linked to notions of security, as I argue in this chapter. The question concerns which notions of security and what sort of practices and ideas are entailed. In other words, to suggest that human security is a form of biopower is a research strategy rather than a normative standpoint. Undoubtedly, ideas of human security have coincided with the dominance of neoliberal ideas, and it can be argued that human security offers the sort of minimum

safety net that neo-liberalism requires. The question is whether such approaches actually constitute obstacles to structural change or whether by offering an alternative set of norms, they contribute to further pressure for change; whether people are being helped whatever the consequences, whether such help sustains existing inequalities of wealth and power, or whether it represents a challenge to such structural inequalities.

The problem with the critiques of human security is that they offer a bleak future. They offer no alternative for protecting and empowering people in faraway places. The implication of the critiques is that all forms of state-based international intervention are harmful. Yet in our globalised world, the local is imbued with the global—surely the refusal of all types of intervention amounts to the application of *laissez-faire* in the political arena alongside dominant *laissez-faire* economics? Indeed, the absence of multilateral intervention in Syria and the consequences of American withdrawal from Afghanistan draws our attention to the need for an alternative and more effective human security approach.

The value of some of the critiques is that they do offer some pointers to how this might be accomplished. First, human security has to understand the human as gendered, contextual and social. It has to be a strategy that emanates from the context rather than imposed from above. Secondly, human security does have to be about the extension of rights-based international law, but that process is also contextual. Law can be used as an instrument of resistance by local groups trying to reduce violence and enhance the safety of their communities, and it is only through such pressure that international tendencies to override law can be constrained. And thirdly, we need a micro empirical picture of the variety of international intervention in practice, what Duffield calls the strategic complexes of global governance, to identify nodal points of resistance to violence and other existential threats.

Human Security in Military Operations

A new development in the trajectory of human security is the growing interest among militaries in the concept. NATO's new Strategic Concept, the outcome of the June 2022 Summit in Madrid, 'emphasises' the need to 'integrate' human security, along with climate change and the Women, Peace and Security (WPS) Agenda 'across all our core tasks' (NATO 2022). And several NATO members—notably the United Kingdom—are 'mainstreaming' human security throughout the armed forces. The new left government in Colombia has also adopted human security, especially in relation to the military and police. What is common among all these initiatives is the idea that what is required is a sea change in security culture.

For both NATO and the United Kingdom, human security is understood as an umbrella concept that encompasses Building Integrity (Anti-corruption), Protection of Civilians, Cultural Property Protection, Children and Armed Conflict, Conflict-Related Sexual and Gender-Based Violence, Human Trafficking, and WPS. A Human Security Unit was established inside NATO by the Secretary-General in 2019. A similar initiative was taken by the then Minister of Defence, Gavin Williamson, in the U.K. Ministry of Defence. Subsequently, these plans have speeded up with a new directive being developed in SHAPE and a 2021 Ministry of Defence Joint Service Publication in the United Kingdom. There is an emphasis on integrating human security in training and in technological development, and, in the U.K. case, the introduction of human security advisers in all operational units.

This new emphasis on human security among Western militaries is the consequence of several overlapping factors. The first factor has been the actual experience of out-of-area operations, particularly, but not only, Afghanistan. According to one British officer,

A lot of this was circulating in government for a while in our stabilisation policies. The need to think about inclusive politics, justice and accountability. [It] is a progression on thinking that has been there for a while. It can be traced back to the Responsibility to Protect/Libya. The UK arrived in this via the Woman, Peace and Security perspective and linking this to other issues. Also important was the experience in Basra in 2008–09 where the commanding officer, General Andy Salmon, adopted an explicitly human security agenda.

A human security approach was also adopted in Helmand: ‘Helmand was an innovation but the way we were attacked closed down space and the approach fell apart. It was a tripartite approach with MoD, FCO and DFID but because of attacks MoD became preminent’. Other examples include the conflict in Mali, the Royal Navy in the Caribbean for humanitarian relief and in the Mediterranean for migrants, while the experiences of Kosovo and Iraq were important in drawing attention to the issue of cultural heritage. The NATO role in Afghanistan has been particularly salient:

There is real appetite for understanding the human environment better—a different way of analysing the human environment that is conflict sensitive. It took a long time to understand the local dynamics in Afghanistan, the multiple reasons for fighting ... the human environment. ... We tend to think about the adversary as a group. But sometimes it is about the structural factors that produce conflict. ... Framing through the adversary is not always the most useful analytical lens. There needs to be a Human Security approach in understanding and engaging.

(Author’s interview with British officer)

Particularly important was the growing emphasis on protection of civilians—something that gained traction because air strikes and night raids were undermining the legitimacy of the international presence in Afghanistan. A comprehensive Protection of Civilians policy was adopted in July 2016. ‘Not only was NATO receiving significant international backlash over highly publicised incidents of civilian harm, but commanders began to identify civilian harm as fuelling the growing insurgency’ (Holt, 2021).

A second factor was the evolution of the European Security and Defence Policy along human security lines. Both NATO and the European Union have distinct security cultures, but it was always assumed that NATO would influence ESDP rather than the other way round (Mazurkiewicz 2018). It can be argued that the European pillar of NATO has been enhanced partly as a consequence of the Trump years, when the United States was less present, but more importantly under the impetus of the war in Ukraine and the impending membership of Sweden and Finland.

A third factor is the growing influence of non-governmental organisations (NGOs) and a much greater readiness for working together with civilians, including other government agencies, international organisations and industry and academia. NATO cooperates with a range of NGOs, including the International Red Cross; the Stimson Centre, which has played a pioneering role in protection of civilians; Civilians in Conflict, the NGO that collects data on civilian casualties; PAX for Peace in the Netherlands, which

has long spearheaded demands for human security; and the Center for Cultural Heritage and Armed Conflict.

And the final, and perhaps counterintuitive, factor is the war in Ukraine. One might have expected that the war in Ukraine would encourage a return to a more traditional emphasis on war-fighting. But according to a senior NATO official, ‘Ukraine has been a wake-up call. Traditional NATO planning was based on the assumption of a World War II type conflict with millions of civilian casualties. That is completely unacceptable nowadays’. This may explain both the emphasis on conventional and defensive forms of deterrence in the new Strategic Concept. It is not just concern about minimising loss of life and preventing escalation; a very important issue is legitimacy. As a U.K. Ministry of Defence official put it, ‘Russia is focused on delivering human insecurity—brutality towards civilians, destruction of cultural heritage, sexual violence, looting’. Conforming with International Humanitarian Law (IHL) is hugely important for legitimacy, something that the United Kingdom stresses in contingency training for Ukrainian soldiers.

What is not clear as yet is whether this new application of human security actually does involve a paradigm shift in how military operations are conducted. In particular, it is not clear whether the new emphasis on human security merely means taking IHL and the various components of the umbrella terms very seriously when conducting military operations—something that is, of course, a positive development—or whether it portends more far-reaching change in how the military operates. One NATO official expressed frustration about the difficulty of changing mindsets. It has ‘not yet materialized in a heartfelt manner’; it has not yet reached a ‘tipping point’.

So, what might human security in future military operations mean? Evidently, implementing human security requires a range of non-military capabilities—humanitarian responders, health workers, engineers, firefighters, police, and so on. The military contribution to human security is focused on meeting large-scale physical threats to individuals and their communities; these might include military invasions, genocide or massive violations of human rights. There are two main roles in which the military may be required in order to implement human security. One is defence of people against the crime of aggression, as in Ukraine, and the other is the contribution to international peacekeeping and crisis management.

Defence against aggression is different from engaging in military competition along geopolitical lines. Rather than matching capabilities of potential aggressors, the idea is to be able to demonstrate effective defence, to show that aggression cannot succeed without at the same time being perceived as a potential threat to other states. During the 1980s, there was much concern about the offensive posture of NATO and the dangers of weapons of mass destruction. At that time, proposals were put forward for what was known as defensive deterrence (Boserup, Neild and Carlton 1990), i.e., deterring foreign attacks through a credible conventional defensive posture rather than through the threat of nuclear or conventional retaliation. It was the idea behind Gorbachev’s notion of ‘reasonable sufficiency’. Proposals for area defence or in-depth defence were put forward that would have meant drawing down nuclear weapons as well as conventional offensive capabilities, such as bombers or massed tanks (though evidently some are needed for defensive purposes). It is worth asking whether Putin would have invaded Ukraine had he realised that Ukraine would put up such an effective conventional defence.

In terms of crisis management and peacekeeping—that is to say, intervention in intractable conflicts—the aim is to end such wars by dampening down conflict and reducing the incentives for violence rather than through victory or a single top-down peace

agreement. Central to this goal is the establishment of legitimate and inclusive political authority and a rule of law. Human security interventions are always civilian led and involve a combination of civilian and military actors. The tasks of the (external) military in these circumstances could include protecting civilians from attack and creating a safe environment in which a legitimate political authority can be established; monitoring and upholding local peace agreements and ceasefires as part of multilevel peacebuilding involving civil society, especially women; establishing humanitarian space through corridors and safe havens that allow for the delivery of humanitarian assistance; and arresting war criminals. A similar approach was adopted by the British in Northern Ireland or the European Union-led anti-piracy mission in the Gulf of Aden, which combined the arrest of pirates with non-military measures such as the introduction of fishing licences on the coast of Somalia.

This is very different from counterinsurgency and counterterrorism where the goal is victory over an enemy. In Afghanistan, for example, the goal was the destruction of the Taliban, al Qaeda and later ISIS Khorasan, rather than the security of Afghans. This meant continuing attacks that legitimised the insurgency as well as allying with corrupt commanders who undermined the legitimacy of the Afghan government. It also marginalised the civilian leadership of the international intervention, notably the United Nations Special Representative (Kaldor 2021).

How such operations are conducted is as important as why. The practice of the military in protecting civilians must conform to human security principles. Human security is about human rights rather than war. It is about saving all lives, including the lives of enemies. It is about law-based security rather than war-based security; in other words, it is more like policing than war-fighting. One way to think about it is an inversion of the law of armed conflict. Under IHL, the killing of civilians is sometimes permitted if it is necessary to achieve a military objective, and the harm is proportionate to what would be achieved by victory. For human security, it is the other way round. The killing of enemies is permitted if it is necessary to protect civilians or save lives.

These kinds of considerations have also influenced thinking in Colombia. The new government of President Gustavo Petro, a former guerrilla, and Vice-President Francia Marquez, a woman environmental activist, is committed to what they call Total Peace, implementing and filling gaps in the peace agreement of 2016, which left out several armed groups. In Latin America, the concept of citizen security has been historically more important than human security, and, in the case of Colombia, this concept has been successfully applied in big cities like Bogota and Medellin. The application of human security, emphasised by President Petro, goes beyond citizen security and is aimed at dealing with organised violent groups (ORGs) mainly operating in rural areas. While human security is understood as a wholistic concept that addresses economic, social and environmental issues and involves local citizens in its implementation, it also recognises the role of the military and the police in assisting local citizens in establishing safe spaces where they can act effectively and weaken the role of ORGs. It is understood that this requires a change in the culture of the military and police. The President has announced a series of measures aimed at changing the behaviour of and reducing corruption within the military and police. This includes insisting on respect for IHL and human rights as a condition for appointments and promotion, the use of indicators to evaluate the performance of the police and military chiefs linked to the protection of citizens and aimed at deterring potential inaction, collusion or misconduct. He has also established a new Ministry of Peace, Security and Coexistence to oversee the Colombian Police and other

civilian institutions. He has eliminated the practice of lower-ranking police and soldiers having to pay fees to rise in rank. And after seven young police were killed in a conflict-affected area, President Petro asked for the removal of all young, less experienced personnel from high-risk areas and emphasised the need to strengthen the relationships between police and local communities as an essential form of security (Guardo forthcoming).

Implications for Global Governance

The modern nation state started out as a war machine. In the 17th and 18th centuries, most state spending consisted of military spending (Krause 2013). Central to the self-conception of states was the idea of geopolitics, the assumption that power depends on the control of territory, which is achieved through military power. The critical geography scholar Simon Dalby (1996) talks about geopolitics as the use of ‘geographical reasoning in the service of state power, a power that is often about war and violence’.

Central to geopolitics is what international relations (IR) scholars call the ‘great divide’ between the inside and the outside (Clarke 1999). The world of the outside is the world of war and diplomacy, where states are treated as individuals and, according to the geopolitical narrative, act according to their interests. Outside, as Bismarck famously declared, is the world of ‘blood and iron’ (Bismarck 1862). Inside is the world of law and politics, where security is based on law and policing rather than military force.

Of course, the world never truly resembled this model. From the Treaty of Westphalia 1648 (or some say even earlier in the Peace of Augsburg 1555) that is said to be the founding moment of the European states system, the existence of states depended on mutual recognition and some shared agreement about rules; state sovereignty was always to some extent conditional—conditional on that shared agreement. According to Chayes and Chayes (1995),

Sovereignty no longer consists in the freedom of states to act independently in their perceived self-interest, but in membership in reasonably good standing in the regimes that make up the substance of international life. ... Sovereignty in the end is status—the vindication of a state’s existence as a member of the international system.

Actually, this was always true, but over time, the regimes within which states were situated became increasingly dense networks of rules, organisations and institutions.

Whether we are talking about the global peace and security architecture, including the United Nations, the International Criminal Court and regional organisations like the European Union or the African Union; or whether we are talking about the emergence of economic and financial institutions, like World Bank, the IMF or WTO; or the array of technical institutions, such as the World Meteorological Organisation, the Food and Agriculture Organisation or the World Health Organisation, all of these have come to be described as global governance. But these international institutions are composed of member states. While they have acquired their own momentum as a consequence of organisational growth and are often under pressure from transnational civil society organisations, they are nevertheless constrained by the behaviour of states. Their effectiveness in contributing to the global public good is repeatedly weakened by the continuing tension between, on the one hand, the imperatives of geopolitics and, on the other hand, the need for institutions that uphold a human-rights-based international system.

The latter is sometimes described as a rule-based or law-based system, but geopolitical actors often frame their actions in legal language and as rule followers, but they favour an interpretation of international rules that legitimate war and coercion.

Geopolitics is epitomised in the commitment to national security and the unilateral capacity to use force. The capacity to fight wars of aggression is central to the imaginary of geopolitics. This is why a shift from national to human security on the part of states or alliances like NATO would entail a fundamental shift in the nature of states with profound implications for global governance. The central lesson of the war in Ukraine, a lesson that should have been learned in Korea, Vietnam, Iraq, or Afghanistan, is that wars of aggression no longer work. They can be immensely destructive and destabilising (and that may be Putin's aim in Ukraine), but they rarely achieve a long-term and decisive capture of territory as in the past. On the contrary, they contribute to instability, fragmentation and chaos.

In Europe, as a consequence of the way individual states were integrated into military alliances, almost no individual state possesses the capacity for unilateral wars of aggression; possible exceptions are the United Kingdom and France. Even though NATO has been, up to now, a geopolitical alliance, many of these states see themselves as multilateralist states committed to a human-rights-based international system. Within the European Union, a common external security policy has been developed that is primarily designed to contribute to international missions, even though there are voices calling for a European army along classic geopolitical lines. The European Union has had an uneasy relationship with NATO since most but not all European Union members are also members of NATO, and arrangements are in place for a sharing of capabilities. A shift within NATO towards human security would facilitate that relationship. It would mean greater European influence over NATO and would involve a shift from geopolitics to the type of arrangement envisaged by the Helsinki Agreement of 1975.

Much depends on how this change of posture would affect the United States and especially intrinsic geopolitical instruments of power such as nuclear weapons. The Trump years and the risk-averse behaviour of the Biden administration suggest that change is underway even in the United States. Support for Ukraine has been tempered by fears of escalation, and discussions around possible reactions to the use of nuclear weapons by Russia suggest that any response will be conventional or political (Schlosser 2022). There has also been talk about applying human security to the U.S. military.

A meaningful shift from national to human security necessarily implies a shift from the dominant geopolitical narrative to the narrative of a human rights-based world order. In practical terms, a change in military posture from war-fighting to non-offensive defence and protection of civilians at state or alliance level as a contribution to a global military-civilian human security service would dramatically reduce the capacity to fight wars and increase the capacity for emergency responses to the challenges of our time—natural disasters, pandemics, famines, and political violence. And the substantive provision of human security would greatly increase the legitimacy of international institutions. Whether this is feasible depends on how far the geopolitical narrative is entrenched in the deep state or whether democratic accountability offers a space for change.

We live in a world that is starkly at variance with human security, in the way that I have expressed, in which authoritarianism in states like Russia, China, India, or Israel is intrinsically linked to aggression and military interference. And a plausible scenario for the future is the further spread of fragmentation and chaos as a consequence of the failure of military interventions. But a shift in some parts of the World—Europe, Africa or Latin

America—could help to make such warlike acts less likely, thereby weakening the dominance of geopolitics. The war in Ukraine could mark a turning point because it has demonstrated the impossibility of successful aggression. According to Bertrand Russell, ‘Wars will cease when and only when it becomes evident beyond reasonable doubt that in any war the aggressor will be defeated’ (Lopez-Claros, Dahl and Groff 2020). That moment should have been reached at the end of World War II as the failure of post-war invasions testifies and as we are now witnessing in Ukraine. The practical implementation of human security at the level of capabilities is a way of embedding that proposition.

Conclusion

In this chapter, I have attempted to give practical content to the term ‘human security’ by tracing the history of the concept over nearly three decades. The so-called broad version, originated by UNDP, drew attention to the range and interconnectedness of existential threats to individual humans and communities. The so-called narrow version focused on threats of physical violence and became associated with justifications for military intervention. After 2001 and the so-called war on terror, human security was often discredited by apparent conflation with all forms of military intervention, often as a consequence of radical critiques. I have tried to show that human security interventions are different from military interventions, even though they may sometimes require the use of the military. I have suggested that they are more similar to the kind of responses to emergencies that might be expected in domestic settings. In so far as the military force is used, it operates under different principles and methods from classic war-fighting, with the aim of saving all lives (both combatants and civilians). This version of human security has been associated with the European Union’s external policy and is now beginning to influence NATO as well as individual militaries, such as the United Kingdom, the Netherlands or Colombia.

Even if such changes were only partial, as is likely given the persistence of authoritarian militaristic states, this could lessen the risk of war as well as levels of violence and could increase readiness to respond to all types of existential threats, including natural disasters, pandemics or famines. Interestingly, President Zelensky’s ten-point peace plan, presented to the G20 summit, began with radiological, energy, environmental, and food security.

Improved national contributions to an effective human security policy by the United Nations and regional organisations, such as the European Union or the African Union, would indeed enhance the executive power of these institutions. While we should share the critics’ concerns with the risks that this might serve to uphold existing global hierarchies, there is also the very real possibility that such institutions could offer a lifeline to ordinary citizens who lack responsible local or national institutions able or willing to respond to dire emergencies and that such institutions could be more accountable to citizens than currently their states are. More to the point, at a time of greater risk to humankind than probably any previous moment, a practical human security policy is desperately needed.

Notes

- 1 For a ‘prehistory’ of human security see MacFarlane and Khong (2006); for more detail on human security, see Kaldor (2007); Beebe and Kaldor (2010).
- 2 United Nations General Assembly (1948): ‘the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people’.

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11 Three Aspects of Radical Inclusion Necessary for a Workable New System for the Peaceful Settlement of International Disputes

Cecelia Lynch

Fundamental to the concepts of the significantly enhanced peaceful settlement of international disputes, or an international peace force, is the idea that such a framework would, as a result of strengthening the prohibition on international conflict, serve to further shift the geopolitical balance away from a calculus of military might and towards more just legal, ethical and humanitarian outcomes.

Such designs for global governance, however, have often been called impractical and unworkable. Specifically, they have often been criticised for being unable to mobilise the necessary ‘political will’ of major powers, as well as those seeking to change power balances. This chapter, however, addresses a different, and arguably more important, challenge to ‘workability’—that of inclusion in the form of ‘bottom-up’ incorporation of voices and perspectives from the inception of global designs to their implementation and evaluation.

Ensuring such bottom-up inclusion, I assert, represents a decolonial move that is just as necessary, if not more so, as accommodating the ‘top-down’ political will of states and state leaders. Inclusive and egalitarian dialogues, plans and partnerships are crucial to achieving effective, positive outcomes for ensuring the peaceful settlement of disputes. Too often, however, policy designs and negotiations exclude certain categories of stakeholders and neglect important perspectives and forms of knowledge, thus replicating paternalistic patterns established during successive eras of colonisation. Such colonial patterns in global international organisation have included the Mandate System of the League of Nations and the Trusteeship system of the United Nations, as well as weighted voting systems in the international financial architecture, all of which do not take into account how wealth was created in the first place.

Drawing from my work on global humanitarianism, I discuss three aspects of inclusion in this chapter that are necessary for workable designs for the peaceful settlement of disputes in any revised UN Charter framework. These three aspects are

- stakeholder inclusion, regarding the range of actors affected by conflict from different parts of the world;
- temporal inclusion, regarding when such actors are included; and
- epistemological inclusion, regarding expanding the kinds of knowledge that inform designs for peaceful settlement.

Taken together, these aspects comprise what I call ‘radical inclusion’. Such inclusion not only concerns strengthened peaceful dispute settlement/peace force deliberations (e.g., under a renewed UN Charter framework) but also requires linkages to other UN forums

to address issues underlying conflict, including long-standing patterns of resource extraction and land appropriation that enable inequities in wealth as well as climate change and its impacts. As a result, such inclusion requires, first and foremost, a changed *orientation*, one that enables working across, rather than merely within, the categories of dispute settlement that currently frame the United Nations's structure and that incorporates a reflexive posture allowing for inclusion to be regularly assessed and updated.

The Problem: Whom to Include, When and How

During the past two decades, networks of humanitarian organisations, partially led by non-governmental organisations (NGOs) and partially supported by the United Nations High Commissioner for Refugees (UNHCR) and other UN agencies, have increased their efforts to be more inclusive, but with only limited success. What is inclusion, and why is it necessary? Who needs to be included, and when is inclusion necessary for achieving international peace? And what forms of knowledge inform the meaning of peace and the peaceful resolution of international disputes in different contexts? Finally, how can 'limited success' be transformed into more enduring forms of inclusion?

This chapter articulates the need for a radical policy of inclusion in any renewed UN Charter framework for the peaceful resolution of international disputes. I address scholarship that cites the need for inclusion, discuss how inclusion is often practiced, review several attempts to ensure it, and suggest how it must be expanded both temporally and in terms of the actors and ideas involved in constructions of peace. I argue that three aspects of inclusion are essential for any workable strengthening of the UN system: (1) physical and geographic inclusion of stakeholders, (2) temporal inclusion and (3) epistemological inclusion. Taken together, these three types of inclusion, I argue, have never yet been achieved in global international organisation or in frameworks to ensure peace. Moreover, such forms of inclusion challenge the very construction of almost any framework for settling international disputes. In the context of this working group, for example, they may even put questions of an international peace force on the back burner, at least for the time being.

My argument begs a number of questions, which I address briefly here. First, I focus on the need for radical inclusion in planning for and carrying out the range of actions that is now included under the rubrics of 'early warning,' 'peacekeeping' and 'peacebuilding'. In Charter terms, these actions fall under Chapters VI and VII of the current UN Charter. However, I must emphasise that even this type of radical inclusion—as difficult as it is crucial to achieve—does not go far enough in addressing what has popularly become known as the 'root causes' of conflict. To do that, not only is a genuinely representative United Nations General Assembly and/or a Global Parliament necessary, but also an orientation or disposition, as well as a framework, which allows and even expects fluid and reflexive forms of participation.

Second, therefore, throughout the chapter, I provide general sketches for how a more responsive global organisation must work across issue areas that are currently demarcated as the province of separate bodies, including the Security Council, General Assembly, Economic and Social Council (ECOSOC) and specialised agencies. I note, however, that my sketches are intentionally unfinished and open-ended, as inclusion must be practiced from the beginning, and those most affected by specific conflicts must take the lead in designing any workable framework for resolving them. I also note that any basis for reforming participation in a new global organisation must not take gross national income

(GNI) and/or current contributions to the United Nations's budget into account, a point to which I will return later.¹

The Three Aspects of Radical Inclusion

Each of the three aspects of radical inclusion is actually quite difficult to fulfil, but each, I argue, is necessary. The notion of gathering 'all stakeholders' at the table is the pithiest shorthand for physical and geographic inclusion. Clearly, a new framework for the peaceful resolution of international disputes will not work if actors who embark on, or are affected by, conflict are not included; clearly, such inclusion needs to be globally representative. Such claims have been made since the very founding of global international organisation, when civil society groups (then called 'voluntary organisations') argued for a place at the table, asking for a League of Peoples instead of a League of Nations.

Historians have gradually revised their assessments to grant these groups a larger role in the formation of the League than previously acknowledged (Lynch 1999: 54). By the advent of World War II, even though many formerly powerful interwar peace groups had been decimated between 1939 and 1941 over debates about whether to support the war, religious, women's, labour, farm, and other groups still took a circumscribed but influential part in the San Francisco Conference that launched the United Nations in 1945. This unofficial 'movement for international organisation' held its own discussions during the early 1940s while the U.S. State Department and British Foreign Office engaged in their official planning processes. This unofficial movement advocated especially for the new organisation to be universalist in membership and pay attention to human rights.

As official plans developed, this movement continued to focus on these two issues while also advocating against the great power veto and against the plan for a trusteeship system. The U.S. State Department, in an unprecedented move, invited 42 unofficial groups (many of them part of this movement) to San Francisco to serve as 'consultants' to the official U.S. delegation. While the movement did not achieve all of its goals by far, it succeeded in institutionalising claims to universal representation, presaging a role for human rights and, to a lesser degree, delegitimising continued colonisation.²

In addition, this movement's efforts ensured the provision granting 'observer status' to non-governmental groups in ECOSOC and the General Assembly (Lynch 1999: 203). During the Cold War, unofficial groups acting as observers, as well as others not granted observer status, pressured governments to engage in disarmament as well as promote human rights. By the early 1970s, environmental issues had gained considerable traction among unofficial groups. The United Nations Conference on the Human Environment (UNCHE), better known as Stockholm 1972, became 'the first major UN conference where nongovernmental organisation (NGO) observers were accredited to contribute' (Dahl 2021).

For the past two generations, habitués of non-governmental assemblies have understood both the importance and the difficulty of making sure all voices are included and served as the impetus for the huge non-governmental forums begun at the Rio Environmental Conference of 1992 and continued since that time (Weiss and Wilkinson 2019). In particular, subsequent NGO forums, including the series of World Social Forums (e.g., Smith *et al.* 2014), have recognised the intersectional impacts of climate and environmental destruction on the propensity for conflict, as well as the harmful gender implications of the use of force. These efforts indicate the interconnectedness among issues that underlie debates about how to renew and reorganise the machinery for the peaceful settlement of international disputes.

This background demonstrates that both civil society groups and many (but not all) official UN representatives acknowledge that all stakeholders should have a say in UN decision-making. This is all the more crucial for any plans to design and implement a new UN framework, from its central principles to its mechanisms for peaceful resolution of disputes. But ‘radical inclusion’ means more than the inclusion of established civil society groups. Indeed, as scholars of humanitarianism have made clear, and as I explain in this chapter, the NGO system has become part and parcel of a layered hierarchy that too often repeats, rather than challenges, top-down forms of conflict prevention, as well as peacebuilding, and that leaves out the very populations it is meant to serve.

Instead of replicating existing structures, then, considerable effort must go into tracking down and forging relationships not only with communities in conflict and at risk of conflict all over the world but also with scholars and others from such areas who have traced the development of these conflicts in their ‘domestic’ as well as transnational forms. These stakeholders must be included from the beginning of new designs for solutions to be workable and durable, as the scholarship and experiences discussed in this chapter make clear.

Finally, conventional internationalist thought needs to broaden to include new epistemological frameworks, especially from a range of religious traditions and Indigenous communities. We know, for example, that Indigenous peoples have been better stewards of the earth and its resources than industrialised countries and that they also have long understood the impact of climate change on livelihoods, as well as the likelihood of conflict. Yet their forms of knowledge are only now beginning to be recognised in relevant debates (e.g., WHO 2013). Likewise, scholarship has begun to catch up with the need to enlarge our epistemological frameworks through exploring concepts such as ‘worlding’ and ‘the pluriverse’ (Agathangelou and Ling 2009; Escobar 2018; Reiter 2018).

Radical inclusion, in this sense, becomes a reflexive and mobile orientation for the different bodies that make up global international organisation in either its current form or any future one, targeting especially those who are at the margins of decision-making but who are most affected by conflict resolution, as well as economic and social mechanisms. In our contemporary historical time, radical inclusion necessitates especially the participation of previously marginalised groups, including refugees, internally displaced persons, Indigenous actors, persons of diverse sexual and gender identities and expressions, and scholars from affected areas, instead of multinational corporations, arms dealers and military leaders.

For example, in addition to the framework currently available under Chapters VI–VII of the Charter, peaceful settlement also requires revamped procedures under what is currently the domain of ECOSOC, including, but not limited to, incorporating the voices of NGOs and of perspectives emanating from a proposed Global Parliament (e.g., Falk and Strauss 2001). Moreover, temporal inclusion requires an orientation towards mobility that is currently lacking such that all bodies interested in an updated global organisation reach out broadly to these actors when such categories are being discussed and debated rather than after they have been established.³ Finally, epistemological inclusion requires foregrounding the ideas and contributions of the UN Permanent Forum on Indigenous Issues (e.g., ECOSOC 2012) as well as the UN Permanent Forum on the People of African Descent (United Nations Human Rights 2021). Each of these forums brings to light extreme forms of past violence that continue to have implications for conflict in the present; each also suggests forms of knowledge that are essential for human and ecological health and, hence, conflict prevention and peaceful dispute resolution.

Scholarship in Favour of Inclusion

The demands of radical inclusion may appear to be too daunting, but considerable scholarly and practitioner research and experience from the early 2000s to the present supports my argument. One important strand of scholarship on various aspects of peacebuilding has for some time advocated in favour of a ‘turn to the local’. Such a turn is based on an alleged binary between ‘global’ or ‘international’ frameworks, supported by the work of UN agencies and ‘international’ non-governmental organisations (INGOs), and ‘local’ populations. Over and over again, scholars have argued that affected communities are ignored in designing, funding and implementing peacebuilding programmes. As Oliver Richmond states (Richmond 2014: 67) about the liberal state-building enterprise of international organisations,

It has failed to capture the associative dimensions of historical social and community-level frameworks. Instead, it indicates a securitised, privatised, contractual praxis: governance occurs through the state, led by international actors, to produce a limited, conservative form of peace. In these terms, peace rests upon an externally designed social contract. Civil society should comply with this contract rather than be constitutive of it.

While Richmond zeroes in on the links between the ‘international community’ and states (new or old), other scholars have developed the idea of ‘critical localism’ to highlight ‘everyday lived experiences’.⁴ Still other scholar-practitioners of peacebuilding note additional ways in which exclusion is practiced, even by well-meaning NGOs. Séverine Autesserre, for example, asserts that ‘international’ peacebuilders’ ‘everyday practices’ ingrain and reproduce inequitable relations with populations they are meant to serve. She touches on, but in my view does not sufficiently develop, the epistemological dimension of inclusion by emphasising the need to incorporate ‘local knowledge’ instead of simply the ‘technical knowledge’ that international peacebuilders come equipped with. For Autesserre, the result is that peacebuilders *want* to ensure durable peace but fail to do so time and time again (Autesserre 2014).

Similarly, Swedish peacebuilder/scholar Pernilla Johansson argues that not only are the intentions of ‘internationals’ good but also that aid workers are frequently devastated by the lack of sustainable results of their hard work (Johansson 2022; see also Martini and Jauhola 2014). Johansson asserts that international peacebuilders (the complex of UN and international NGO staff working on implementing designs for peace) do not fully ‘listen’ to their interlocutors. Moreover, they hide their own emotional reactions (lack of knowledge, frustrations, etc.) due to a belief that ‘objectivity’ is required for ‘professionalisation’. This attempt at objectivity inevitably fails at producing peace but succeeds (unfortunately) in reinforcing hierarchies of power and knowledge that downplay the insights of recipient communities.

Additional scholarship points to the numerous ways that affected communities are ignored in conceptualisations of development, emergency aid and peacebuilding programmes while also demonstrating that communities not only want to be included but also have important perspectives, experiences and knowledge to offer, as pointed out by Anyidoho (2012), Fast (2017) and Mahmoud (2019), among others. But one critical perspective that I wish to highlight, that of Oheneba Boateng (2021), dispenses with the notion of a turn to ‘the local’ altogether, showing instead how the ‘homegrown’ nexus of

development, humanitarianism and peace is actually *restorative* of pre- and anti-colonial modes of knowledge and action.⁵ I return to this perspective later, but for now, I note that the concept of restorative action gestures both to forms of knowledge and kinds of practices in affected societies that remain available for inclusive forms of preventive diplomacy and peacebuilding today.

Two Examples of Limited Inclusion in International Governance: Women and Faith Communities

In the late 1990s and early 2000s, feminist activists and scholars argued that women needed to be included in peace mechanisms, producing the United Nations Women, Peace and Security Agenda (WPS).⁶ Beginning with UNSCR 1325, which ‘called for women’s increased participation in initiatives to prevent and resolve conflict, as well as their protection during conflict and post-conflict situations, ultimately making gender a component of every Security Council action’ (Reiling 2024; UN Women 2000), the WPS agenda eventually included a number of additional resolutions specifying mechanisms for inclusion of women in decisions about how to address the kinds of violence affecting them. Transnational and national women’s organisations had been at the forefront of advocating for such an agenda, especially given its recognition at the highest level (the Security Council) of the UN peace and security apparatus. The WPS agenda, therefore, theoretically represents a major, though still limited, way for many of those most affected by conflict both to challenge gendered forms of militarism and have a say in peacebuilding. Cohn, Kinsella and Gibbings (2004) describe the process by which women’s organisations claimed a place at the table while also foregrounding one of the main concerns that would become heightened over the next two decades: the ‘worry that the Security Council could be “manufacturing the consent” of women and NGOs to suit its purposes’. This worry of top-down imposition—of the roles women could take and of the meaning of security for them—has remained salient. Cohn, Kinsella and Gibbings (2004) noted women’s experiences in the words of one of their interlocutors:

Women are reduced to getting on their knees, literally, outside the discussions they were barred from. ... ‘Whatever the code words, let us in [the Security Council]! Peacebuilder, decision-maker, whatever argument works, let us in! Let us in so we can wrestle with the discussion at least; contest the parameters and react, in real time and not after the fact’.

Over the next two decades, implementation of the WPS became increasingly controversial, primarily for remaining too ‘top-down’ in its conceptualisation of women’s security and the means to address it (Basu and Confortini 2017; Olonisakin, Hendricks and Okech 2015; Shepherd 2016). Specifically, the WPS agenda has focused too much, in the view of critics, on the creation of National Action Plans that sometimes result merely in increasing gender quotas in specific areas and normalising instead of challenging the militarisation of societies themselves (Reiling 2017, 2024; Shepherd 2016). In addition, the WPS agenda too often equates women’s security with reductions in sexual violence.

While reducing and eliminating sexual violence against women is, of course, critically important, women activists and scholars, especially from the Global South, have argued in favour of broader conceptions of security, including economic, political and environmental, as well as sexual, that must be addressed through communal transformation

(Abdullah and Fofana-Ibrahim 2010; Reiling 2024).⁷ As a result of these and additional issues with the WPS agenda (including operationalising a focus on ‘women’ instead of more inclusive notions of ‘gender’), feminist scholars from different parts of the world charge the WPS agenda with heightening instead of diminishing differential gender treatment in the Global North and South. In sum, as Soumita Basu and Akhila Nagar (2021) argue, ‘there are concerns that the WPS agenda has lost its transformative potential due to its absorption into the ‘business-as-usual’ approach to peace and security policies’ (213). The WPS agenda thus demonstrates the ease by which potentially innovative forms of inclusion can become ossified by UN and related bureaucracies and highlights the need to develop ongoing reflexivity in forms of inclusive participation.

Approximately a decade later, in the early 2010s, representatives of religious organisations active in refugee work, peace and conflict resolution, and humanitarianism in general argued in favour of including religious actors and organisations in the design and implementation of peace mechanisms. This activism, like women’s activism previously, resulted in a new programmatic emphasis, this time located in the UNHCR, especially in its annual consultations with NGOs. The 2011 Report of these annual consultations outlined the epistemological rationale for inclusion of religious communities in humanitarian efforts worldwide (UNHCR 2011):

NGOs recognised the importance that faith plays in the lives of conflict and disaster-affected communities, and the role and influence of faith communities and faith-based organisations in protection. Faith runs deep in the veins of conflict and disaster-affected communities and plays a major role in their lives. It helps people cope with trauma; it validates their humanity; it informs their decisions; and it offers guidance, compassion, consolation and hope in their darkest hours. At-risk or affected communities turn to FBOs for physical protection, material assistance, guidance and counselling, spiritual confirmation, compassion and understanding.

Then High Commissioner for Refugees António Guterres (now UN Secretary-General) established a dialogue with faith leaders in December 2012, noting that the international legal framework granting the right to asylum was grounded in teachings from multiple religious traditions. Subsequently, ‘Faith and Protection’ became the theme of the 2012 annual consultations between UNHCR and NGOs. A range of representatives from major faith traditions, Catholic, Protestant, Muslim, Jewish, Hindu, and Sikh, collaborated in drawing up the forum’s background document.⁸ The document focused on demonstrating how religious traditions support the right to asylum and specifying ways that the UNHCR could better work with faith communities. The document also noted, more specifically, that faith-based organisations frequently had deep and long-standing ties to communities riven with conflict and that spiritual values and the recognition that human dignity included spiritual and religious connections are critical for peaceful integration of refugees. In these ways, the UNHCR was acknowledging the need to broaden the actors it involved in addressing both sites of conflict and the flow of refugees as a result of conflict. It was also acknowledging, without explicitly naming it, the necessity of epistemological openness in its understanding of humanitarian action and human dignity (UNHCR 2012).

The following year (2013), I attended the UNHCR-NGO annual consultations, where one of the major products of this collaboration was launched. Called ‘Welcoming the Stranger, Affirmations for Faith Leaders,’ this document, according to panellists who described its genesis and development, represented a carefully crafted non-denominational

appeal to generally-accepted religious tenets as a primary basis for the right to asylum. The document begins with the following statement:

A core value of my faith is to welcome the stranger, the refugee, the internally displaced, the other. I shall treat him or her as I would like to be treated. I will challenge others, even leaders in my faith community, to do the same.

The document then outlines 16 ways that signatories will respect refugees and different faith traditions, offer hospitality and speak out for justice. It was designed for distribution to faith leaders and congregations of all kinds and was translated into Arabic, French, English, Russian, Spanish, German, Hebrew, and Turkish. The ‘Affirmation of Welcome’ was to be disseminated through the Religions for Peace World Assembly ‘in coordination with a wide array of faith-based organisations, governments, and international organisations’. In addition, participants recognised that faith actors who could and should be partners with UNHCR and NGOs often fell ‘outside of the traditional humanitarian system’, and these actors needed to be included in their efforts (UNHCR 2013: 31).

It is unclear just how widely the ‘Affirmation of Welcome’ was read or taken up for discussion in faith communities in different parts of the globe.⁹ Certainly, the Rapporteur’s Report inadvertently described an important paradox in the collaborative effort in noting the gap between the costs borne by the ‘international humanitarian community’ vis-à-vis communities that are tasked with doing the welcoming of refugees, as the following statement indicates (UNHCR 2013: 31):

NGO representatives explained their advocacy in relation to the Affirmation of Welcome and indicated that this document is directed at receiving communities across the world who often sacrifice much more than the international humanitarian community when they welcome the stranger. ... The ... event closed by highlighting the recent UNHCR-NGO initiative to better understand the contributions to protection outcomes across the world of FBOs, local faith communities and faith leaders.

In other words, the event was explicit in recognising the work done by faith communities and the possibilities for peaceful integration that a better integration of their views and religious orientations in peaceful resettlement could engender (Ager and Ager 2015). Yet the quote also implicitly notes that the receiving communities were not the ones who wrote the document and decided on the means of its dissemination. As a result, temporal inclusion—that is, incorporation of those doing the work of welcoming or at least accommodating refugees—was lacking; instead, inclusion would be *post facto*.

Both of the aforementioned initiatives, for inclusion of women and faith-based groups in issues of peace, security and peaceful incorporation of refugee populations fleeing from conflict, were and are laudable. Nevertheless, actual mechanisms for including them have had limited success, at best. At worst, they have resulted in performative activities that have achieved insufficient support from affected communities and possibly even reinforced systems that gave rise to violence to begin with.

What Is Being Done to Ensure Inclusion? What Can Be Done to Enact Inclusion?

Seminars and webinars I attended virtually in the fall of 2022 on conflict resolution, humanitarian action, and inclusion of faith actors have all taken up the call for ‘localisation’

previously outlined by scholars, as well as the more recent call for ‘decolonisation’. Each of these terms has moved from academic buzzword to practitioner circles as shorthand for ‘inclusion’. One seminar was called ‘Supporting Community Stakeholder Engagement’; the moderator introduced the session as an ‘opportunity to delve into the “localisation agenda”’. Another recent seminar noted that ‘localisation’ is ‘about transferring power to local and national actors’ and that this kind of transfer ‘became a foundational piece of the “grand bargain” struck six years ago at the Humanitarian Summit’. Each of the webinars included ‘international’ participants from NGOs and international agencies; each participant outlined what their organisation was doing to ‘localise’ and what obstacles remained for doing so. Still, participants noted, ‘[t]he Humanitarian system is very dysfunctional in engaging community members’. A panellist in a webinar run by the Joint Learning Initiative on Faith and Local Communities (JLI), an outcome of the 2011–13 UNHCR/NGO annual consultations on faith and protection discussed earlier, noted that local actors are ‘doing a lot of work, but are still not represented in global power dynamics’ ... ‘Southern voices are still marginalised’.

Participants in these forums are trying to include the ideas of recipient populations—for example, in spreading awareness of conflict and aid provision through the development of digital apps—and in revising training programmes for women and faith groups to meet their needs in Information, Communications Technology, health care and information sharing. Participants in these 2022 panels noted the value of ‘harnessing local knowledge’, noting that the ‘capacity ... is there’; that it would make their efforts ‘more sustainable’, and that it would be instrumental in ‘reflecting the dignity of local communities’. At the same time, both scholars and these ‘internationals’ continue to cite obstacles to inclusion, such as donor unwillingness to trust, and therefore fully incorporate the participation of community participants; the resulting fact that programmes are still designed without recipient community input (and therefore without their buy-in), making later implementation difficult; and the fact that ‘local knowledge’ is insufficiently appreciated and incorporated (Harvard Humanitarian Webinar 2022; Madani 2022).

In addition, these examples show that NGOs themselves still conceptualise inclusion in limited ways, as, for example, ways to increase the sustainability of NGO efforts rather than as the means to make their own efforts subservient to the ideas and needs of affected communities.

Yet another example concerns the 2015 UNHCR/NGO annual consultations, whose theme was ‘In Pursuit of Solutions’. Two main ideas dominated the panels I attended: (a) incorporating refugees into decisions about their own care, protection and futures, and (b) promoting ‘community-based protection, support and care’, the notion that local communities that are either sites of conflict or sites of refugee settlement should be listened to and included in designs for security, employment, health, and social services, etc. As I wrote in a blog post at the time, ‘One might think that both would be all too evident, but in the humanitarian international today, one would be mistaken’ (Lynch 2015). Nevertheless, the panel discussions were extremely interesting and productive, as UNHCR and NGO personnel had clearly reached out to numerous refugees and affected communities around the world.

One of these included an activist from southern Sudan, who detailed several very concrete protection measures her women’s network (made up of women of different faith traditions) has taken in order to survive government bombings, which disproportionately injured and killed women and children. Such concrete measures included instructions for women on how to make emergency shelters in caves or by digging foxholes, how to store

provisions and when and how to run for cover. These ideas were critical because otherwise, in the event of air raids, children would run for their mothers and mothers for their children, getting injured or killed along the way. These are only some of the kinds of measures that are critical to survival but which need to be thought through ‘from the ground up’ by those who are living through crises on a daily basis.

Another panel featured a university dean, a local imam and a Pentecostal bishop from the Adamawa Peace Initiative in Nigeria, who had worked together for several years to feed and shelter hundreds of thousands of people displaced by the fighting with Boko Haram. One of the fascinating things about their presentation was the description of how difficult it was to attract outside funding in the early stages of their work, given how community-based they were. When larger NGOs did notice, however, mostly after the highly publicised kidnappings of the girls from Chibok, they wanted to reinvent the wheel by redesigning the work of the already-successful local network rather than simply supporting its painstaking efforts. While these examples show community actors directly involved in saving lives and providing food and shelter in a very immediate sense, the expertise and experience of these actors would be invaluable in deciding whether and what kind of eventual UN peace force or other reframed peaceful resolution measures could be useful in their contexts. They would also be invaluable in providing input directly to the Security Council or, in the framework outlined by Lopez-Claros, Dahl and Groff (2020), Executive Council decision-making.

Two additional contemporary examples demonstrate how working across currently demarcated UN agencies and other UN bodies is necessary for any future framework for the peaceful settlement of disputes and also how all three aspects of radical inclusion are crucial to incorporate in a reflexive manner. In the Democratic Republic of Congo, colonial-era theft of land and resources set up ongoing forms of wealth extraction that not only destroyed an independent democracy in the early 1960s, but that also continue to destabilise Congolese society, as noted in the statements of Pope Francis during his 2023 visit to the country (Murhula 2023; see also Wakesho and Gutbi 2018). Today, the conflict remains international, with both Western multinational corporations (MNCs) and neighbouring governments (Rwanda and Uganda) heavily involved. Networks of Congolese religious scholar-activists in Eastern DRC experience rebel incursions as well as the arrival of new groups of refugees on an almost weekly basis. These scholar-activists—involved in the Anglican and Catholic Churches’ respective peace networks—should be included in assessments of the historical-contemporary ties, forms of intervention and reparations that might enable peaceful settlement of the conflict.

Similarly, French and U.S. commitments to the slave trade not only decimated numerous African communities but also prevented the Haitian Revolution—the first successful national human rights rebellion against chattel slavery—from being able to emerge from debt, impoverishing the Haitian people to the present day. A 2022 *New York Times* series traced the specific links of Haiti’s contemporary problems from the Haitian Revolution to the present, replicating the work of international relations scholars such as Siba Grovogui (2011) and Robbie Shilliam (2008). The series shows that this is not merely a ‘domestic’ conflict about a ‘failed state’ (Porter *et al.* 2022). Instead, it is one in which French banks and the U.S. military have been culpable over generations, rendering UN peacekeeping efforts ineffective. As a result, civil society groups in Haiti, along with critical legal scholars, should be involved in revising the very definition of ‘international’ disputes, as well as determining an equitable resolution for the country’s dire economic situation.

Additional Measures to Ensure Radical Inclusion

Designing and implementing a radically inclusive new framework for the peaceful resolution of international disputes is not easily accomplished. But if the experience of women in the Good Friday and Liberian peace accords are any indication, this difficulty is primarily because of entrenched practices that bypass affected communities rather than ensuring the availability of their expertise. As the examples throughout this chapter demonstrate, marginalised voices are, in fact, fairly easily found and are critically important. Yet even NGOs are still calling for increased inclusion for themselves in global decision-making (InterAction 2023).

Radical inclusion takes time. As Boateng (2021) demonstrates, when transnational NGOs and international actors do develop ‘new’ forms of action, they frequently disregard, rename, or even erode ‘homegrown’ practices. More significantly, these transnational actors need to confront and learn from ‘their own historical relationship with colonialism before reform can proceed’ (Boateng 2021: 3–4). This is why I have called for ‘centering global humanitarianism in Africa’ for both geographical and onto-epistemological reasons (Lynch 2022). It is also why both JLI and the Critical Investigations into Humanitarianism in Africa (CIHA) blog have engaged in efforts for inclusion that span more than a decade. CIHA, for example, has developed an online course that explores the relationship between past colonising and missionising and contemporary humanitarian efforts. The course also includes students and NGO representatives from across the African continent, as well as across the University of California system, to focus together on how to reverse the lens on humanitarian aid.¹⁰ The JLI has re-envisioned much of its regional work in order to enact a ‘fair & equitable approach’; to ‘shift power, resources, and leadership to local, national, and regional levels’; and to become more ‘inclusive and accessible’ (Madani 2022). While each of these initiatives is ongoing, they indicate ways that inclusion is possible and can inform a new framework for the peaceful resolution of international conflict.

These examples provide models which, in conjunction with seeking out knowledge from Indigenous and Diasporic populations, can also inform both human and planetary well-being. While this chapter has not focused on climate change or epidemics and pandemics, humanitarian actors increasingly note that addressing these issues through genuinely equitable means is critical for preventing future crises and resolving disputes through peaceful means. Expanding access to discussion of ‘the problem’ and the design of alternative systems, soliciting the views of recipient communities in different geographic regions with different identities, forms of representation and epistemological orientations will be increasingly necessary as environmental threats to peace take a more central position in global debates.

In sum, each of the three aspects of radical inclusion discussed in this chapter is necessary for any revised global approach to the peaceful settlement of international disputes. Such radical inclusion requires a changed orientation towards fluidity and reflexivity, as well as a framework that either synthesises or cuts across current boundaries between currently demarcated UN bodies and agencies. Let the openings begin.

Notes

- 1 I very much appreciate the careful work done by Schwartzberg and Clark and Sohn, both discussed in Lopez-Claros, Dahl and Groff (2020: chs. 4 and 5) as well as the proposals by Lopez-Claros, Dahl and Groff in the same chapters about voting systems that take into account GNI, but these systems do not account for how wealth has been created in Europe and the United

- States over generations literally on the backs of slaves, nor does it account for wealth from property and resources across the Global South claimed by actors in the Global North, from states and imperial companies to contemporary multinational corporations (MNCs) and preferential French and British trading systems. Contemporary studies of reparations across a number of domains address the ongoing ramifications of these histories of wealth inequalities. For a review of thoughtful proposals for revised voting, see Augusto Lopez-Claros, Dahl and Groff (2020: chs. 4 and 5 especially). For debates regarding the contours of reparations, see, for example, United Nations Human Rights (2019).
- 2 I detail this process from the early 1940s through Dunbarton Oaks and Yalta to San Francisco, based on extensive archival work, in Lynch (1999: 192–208; see also Robins 1971).
 - 3 This includes broader inclusion in any future discussions of the working groups gathered by the Global Governance Forum, among other interested parties.
 - 4 See the organisation Everyday Peace Indicators (EPI), led by Pamina Firchow and Roger MacGinty, which seeks to work with communities from California to Colombia to Sri Lanka.
 - 5 I have also demonstrated the problematic nature of ‘the local’ in two relatively recent talks in Finland and Poland, entitled, respectively, ‘Banish the Local!’ (University of Jyväskylä conference on ‘The West’, June 2019) and ‘The Need to Reframe “Internationalism” and “Localism”, for ‘Modern Internationalism: Chance, Fantasy or Reality?’ (Jagiellonian University, Krakow, Poland, online, January 25, 2022).
 - 6 Two important precursors were the example of women activists in the forging of the Good Friday Peace Agreements in Northern Ireland and the Liberian women’s peace movement. See, for example, Racioppi and O’Sullivan (2006: 189–208) and African Women and Peace Support Group (2004). In each of these cases, however, women had to force themselves into negotiations that tried hard to keep them out. See, for example, Donahoe (2018).
 - 7 The Global Governance initiative has an extensive gender equality programme (LINKS) that demonstrates how and why gender equality is necessary for peace and well-being, especially connected to the UN Sustainable Development Goals. Here, I focus on the need for inclusion, not only of women but of perspectives that understand the gendered nature of security and its intersectional implications.
 - 8 Representatives from the Archbishop of Canterbury’s Office, Islamic Relief UK, Hebrew Immigrant Aid Society (HIAS), International Catholic Migration Commission (ICMC), Oxfam UK, Jesuit Refugee Service (JRS), Lutheran World Federation (LWF), United Sikhs, Interfaith Hindu Forum of Britain, Hindu Christian Forum UK, and Tearfund UK were involved in drawing up the Background Document, with assistance from the World Council of Churches in Geneva (UNHCR 2012).
 - 9 In my subsequent interviews in different parts of the Middle East, for example, groups I met with had not heard of the document. Such a task of distribution is immense, of course, and the fact that my interlocutors were not aware of it cannot be taken as a negative evaluation of its effectiveness.
 - 10 The notion of ‘reversing the lens’ comes from the work of Ngūgī wa Thiong’o (2009), who asserts that we should stop asking how much the West gives to Africa, and instead recognise that African has been giving to the West—of its people, labour and resources—for hundreds of years.

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12 Infrastructures for Peace

A New Layer of Peace and Security Governance?

Darynell Rodríguez Torres

One of the areas that has caught the attention of the peacebuilding community over the past decade is the notion of infrastructures for peace (I4P). Broadly speaking, ‘infrastructures for peace comprise all institutions, mechanisms, resources, and skills that create resilience, address root causes of conflict and support peaceful resolution of conflicts’ (GPPAC 2020).

There are two main approaches to the understanding and development of I4P. The first one stresses their loose and informal character, arguing they should be based on existing informal traditional mechanisms of conflict resolution. The second approach advocates a more formal and systematic development of institutional capacities to support conflict prevention: dialogue, mediation and peacebuilding efforts.

Both perspectives of I4P coincide in the need for ‘local ownership’ and inclusiveness, underscoring the importance of a bottom-up approach that favours the participation of multiple actors in the articulation and usage of such infrastructures. Whether they are built on existing traditional structures, on formal state institutions or on loose arrangements and networks, I4P implies the establishment of a layer of actors and mechanisms that should be taken into consideration for peace and security governance at the local, national, regional, and international levels.

One of the main limitations thus far has been how to elevate these emerging peace infrastructures above national boundaries and better link them to the broader network of regional and international peace and security arrangements. This chapter will argue that a formal and systematic development of I4P is not only more effective in responding to threats but can also contribute to the governance of a state by strengthening the links between the state and its citizens, promoting a collaborative approach to peace and security.

At the same time, the creation of such linkages can be reflected in the international peace and security architecture, improving the existing spaces of participation, consultation, political coordination, and collective action of multilateral institutions. I4P can then contribute to bringing the work of multilateral institutions closer to the people and their needs, making them feel more purposeful, relevant and valuable as actors, better equipped to address complex transnational peace and security challenges.

Informality vs. Institutionalisation. Which I4P Is Better Fit for the Purpose?

There is not one common definition for I4P. The first reference to the term was used by the peacebuilding researcher John Paul Lederach, who suggested that the nature of contemporary conflict required an approach that goes beyond traditional state diplomacy.

Lederach suggested the development of an infrastructure across all levels of society that empowers actors and resources from within that society and leverages the contribution of external actors (Lederach 1997).

The concept of I4P has been defined in various ways. Giessman (2016) describes it as a dynamic network of skills, capacities, resources, tools, and institutions that help to build constructive social and political relationships and enhance sustainable resilience of societies, protecting it against relapse into violence. Meanwhile, the United Nations Development Programme (UNDP) defines it as a network of interdependent systems, resources, values, and skills co-owned by government, civil society and community institutions that promote dialogue and consultation, prevent conflict and enable peaceful mediation when violence occurs in a society (UNDP 2013).

Other definitions emphasise the need for institutional development to support peace-building processes. Proponents of this view argue that there is a need to develop institutions specifically mandated to support different parties in the prevention and peaceful resolution of armed conflicts (Hopp-Nishanka 2013). In this sense, I4P is seen as cooperative, promoting problem-solving approaches to conflict within societies that are based on dialogue and non-violence but which also require institutional mechanisms appropriate to each country's culture to promote and manage this approach at the local, district and national levels (van Tongeren 2011).

To enhance their effectiveness, other scholars and peace practitioners stress the importance of a systemic approach to I4P. They argue that the effectiveness of I4P networks is highly reliant on the functional integration and organised interplay between its constitutive parts, each with related skills, capacities, resources, tools, and institutions. Some even make an analogy between peace infrastructures and the system-wide institutions created to support health care, education, and finance (Brand-Jacobsen 2013; Sharma and Suurmond 2013).

The main idea behind the more 'institutional' approach of I4P lies in the belief that networks and networking are necessary, but not sufficient, conditions for the development of peace infrastructures. To limit peace infrastructures to these informal arrangements and platforms would prevent the development of system-wide mechanisms that enable structured interaction among different actors and lead to better results, greater inclusiveness, transparency, accountability, and sustainability.

If I4P implies the need to develop certain frameworks supported by organisations, norms and procedures, the question that arises is what kind of institutional arrangements are required and for what purpose? In other words, what kind of underlying structures are needed to support peacebuilding efforts? To answer this question, we must first consider what we mean by peacebuilding.

The term 'peacebuilding' was first coined by the peace researcher Johan Galtung (1976) in his article 'Three Approaches to Peace: Peacekeeping, Peacemaking, and Peacebuilding'. In this article, Galtung argues that

the mechanisms that peace is based on should be built into the structure and be present as a reservoir for the system itself to draw up. ... More specifically, structures must be found that remove causes of wars and offer alternatives to war in situations where wars might occur.

Galtung seems to suggest the need to embed specific mechanisms that support peace into the fabric of a society, including its economic, social and political structures. Hence, the

development of such mechanisms should not be conceived of as part of a post-war reconstruction effort—to which the idea of peacebuilding is often associated—but rather be in place as part of a country's basic structures, ready to be activated when needed in order to prevent or manage societal conflicts.

For example, the establishment of a common security system between two or more countries can help to remove the potential for war between them. The development of economic interdependence between countries can also create incentives for peaceful cooperation instead of conflict. Additionally, Galtung suggests the creation of alternative dispute-resolution mechanisms, such as mediation and arbitration, which can help to prevent violent conflict and enable the peaceful resolution of disputes. By embedding such mechanisms into the structures of society, Galtung argues that they can serve as a foundation for peace and help prevent the outbreak of violent conflict.

John Paul Lederach also argues that the understanding of peacebuilding should go beyond post-conflict reconstruction. He conceives peacebuilding

as a comprehensive concept that encompasses, generates, and sustains the full array of processes, approaches, and stages needed to transform conflict toward more sustainable, peaceful relationships. The term thus involves a wide range of activities that both precede and follow formal peace accords. Metaphorically, peace is seen not merely as a stage in time or a condition. It is a dynamic social construct.

(Lederach 1997)

This 'non-sequential' approach to peacebuilding is echoed by the UN Peacebuilding Support Office, UNPBSO, which refers to peacebuilding as 'the continuum of strategy, processes and activities aimed at sustaining peace over the long-term with a clear focus on reducing chances for the relapse into conflict'. This organisation also highlights that 'it is useful to see peacebuilding as a broader policy framework that strengthens the synergy among the related efforts of conflict prevention, peacemaking, peacekeeping, recovery and development, as part of a collective and sustained effort to build lasting peace'.

Other peacebuilding organisations have defined it as 'a long-term process of encouraging people to talk, repairing relationships, and reforming institutions' (Conciliation Resources) or 'dealing with the reasons why people fight in the first place and supporting societies to manage their differences and conflicts without resorting to violence' (International Alert).

At its core, peacebuilding refers to the process of rebuilding relationships of trust that have been broken in a conflict. This implies relationships that were damaged among people across a conflict divide, but also between people and state institutions. To do this, the creation of channels for dialogue, communication and participation at different levels is key to rebuilding such trust. Additionally, mechanisms such as early warning systems can help detect and respond to potential risks before they spiral out of control. These mechanisms can be built into the fabric of society, allowing them to serve as a foundation for peaceful conflict resolution and preventing violent conflict from arising in the first place.

If we accept this understanding of peacebuilding and agree that I4P should essentially be that framework needed to support such a process, then reliance on informal, non-institutionalised mechanisms seems insufficient. They can be useful to support trust-building among people but are clearly insufficient to support trust-building towards state institutions.

This last point suggests a close relationship between the concepts of peacebuilding, statebuilding and democratic governance. It can be argued that any infrastructure that supports peacebuilding would implicitly contribute to the development of well-functioning state institutions that are responsive to citizens, transparent and accountable. This would be in line with Galtung's point about embedding mechanisms that support peace within the fabric of a society, including its social, economic and political institutions.

Peace infrastructures range from official government-led efforts such as Peace Ministries or Peace Departments to informal arrangements of civil society organisations (CSOs). Successful infrastructures involve both government and non-governmental actors, each leveraging their capacities, resources and outreach to develop policies and mechanisms that respond to identified threats and prevent violence.

Actually, I4Ps have proven to be effective channels for enhancing democratic governance, strengthening state institutions, and fostering the participation of civil society in security policies, bringing a bottom-up perspective to security issues and articulating effective collaboration with security actors. In that regard, it can be argued that I4Ps can be useful instruments for operationalising the idea of human security, taking it from its conceptual form to effective practice.

I4Ps involve collaboration between actors, including government and civil society, but there is a risk of co-optation compromising their effectiveness. This requires strong governance structures promoting transparency, accountability, public consultation, oversight, and monitoring, as well as diverse and inclusive participation. Informal I4Ps may find this difficult to implement.

How I4P Can Strengthen State Institutions and Promote Partnership with Civil Society

Some critics claim that institutionalising I4P reinforces the link between peacebuilding and statebuilding, promoting a liberal statebuilding agenda that undermines traditional conflict resolution mechanisms and their 'bottom-up' approach (Verzat and Berghof Foundation 2014). However, experiences in countries such as Ghana and Kenya suggest that I4P can strengthen traditional conflict resolution mechanisms and even give them international projection.

The case of Ghana seems paradigmatic of how the formalisation and institutionalisation of I4P contribute to strengthening state institutions and, at the same time, create possibilities for effective collaboration between state and CSOs, ensuring a bottom-up approach to them. Due to ethnic conflicts in the north of the country from 1994 to 2002, the Northern Regional Peace Advocacy Council (NRPAC) was created by the regional government as a mediation mechanism. The Council was based on the peacebuilding practices of grass-roots CSOs (Odendaal 2010). The Council's success resulted in the creation by the national government of a National Peace Council, linked to ten regional peace councils, each of which was composed of diverse stakeholders and CSOs with peacebuilding expertise. The infrastructure was formalised through Act 818 in 2011. The infrastructure is considered one of the most successful and has helped consolidate the democratic system while reducing violence.

Ghana utilised its peace architecture development to reinforce its democracy, nation-building and institutional capacity to be self-regenerating (Ojielo 2007). As noted by Verzat and the Berghof Foundation (2014), this development has led to the establishment of a managerial administration, including peace councils, officers and support units, whose aim is peacebuilding at all levels of the society.

Critics of the institutionalisation of Ghana's peace infrastructure claim that the ultimate goal was not to promote dialogue or prevent armed conflict but rather to develop a liberal democratic architecture in the country (Verzat and Berghof Foundation 2014). However, others believe that this institutionalisation has been a key factor in its effectiveness. Emmanuel Bombande, a civil society leader involved in creating the infrastructure, argues that legal backing for the National Peace Council, as well as the regional and district peace councils, is crucial to giving them the necessary visibility and leverage that makes them able to function with all communities and state institutions (Bombande 2007, cited in Verzat and Berghof Foundation 2014).

While the approach to the development of Ghana's I4P might seem 'top down', in reality, it has used the state's legitimacy to empower the different actors that contribute to it, giving a central role to civil society. Without a prominent role for civil society, this infrastructure could not have been developed effectively, and without the official endorsement of Ghana's political institutions, civil society actors could not have been as effective in their conflict resolution efforts at the regional, national and even international levels.

Another area in which I4Ps have proven useful for strengthening the capacities of the state, particularly in conflict-affected countries, is security sector reform (SSR). The relationship between the community and security forces is a crucial factor in countries emerging from conflict, as the trust factor is often severely damaged. SSR programmes are integral to the peacebuilding process, encompassing the various functions of the military, the police, intelligence services, financial institutions, and the composition of security forces. Additionally, SSR programmes address civilian control, demining, small arms control, disarmament, demobilisation, and reintegration.

According to Ghimire (2016), the literature on peacebuilding identifies two key areas in which SSR contributes: policies and institutions. At the policy level, SSR is expected to promote recovery processes towards democratic peace and work towards democratisation and the development of participatory state institutions. At the institutional level, SSR aims to establish new bodies or restructure existing ones based on such principles as transparency, clarity of roles, merit, and public participation. This not only creates well-designed and affordable security institutions but also supports the disarmament of paramilitary forces and the reintegration of militia members into civilian life (Ghimire 2016).

The social contract between states and citizens establishes that the state has the monopoly of force and provides security in return. I4Ps can contribute to enhancing the effectiveness of SSR programmes, which can help rebuild trust in those institutions. Ghimire's analysis highlights the potential of infrastructure for peace in supporting SSR programmes such as military and police reform, small arms control and disarmament, and demobilisation and reintegration (DDR) (Ghimire 2016).

In terms of defence reform, Ghimire argues for the adoption of a formal and constitutional form of I4P. The reasoning behind this is that state-backed infrastructures would be more effective in supporting defence force reform because of the need for confidentiality in strategic discussions. Formal institutions with a prominent role in civil society would ease concerns about opening up such discussions to non-military personnel and prevent the exclusion of CSO representatives even from non-strategic consultations. Such exclusion cannot be avoided in the case of informal infrastructures (Ghimire 2016).

With regards to police reform, there are various ways in which peace infrastructures can enhance it, such as community security, local mediation, alternative conflict dispute mechanisms, early response bodies, neighbourhood watch, among others. For instance,

these infrastructures were useful in Kenya during the episodes of electoral violence in 2008 and have helped prevent similar outbreaks since then. However, non-state platforms cannot use force or enforce laws. Nevertheless, they can help increase resilience and provide greater legitimacy and proximity to citizens (Ghimire 2016).

The case of Kenya is also a good example of small arms control. An infrastructure composed of civic groups, provincial administration and local police commands was created to respond to transnational smuggling of weapons. Similar infrastructures to respond to that problem have also been developed between Nepal and India and Nepal and China.

In the case of Kenya, the government, CSOs, and other stakeholders established the Kenya National Focal Point on Illicit Small Arms and Light Weapons in 2003 to coordinate efforts to combat the proliferation of small arms and light weapons in the country. A comprehensive National Action Plan on Small Arms and Light Weapons Control was developed, including a range of measures such as strengthening border controls, campaigns to increase public awareness, programmes for weapon destruction, and enhancing the capacity of security agencies to respond to arms trafficking. As a result of these efforts, Kenya has seen a decrease in the number of small arms circulating within the country, and violent crime and armed conflict have declined in the region (Small Arms Survey 2019).

Similarly, in Nepal, a range of initiatives have been implemented to address small arms and light weapons proliferation. These include the establishment of community-based monitoring mechanisms, the implementation of public awareness campaigns and the development of a database to track the circulation of weapons. In addition, Nepal has worked with neighbouring countries, such as India and China, to prevent the smuggling of weapons across their borders. As a result of these efforts, there has been a decline in the incidence of armed violence in Nepal (Small Arms Survey 2018).

Overall, while the effectiveness of small arms control measures can be difficult to measure, the establishment of infrastructure and coordination mechanisms in Kenya and Nepal has shown some positive results in reducing the incidence of armed conflict and violence in those regions.

A regional approach has not only been useful for controlling arms smuggling. Regional I4Ps have also made important contributions to DDR. For example, the Organisation of American States (OAS) played a significant role in the demobilisation of Contra combatants in Nicaragua (Muggah 2006). Similarly, the OAS has been involved in the verification of peace agreements in Colombia and in brokering a truce between street gangs in Salvador (Muggah and Aguirre 2013).

All the aforementioned examples suggest that a formal infrastructure for peace is necessary to address key complex peacebuilding issues such as SSR. Transnational security challenges require coordinated regional responses that can be more effectively achieved through formal state institutions with delegated authority and structured channels for consultation and joint action with non-governmental actors (Ghimire 2016).

Elevating I4Ps to the Regional Level

The complexity of global security threats and the fact that the drivers and the effects of violence do not pertain to any one country but rather affect entire regions call for regional solutions. The development of regional architectures for peace has been based primarily on the establishment of regional intergovernmental organisations (RIGOs) and their mandate to address peace and security issues. The challenge here is not to make these

infrastructures formal and institutionalised but actually to make them more open to the participation of non-state actors, so they can also articulate a people-centred approach to their work.

The creation of many regional organisations can be traced back to the Cold War era, during which their structures were designed to tackle the security challenges of that time. For example, forums such as the OAS and the League of Arab States were established as spaces for political/ideological unity and cooperation, often linked to regional military alliances. In Africa and Asia, the process of decolonisation led to a new wave of regionalism, giving rise to organisations such as the Organisation of African Unity, the Association of Southeast Asian Nations (ASEAN), and the South Asian Association for Regional Cooperation (SAARC). These organisations were established in the mid-20th century, and each played a vital role in promoting regional stability and cooperation (Rodríguez Torres 2013).

The structures of these organisations and the mechanisms developed to contribute to regional peace and security are still largely based on an analysis of the risks and responses made from the perspective of the state. But I4Ps cannot only be based on informal networks and mechanisms, nor can they preclude the participation of non-state actors if they want to be effective.

The importance of incorporating perspectives beyond the state into these regional infrastructures is particularly relevant in the current context. Most of today's conflicts are not interstate but *intrastate*, and the majority of victims in these new wars are not combatants but civilians (Kaldor 2012). For example, in Latin America, the civil war in Colombia has resulted in over 260,000 deaths and has had a spillover effect on neighbouring countries such as Ecuador and Venezuela, as well as on the wider region (Ruprecht 2019). In Africa, the conflict in South Sudan has displaced over two million people and has led to a humanitarian crisis that affects not only South Sudan but also the neighbouring countries of Uganda and Sudan (UNHCR 2021a). The conflict in Syria has resulted in over 500,000 deaths and has led to a refugee crisis that has spread into neighbouring countries, destabilising the entire region (UNHCR 2021b). These examples illustrate how intrastate conflicts can have a spillover effect, affecting neighbouring states and becoming a factor for regional destabilisation and a risk to regional and sometimes even global security.

The establishment of peace infrastructures at the subregional and continental levels has become crucial in recognising that many conflicts have a regional character. The idea behind developing regional capacities for peacebuilding can be condensed into three key points: first, conflicts rarely remain limited to a single state; second, those located closer to the problem are often better placed to understand and influence the situation; and third, the proximity of regional actors to the conflict ensures a long-term, vested interest in the outcome (de Coning 2015).

Although regional organisations have comparative advantages, their mandates and capacities to address peace and security issues vary considerably. Wallensteen and Björner (2015) have identified at least 29 RIGOs with the potential capability of affecting issues of peace and war, but a comparison of these organisations reveals significant differences. While the European Union ranks high in terms of effectiveness, others such as SAARC, SADC or the Intergovernmental Authority on Development (IGAD) are generally deemed ineffective. Organisations such as ASEAN or the Organization for Security and Co-operation in Europe (OSCE) fall somewhere in between, with their effectiveness varying depending on the historical period being analysed (Nathan 2010).

Despite the importance of regional approaches for addressing regional and sub-regional conflict systems, some member states of a RIGO can hinder its effectiveness or even take sides with one of the parties in the conflict. Greater cooperation between regional multilateral organisations and the United Nations can help balance some of these disadvantages since the United Nations often has more resources, experience and distance from the local situation, as well as a strong legal standing (Wallenstein 2015). However, this could also increase the risk of including other factors and interests that do not necessarily address the root causes of the problems. For example, issues such as the ‘global war on terror’ can distort local or regional conflict dynamics (de Coning 2015). Therefore, it is crucial to avoid a top-down approach that overrides the advantages of a regional one.

The international system is making the transition to a more inclusive model involving multiple actors beyond the state. While this is evident in many areas, security issues pose unique challenges due to their traditional control by the state. However, multilateral organisations are increasingly expected to adopt a human security approach, which incorporates the concerns of individuals and communities. Collaboration with CSOs can ensure that regional security policies are responsive to people’s needs and incorporate a bottom-up approach, mutually reinforcing both civil and national security (Rodríguez Torres 2016).

Once again, at the regional level, formalised collaborations seem to be more effective than informal ones. The West African regional peace architecture is an example of best practices, where economic interdependence led to the recognition of a regional approach to promote peace and security in the sub-region. The Economic Community of West African States (ECOWAS) recognised the need for a regional approach to promote peace and security due to the porosity of borders and the spillover effect of conflicts. This was a significant decision for an economic community that did not initially prioritise peace and security in its mandate and lacked the capacity to address these issues. Acknowledging these shortcomings, the organisation sought cooperation from CSOs and developed a partnership with the West African Network for Peacebuilding (WANEP). WANEP established a subregional early warning mechanism in 2000, involving community groups and CSOs across the region in monitoring events for the prevention of armed conflicts (Bombande 2016: 121). The partnership with WANEP has been crucial to the success of ECOWAS in conflict prevention (Bombande 2016).

The initial focus of the WANEP-ECOWAS partnership was on early warning; however, now there is more emphasis on response-generation capabilities. Consequently, resources are now dedicated to building stronger response systems and creating national I4Ps. As a result, peacebuilding capacity is evolving from regional to national levels, promoting bottom-up approaches to conflict prevention in conjunction with state and regional levels (Bombande 2016).

The ‘virtuous cycle’ of a grass-roots-to-subregional-level approach has resulted in a regional peace infrastructure. ECOWAS and civil society are now working together to develop national peace infrastructures. West Africa’s success in this approach is unique and has institutionalised a multi-stakeholder approach to regional security, unlike any other experience.

At the continental level, the African Union has developed a strong institutional architecture to promote peace and security. This includes instruments such as the Commission, the Panel of the Wise, the Continental Early Warning System (CEWS), the Peace Fund, and the African Standby Force (ASF), a multidisciplinary continental peacekeeping

force that operates under the direction of the African Union. However, engagement with CSOs and other non-state actors is discretionary and limited to CSOs which have close contact with the African Union or which tend to be well-trusted entities led by charismatic figures with political stature, or well-resourced INGOs (international non-governmental organisations) that have a significant footprint.

In the absence of effective formal mechanisms, CSOs have had to pursue innovative approaches to engaging the African Union. An excellent example of this is the African Centre for the Constructive Resolution of Disputes (ACCORD). This organisation has invested in developing a long-standing relationship with the African Union and helps to organise the African Union's High-Level Retreats, which bring together officials from the African Union, RECs, Special Envoys, and civil society representatives to discuss emerging peace and security challenges. Additionally, it is building an African Peace Centre in Durban as a venue for dialogue and mediation for political leaders. Nevertheless, such engagements remain selective, discretionary and highly dependent on the charisma, influence and entry points of the directors of these organisations, many of whom have certain political stature that enabled this type of access.

Europe and the Pacific have other noteworthy experiences in engaging civil society for conflict prevention and peacebuilding, but they lack a formal regional peace architecture having a multi-stakeholder approach. The European Union partners with the European Peacebuilding Liaison Office (EPLO), a civil society platform, to run the Civil Society Dialogue Network (CSDN), a forum for dialogue between CSOs and European Union policymakers. The CSDN hosts events on policy issues of concern to the European Union, inviting CSOs to share their expertise on specific topics or geographic crises. Working with a network organisation like the EPLO has proven valuable in organising civil society input and participation, a key to the success of this mechanism.

Regarding the Pacific, the Secretariat of the Pacific Islands Forum (PIF) has in recent years developed a relatively advanced approach to engaging with CSOs focused on conflict prevention and peacebuilding. The organisation has been holding bi-annual civil society 'dialogues' for security discussions around the meetings of the Forum Regional Security Committee (FRSC) since 2009. Attendees include regional and national CSO representatives, political governance and security staff from PIF, representatives of member states, and other development partners.

The dialogues serve primarily as a platform for sharing information. CSOs are able to submit reports and lobby the Secretariat through the dialogues, which ostensibly provide them with a way to participate in higher-level decision-making processes. For civil society, the dialogues provide an opportunity to engage with government officials at a time when doing so may be difficult in some countries. Although some CSOs have struggled to engage directly with national-level government officials, their participation in this regional platform facilitates interaction and raises their profile. From the perspective of the Secretariat, the dialogues have been useful for information sharing. However, PIFS bureaucrats note that the dialogues are still a work in progress and that, while they are useful, this mechanism is still a long way from becoming a formalised institutional arrangement in the region's peace architecture.

The objective of establishing regional I4P seems to be more challenging in other regions. Despite being criticised for its ineffectiveness, the Arab League unexpectedly became an influential platform since the Arab uprisings in 2010. The league played a crucial role in diplomatic actions in various regions by offering legitimacy to the Western intervention that resulted in the removal of Mu'ammar al-Qaddafi, supporting the Gulf

Cooperation Council's effective efforts to compel Yemeni president Ali Abdullah Saleh to step down, and actively participating in attempts to resolve the Syrian conflict (Maddy-Weitzman 2012). While some member states remain distrustful of civil society, there are individuals within the Secretariats of the League of Arab States (LAS) who support institutional reform. The potential for the Arab League to play a broader role in democratising the region by engaging in election monitoring, responding to humanitarian crises and reforming its human rights protection system has been hotly debated by analysts.

Various initiatives have been proposed during European Union-LAS conferences, such as launching region-wide campaigns to raise awareness about the role of civil society, holding workshops on specific policy issues for CSOs and LAS civil servants and developing mechanisms for CSOs in various fields to present reports to relevant ministerial councils (European Peacebuilding Liaison Office (EPLO) 2013). However, these ideas have yet to be put into action, and it is uncertain whether the LAS will be able to establish an effective regional peace infrastructure.

In Southeast Asia, ASEAN has taken steps to engage more closely with civil society and create a participatory 'ASEAN Community'. In 2005, the Malaysian government organised the first ASEAN Civil Society Conference (ACSC) alongside the ASEAN Summit, creating opportunities for CSOs to interact with heads of state. In 2008, ASEAN adopted the ASEAN Charter, which emphasises the importance of civil society engagement. In 2009, ASEAN also established its Intergovernmental Commission on Human Rights (AICHR).

Despite these recent developments, the regional infrastructure for peace in Southeast Asia is still in its early stages. The ASEAN Secretariat lacks formal mechanisms for engagement or clear procedures for accrediting CSOs. The ACSC and corresponding ASEAN People's Forums are highly informal and depend on the space that the hosting chair may (or may not) wish to give them during the ASEAN Summit or while holding the rotational chair. While regional networks have emerged, such as the prominent CSO Solidarity for Asia Peoples' Advocacies (SAPA), coordination among CSOs can be poor (Rodríguez Torres 2016).

While ASEAN has limited conflict prevention mechanisms, over the last years, it has still managed to develop some, demonstrating its potential for peacebuilding. For example, in 2011 the ASEAN Institute for Peace and Reconciliation (AIPR) was established, primarily for research and policy work, with a potential role in facilitating peace negotiations. Also, the Asian Peace and Reconciliation Council (APRC) promotes quiet diplomacy in the region, drawing on a high-level pool of dignitaries for conflict prevention.

In Latin America, opportunities for developing a regional peace infrastructure with the participation of state and non-state actors are limited. Despite past successes in countries like El Salvador, Nicaragua and Colombia, regional multilateralism is being undermined and discredited by the growing political polarisation.

Political divisions within governments of different countries in Latin America have hindered the ability of regional organisations, such as the OAS, to take effective action for conflict prevention and peacebuilding. For example, the OAS's attempt to apply its democratic charter to defend democracy in Venezuela has been unsuccessful due to the majority rule-based political divisions. In addition, the emergence of new regional forums such as the Bolivarian Alliance for the Peoples of Our America (ALBA), the Union of South American Nations (UNASUR) and the Community of Latin American and Caribbean States (CELAC) have weakened the position of the OAS. This has led to a dysfunctional regional multilateralism characterised by 'forum shopping' where deliberations of

one organisation are often discredited and taken to one of the other organisations whenever a particular government of a state feels it will be more favourable to its interests.

Furthermore, Latin American RIGOs tend to be state-centric and lack financial and human resources, showing a preference for presidential summits. This makes it difficult to establish formal cooperation agreements and to develop effective capacities to install a regional infrastructure for peace that is credible and accepted by the highly ideologised political regimes of many of the countries in the region (Legler 2010; Serbín 2012).

Conclusion

In many conflict-ridden societies, the development of I4Ps has contributed to bringing together different—and differing—actors to explore collaborative approaches for addressing peace and security challenges. Not only have these infrastructures helped to create greater resilience and provide alternative avenues for collective prevention, management and resolution of violent conflict at the community level, but some of them have also evolved into effective mechanisms at the national level, becoming important spaces in the promotion of the democratic and inclusive governance of always delicate security issues.

Moreover, in contexts of state fragility, I4Ps have proven to be effective in strengthening the legitimacy of the state, reinforcing state institutions and contributing to the re-establishment of the social contract, rebuilding relationships of trust among people and state institutions. This has been done by engaging community leaders of different sectors and providing them with multi-stakeholder platforms that facilitate joint analysis and collective action at different levels when required. These mechanisms give a protagonist role to citizen organisations that no longer act simply as passive ‘receivers’ of government policies, but as active agents, and even key partners, in the development and implementation of such policies.

In that sense, the bottom-up approach of I4Ps remains a key element of their success and makes these structures useful spaces for dialogue, interaction with government officials and citizen advocacy on matters related to peace and security. Hence, the development of I4P can be a useful mechanism to effectively articulate human security principles and strategies in communities and countries affected by violent conflict.

The experience of different countries shows that these infrastructures are more effective when there is a certain degree of formalisation. The case of Ghana is a good example of an I4P based on a legal mandate that gives its participating organisations greater leverage, credibility and visibility in the communities where they are active. While it could seem that such official backing could go against the bottom-up principle of I4P, it strengthens this component and reflects the increasing relevance of the partnership between state bodies and private citizens’ organisations.

These public-private partnerships are of vital importance for the success of I4P. It is the participation of private citizens and CSOs that gives these mechanisms greater influence and outreach, beyond that which governments acting by themselves could provide. At the same time, it is the official character and the legal backing of these forums that provide spaces for participation in which CSOs feel they can be more effective and influential.

Another aspect of valuable complementarity takes place when I4Ps are elevated internationally to the regional level. There is huge potential for RIGOs to become the ‘hub’ of such regional infrastructures. Again, collaboration with CSOs is fundamental in these cases. If, as defined by UNDP, I4Ps are, in essence, networks of interdependent systems, resources, values, and skills co-owned by government, civil society and community

institutions to prevent conflict and enable peaceful mediation, there is a very important regional dimension to the different conflict systems that need to be acknowledged.

Multilateral organisations are networks of states that acknowledge a great degree of interdependence and seek to collectively manage common problems. Multilateral forums need to start transitioning from being closed systems of sovereign states, with little room for open debate and no space for the involvement of citizens, to becoming ‘agoras’, public spaces open to non-state actors, in which issues can be debated and even decided (Klabbers 2005).

The growing involvement of citizens as active agents of their own security is a most promising development but also one of the most difficult to organise. Engaging with established networks and platforms seems like an effective way to overcome this obstacle. The most successful I4Ps have established partnerships with network organisations at national and regional levels. Establishing a division of work with platforms of CSOs and allowing them to decide who are the best people and organisations to participate in a particular discussion could contribute to overcoming the difficult question of who to engage with, preventing common pitfalls that undermine inclusivity. It is not a perfect solution, but it can be helpful to provide ownership and simplify complexity.

The governance of peace and security must strive to incorporate the great variety of actors and interests in order to respond to increasingly complex challenges. The development of I4Ps can provide spaces for multi-actor collaboration, connecting different levels of action: grass roots, community, regional, national, regional international, and global, and putting human security at the centre of peace and security policies.

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13 ‘Organic Evolution’ in the United Nations

Retrospect and Prospect

Guy Fiti Sinclair

Global governance has undergone a series of profound transformations over the past eight decades.¹ From a world of empires to a world of nation states; from formal inter-governmental organisations to non-governmental organisations (NGOs) and transnational corporations—the actors of global governance, their modalities of action and interaction have all proliferated since the close of World War II until the present day. Once viewed as the centrepiece of international law and order, the United Nations is now one of several hundred international organisations—albeit the largest and still one of the broadest in functions—that states have created to coordinate their affairs, settle their disputes and advance their interests. As catastrophic global risks multiply and deepen, the question arises whether the United Nations retains the capacity to adapt to present-day needs and exigencies. This chapter critically reflects on this question in light of the United Nations’s record of ‘organic evolution’ and considers the challenges that lie ahead if it is to make further adjustments in practice.

At the time of its founding, at the United Nations Conference on International Organization held in San Francisco in April–June 1945, the United Nations Organization (as it was then called) was widely expected to serve as the central international organisation to guarantee peace and security in the postwar international order. Some three-quarters of a century later, the United Nations is a complex network of intergovernmental forums supported by a vast bureaucratic apparatus distributed across numerous agencies and offices. Perhaps best known to the general public through the annual meetings of its General Assembly, the dramatic confrontations and decisions of its Security Council, and the blue helmets of its peacekeepers, the United Nations remains the most important global governance organisation concerned with ‘high politics’ questions of international peace and security. Yet UN entities—its agencies, funds, programmes, and offices—now intervene in a wide range of other matters, including social and economic development (UNDP 2023), international trade and finance (UNCTAD 2023; UNCITRAL 2023), the protection of children (UNICEF 2023), the status of women (UN Women 2023), refugees (UNHCR 2023), human rights,² and the environment (UNEP 2023; UNFCCC 2023). In all these ways and more, the United Nations has powerfully shaped and re-shaped modern statehood and state powers, while dramatically expanding beyond the powers expressly provided to it in the Charter.

Given the range and sheer number of component entities that make up the United Nations today and the variety of their activities, no single narrative or analysis can adequately explain how the organisation has evolved from its establishment to the present day.³ Indeed, the United Nations’s highly decentralised and diversified structure makes it

reasonable to envisage it as an assemblage of heterogeneous entities, each with its own constitutive makeup, interests, goals, and instrumentalities, and functioning in diverse and shifting relationships with one another. From this perspective, what we call the 'United Nations' is the sum of its component entities and their interrelationships. Moreover, the United Nations's identity and boundaries are constantly defined and redefined by its interactions with other 'external' entities of various kinds. These include a wide range of specialised agencies,⁴ international organisations outside the UN system, NGOs, corporations, private donors, and foundations.

Rather than attempt a general account of the United Nations's evolution, then, this chapter focuses on those aspects most relevant to the organisation's core purpose of maintaining international peace and security.⁵ By and large, these concern acts of the General Assembly and, especially, the Security Council; they include decisions on questions of collective security, peacekeeping and the peaceful settlement of disputes. For reasons of space, the chapter does not consider the settlement of disputes through the United Nations's principal judicial organ, the International Court of Justice, or other courts and tribunals associated with the United Nations. Nor does it address the important work relating to disarmament and arms control by UN bodies or organisations related to the United Nations, such as the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO 2023), the International Atomic Energy Agency (IAEA 2023) and Organisation for the Prohibition of Chemical Weapons (OPCW 2023). The chapter does, however, lightly trace the evolution of the United Nations's development and human rights-related work, with the aim of indicating how these activities have tended to converge with the United Nations's peace and security mandate in a range of important practices.

The United Nations is far from being the only global governance organisation to have undergone a dramatic transformation in its structures and powers. The next part of this chapter begins by identifying the central dynamics of such transformations, including the external and internal factors which stimulate such evolution, legal modes through which it takes place and the narratives or ideological frameworks through which it is understood and legitimated. The next section of this chapter offers a high-level history of 'organic evolution' in the United Nations's structure and activities. The following section then outlines several key legitimacy challenges that arise from how the United Nations has evolved, focusing on legal, input and output legitimacy, and how each of these is made more complex by the United Nations's many interactions with other organisations and entities. Section 'Conclusion: Possibilities for the Future' concludes by exploring some overarching questions which must guide deliberations on how the United Nations will approach the next stages in its organisational evolution, with particular attention to how its mandate in the area of peace and security may be meaningfully enhanced.

Dynamics of 'Organic Evolution' in International Organisations

As key elements in contemporary global governance, international organisations such as the United Nations are potential sources of dynamism as well as stability. By definition, international organisations are established by a treaty or another instrument governed by international law.⁶ These documents, often called their 'constituent instruments', typically enumerate the central organs of an international organisation, describe their powers and methods of decision-making and set out processes by which their own terms may be

amended or revised. Notwithstanding these provisions, it is not unusual for international organisations to create new organs—even entirely new international organisations (Johnson 2014)—and undertake new activities that were not foreseen by their founders and not prescribed in their constituent instruments (Sinclair 2017). The precise nature and rationales for such innovations vary from organisation to organisation, but it is possible to identify some common themes and dynamics.

First, international organisations often expand their powers and begin to carry out new kinds of activities in response to significant *external stimuli*. These may come in the form of political crises, such as wars and conflicts, or economic shocks, such as the Great Depression or the Global Financial Crisis, which demand immediate emergency action. They may appear as longer-term processes, such as decolonisation, which almost doubled the United Nations's membership between 1945 and 1960, tilting the balance of interests within the United Nation's political organs and forcing the organisation to address issues of pressing concern to its new members. They may involve changes in the wider policy environment, such as the shift from essentially Keynesian, state-centred models of economic development which prevailed from the 1950s through the 1970s to 'neoliberal', neo-classical and supply-side economic ideas which rose to dominance during the 1980s and became orthodoxy after the end of the Cold War. They may also arise with the emergence of new technologies, whether in the form of communications and information technologies or in the sense of novel techniques for influencing state and individual behaviour, such as indicators or auditing. Another important source of external stimuli, and one that has influenced the United Nations throughout its history, has been the changing ecology of international actors with which it has had to interact.⁷ All these elements—political and economic crises, shifts in international policy, new technologies, and increasing interactions—have intensified the trends to globalisation and global governance, especially over the past few decades.

Second, *how* international organisations change depends in large part on *internal factors*. Indeed, a key element of most definitions of international organisations is their possession of a separate international legal personality (ILC 2011: art 2(a)) or at least one organ that is capable of expressing an independent will and may give rise to innovations that materialise within international organisations themselves. The executive heads of international organisations can exercise particular influence over the directions they take, whether in setting new agendas through 'policy entrepreneurship', in publicly articulating the rationale for new initiatives or in skilfully manoeuvring within the margins of their delegated authority. The examples of Albert Thomas in the International Labour Organization (ILO) and Dag Hammarskjöld and Kofi Annan in the United Nations stand out in this respect (Chesterman 2007; Sinclair 2017). In doing so, these leading international civil servants exercise different combinations of legal, moral and expert authority (Sinclair 2015). Beyond any specific individual, institutional cultures determine how external stimuli are interpreted and acted upon; knowledge communities associated with international organisations can thus shape the direction in which an organisation evolves, as studies of the role of economists and economic thinking within World Bank and the International Monetary Fund (IMF) have demonstrated (Alacevich 2009; Chwieroth 2010). Significant failures by an international organisation can prompt reforms with long-lasting effects.

Third, international organisations differ in the *legal modes* by which they implement institutional changes. Sometimes those changes are made by formally amending an organisation's constituent instrument, as when the UN Charter was amended to enlarge

the membership of the Security Council in 1965 and the Economic and Social Council (ECOSOC) in 1965 and 1973. Rather than making an amendment, sometimes an organisation's constituent instrument is entirely replaced, as has happened periodically in the Universal Postal Union and the International Telecommunications Union (previously the International Telegraph Union) (Schermers and Blokker 2003: para. 1195). More substantial yet are cases where an organisation's name is modified together with its constituent instrument to reflect a substantial change in its functions, as when the Organisation for European Economic Co-operation (OEEC) became the Organisation for Economic Co-operation and Development (OECD); when one or more existing organisations are subsumed under another, as when several of the European Communities became part of the European Union,⁸ or when an entirely new organisation is created to take over many of the functions, assets and liabilities of an earlier, dissolved organisation, as when the United Nations was created to replace the League of Nations.

Fourth, certain common *narratives* have emerged to understand and justify change in international organisations. These narratives typically draw on public law concepts in particular national systems, applied by analogy to the international sphere. The plenary organs of international organisations (such as the United Nations General Assembly) are thus frequently likened to national parliaments, and their relationships to executive organs (such as the Security Council) are sometimes described in terms of 'checks and balances' (Alvarez 2001). Expanding this analogy, legal commentators and international civil servants have regularly described the growth and expansion of powers exercised by international organisations as a process of 'constitutional growth' and their constituent instruments as 'living constitutions' (Engel 1967). As early as 1920, both the League of Nations and the ILO were described—the first by an international lawyer in the United States, the second by the Director of the International Labour Office—in almost identical terms (Thomas 1948; Wright 1920). Originating in Western liberal democratic traditions, it is doubtful whether these analogies apply with much precision to international organisations, which lack a firm democratic basis (Alvarez 2001). Nonetheless, by merging the familiar (and comforting) ideas of the rule of law, emergency response and societal progress, they have served as powerful legitimating imaginaries for international organisations to multiply their organs and expand the scope of their activities.

By the time the UN Charter was signed, these imaginaries were firmly embedded in international legal discourse. In his closing speech to the San Francisco conference, U.S. President Harry Truman thus remarked (cited in Franck 1985: 15): 'This Charter, like our own Constitution, will be expanded and improved as time goes on'. One of the earliest commentaries made a similar prediction (Pollux 1946: 54):

The Charter, like every written Constitution, will be a living instrument. It will be applied daily; and every application of the Charter, every use of an Article, implies an interpretation; on each occasion a decision is involved which may change the existing law and start a new constitutional development. A constitutional customary law will grow up and the Charter itself will merely form the framework of the Organization which will be filled in by the practice of the different organs.

Translating this imaginary into legal terms, an early advisory opinion of the International Court of Justice confirmed that the United Nations not only possessed international legal personality but could also exercise implied powers—that is, 'powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being

essential to the performance of its duties' (ICJ 1949: ICJ Rep 174, 182). In practice, this has been the principal means by which the United Nations's legal powers have expanded, given that the Charter has rarely been amended—and then only in non-essential elements, such as increasing the membership of the Security Council and ECOSOC to reflect the dramatic rise in the organisation's membership following decolonisation.⁹ The next part of this chapter outlines a short history of institutional changes in the United Nations over its first 75 years of operations, many of which have been envisioned and carried out as necessary to a process of 'organic evolution' in that organisation and its changing role in global governance.

A Short History of 'Organic Evolution' in the United Nations

The design of the postwar international order, initially formulated by (mostly) U.S. policymakers in the early years of World War II and settled by negotiations among the Allied and Associated powers in its closing months, centred—at least ostensibly and formally—on the United Nations.¹⁰ As the 'general international organization' (United Nations 1943: art. 4; World Bank 1944: art. 5, s. 8(a)), the UN Charter aimed to establish a binding mechanism of collective security through the Security Council, to whose service members would provide on-call armed contingents under the responsibility of a standing Military Staff Committee (United Nations 1945: art. 47). It was hoped that these arrangements would overcome the evident limitations of the League of Nations, which had the fatal flaw of requiring unanimity among all its members before military action could be taken. Through the General Assembly and ECOSOC, the United Nations also had a broad mandate to promote social and economic cooperation, including by coordinating the activities of the specialised agencies (United Nations 1945: arts. 60, 62–64). These responsibilities extended to supervising the colonial administration of Trust Territories and other non-self-governing territories (United Nations 1945: chs. XI, XII and XIII).

Almost immediately after its establishment, the United Nations was faced with unanticipated circumstances which forced it to adapt in a variety of ways. The Cold War conflict between East and West meant that the Military Staff Committee was never established, no member made military forces available to the United Nations, and Security Council action was more often than not blocked by one or other of its permanent members. Instead, collective security arrangements emerged at a regional level, reflecting the Cold War divisions, such as the North Atlantic Treaty Organization (NATO) and the Warsaw Pact (United Nations 1945: ch. VIII, Regional Arrangements). Only once during the Cold War was the Council able to authorise military action—when the Soviet Union was boycotting Security Council meetings in protest against the exclusion of Communist China from the United Nations—to intervene in the Korean conflict under the leadership of U.S. General Douglas MacArthur (UNGA 1950a). Recognising the unique circumstances that made this action possible, the United States took the initiative to introduce the 'Uniting for Peace' resolution, which would allow the General Assembly to recommend military action in circumstances when the Security Council was prevented from doing so by a member's veto (UNGA 1950b).¹¹

The process of decolonisation that began after World War II and accelerated through the 1950s and 1960s prompted several other adaptations. Both the United Nations itself and several of the specialised agencies launched extensive programmes of technical assistance to support economic and social development efforts in the Global South. Embodying a kind of ideal international civil servant in the eyes of many at the time, the second UN Secretary-General, Dag Hammarskjöld, pioneered techniques of preventive

diplomacy, such as negotiating the release of U.S. airmen who had been shot down over China (Urquhart 1972: 96–99). An early practice of sending unarmed observation missions to conflict hotspots evolved, in the context of collapsing European overseas empires, into the regular use of peacekeeping missions—nowhere mentioned in the Charter—as a technology of orderly decolonisation (Sinclair 2019).¹² In response to the 1956 Suez Crisis, the General Assembly invoked the 'Uniting for Peace' resolution to create the first armed peacekeeping mission, the UN Emergency Force (UNEF) (UNGA 1956a). Following this experience, the UN Secretary-General Dag Hammarskjöld codified key peacekeeping principles, requiring peacekeeping operations to be deployed only with the consent of the parties, in particular the host state(s); to remain neutral and impartial in the conflict; and to use a minimum of force, only in self-defence (Hammarskjöld 1958). These principles remain broadly accepted today, though they are often honoured in the breach.¹³

During these early decades, the United Nations was also a productive source of new ideas and practices concerned with economic and social development.¹⁴ These emerged from and in turn led to a proliferation of UN development funds and programmes, including the Department of Economic Affairs, functional and regional economic commissions,¹⁵ an Expanded Programme of Technical Assistance (which incorporated the activities of the United Nations and specialised agencies), the UN Conference on Trade and Development (UNCTAD), the UN Industrial Development Organization (UNIDO), and the United Nations Development Programme (UNDP) (Sinclair 2023). Four years after UNEF, the massive UN operation in the Congo (*Opération des Nations Unies au Congo*, or ONUC) faced a much more complex situation and invoked military responses which arguably exceeded each of Hammarskjöld's principles (Findlay 1999). ONUC also established an extensive civilian programme, linking UN funds and programmes with those of many specialised agencies to support economic development and statebuilding activities (Sinclair 2017). As such, ONUC stands out as an early example of peacebuilding and even peace enforcement, which would become more common from the 1990s onwards.

The next two decades were a period of heightened expectations and disappointed hopes for many associated with the United Nations. Chastened by the constitutional and financial crisis that followed ONUC, UN peacekeeping remained relatively unambitious during this period. At the start of the 1970s, the General Assembly resolved to approve a landmark declaration codifying the principles of international law concerning friendly relations and cooperation among states designed to adapt the relevant Charter provisions to the postcolonial era (UNGA 1970). In the wake of the abrupt collapse of the Bretton Woods monetary system and the oil crisis of 1973, a number of non-aligned states in the Global South championed—and passed through the General Assembly—proposals for a New International Economic Order (NIEO) that would involve a significant restructuring of global institutions, including the United Nations itself and its relationships to international financial institutions such as World Bank and the IMF (UNGA 1974b).¹⁶ Notwithstanding the launch of a North-South Dialogue to explore issues raised by the NIEO, the effort effectively ended with the debt crisis in Latin America and other countries of the Global South, beginning in the early 1980s. During this decade, often described as a 'lost decade' for development (Carrasco 1999), a 'Washington consensus' centred on deregulation, trade liberalisation and structural adjustment became economic orthodoxy and empowered international financial institutions, to the detriment of the United Nations (Williamson 2009). Yet these same decades also saw an efflorescence of the UN human rights system through proliferating treaty bodies and special procedures (Limon and Power 2014).

The end of the Cold War marked a major shift in the United Nations's fortunes and a new period of normative and institutional innovation. In the lead-up to the 1990 Gulf crisis, Security Council resolutions authorised sanctions and the use of force against Iraq (UN Security Council 1990). Rarely used during the Cold War, sanctions became a frequent tool of Security Council action—and a controversial one where, as in Iraq, their severe humanitarian consequences became evident (Farrall 2007; Sullivan 2020). During that decade, the Council achieved an unprecedented level of activity, authorising peace operations with ambitious goals—including monitoring local police, disarming combatants, monitoring human rights, organising elections, and reconstructing state functions (Ratner 1995)—and establishing international criminal tribunals to address genocide, war crimes and crimes against humanity, as in Rwanda and the former Yugoslavia (Schabas 2006). The new possibilities for peace operations were summed up in the *Agenda for Peace* by then-Secretary-General Boutros Boutros-Ghali, which distinguished traditional peacekeeping from two new kinds of operations involving peace enforcement and post-conflict building (Boutros-Ghali 1992). These efforts culminated, at the end of the decade, in mandated missions to administer territory in Kosovo and Timor Leste (Chesterman 2007). In parallel, UN development ideas returned to centre stage—in part through a series of international conferences which drew attention to issues of environmental sustainability, social and human development and human security—culminating in the Millennium Development Goals (Schechter 2009).

Several normative shifts around the turn of the millennium had the effect of fragmenting the policy grounds for UN peace and security engagements over the following decade. High-profile peacekeeping failures in Somalia, Srebrenica and Rwanda led to a significant review in 2000, which concluded that peacekeepers needed to undertake more robust responses to protect civilians in conflicts (United Nations Peacekeeping 2000). However, these same failures also led to the formulation of a new doctrine, the Responsibility to Protect (R2P), which received the endorsement of the General Assembly (UNGA 2005). And the terrorist attacks on the United States in September 2001, followed by the declaration of a 'global war on terror', prompted what has been termed a 'turn to legislation' by the Security Council, involving resolutions that require action on the part of all UN member states in terms that are general and abstract, not limited in time or to particular situations or states (Talmon 2005). NATO's bombing of Yugoslavia in 1999, carried out without Security Council authorisation, was a first step in weakening the Council's authority following the high watermark of the early 1990s. It was followed, among others, by the invasion of Iraq by a United States-led 'coalition of the willing' with questionable authority from the Security Council, a NATO intervention in Libya which arguably exceeded its Security Council mandate and Russia's invasion of Crimea without a Security Council mandate, all of which took place against the objections of a majority of the Council's members.

The multifaceted crises into which the United Nations has intervened over the last two decades have often seen an overlapping of human rights, humanitarian, development, governance, and refugee issues, which involve multiple international organisations, NGOs and private foundations. In the aftermath of the 2003 Iraq War, Secretary-General Kofi Annan's 'In Larger Freedom' report and the General Assembly's World Summit Outcome underscored the urgent entanglements of poverty, security and human rights (UNGA 2005; UN Secretary-General 2005). As its title suggests, the General Assembly's '2030 Agenda for Sustainable Development' represents the most ambitious global plan yet, embracing peacebuilding and conflict prevention, together with environmental sustainability, governance, human rights, social justice, and equity (Fukuda-Parr 2018; UNGA 2015).

Continuing a trend that began in the 1990s, regional organisations have regularly sought to undertake peacekeeping missions, often requiring coordination with the United Nations (Welz 2016). Though not directly involved in the wars in Afghanistan and Iraq, UN peacekeepers have learned from—and tended to incorporate counterinsurgency techniques from—those conflicts (Karlsrud 2015). UN operations are now regularly more 'robust', with stabilisation mandates that bring the United Nations into direct, even aggressive, engagements with warring parties (Karlsrud 2015). As the next part of this chapter will discuss, these circumstances raise complex questions of legitimacy with which the United Nations will need to grapple over the coming years.

Problems of Legitimacy

Legitimacy is a notoriously difficult concept to pin down, and its application to international organisations, especially one as complex as the United Nations, has become increasingly fraught. In exploring the problems of legitimacy that have arisen in relation to UN actions over the past three-quarters of a century, this part of the chapter is primarily concerned with the *sociological* legitimacy of the United Nations—that is to say, the perceptions or beliefs of social actors that the United Nations has the right to act and exercise the powers that it does—rather than determining whether these perceptions are correct in a normative sense. The goal here is not to measure empirically the waxing and waning of the United Nations's sociological legitimacy. Rather, this part of the chapter aims more modestly to outline how various audiences' views of UN legitimacy have changed over time so as to provide a basis for evaluating its prospects for future evolution.

In classical international legal terms, legitimacy was simply a matter of securing state consent. Having signed or acceded to the Charter, it was understood that UN members had agreed to be bound by its terms. In theory, then, any action or decision by a UN organ that went beyond the scope of the authority granted to it would thus exceed the limits of state consent and be deemed *ultra vires* or beyond its legal authority (Osieke 1983). In practice, however, it has proven very difficult to limit the expansion of the United Nations's powers by this means. By design, the Charter gave primacy to geopolitics over law, embodied in the notion of giving the most powerful (and thus the most dangerous) member states the right of veto over Security Council action. The Charter did not grant any court or tribunal the authority to make a binding *ultra vires* finding in relation to UN organs, nor is it clear what the effect of such a finding would be in legal terms or who would enforce it—particularly if it concerned a decision by the Security Council. Moreover, the doctrine of implied powers made it difficult to determine what areas of action, if any, would be off-limits for an organisation with purposes as broad as the United Nations. Indeed, as we have seen, some key UN practices have emerged in precisely this way. It is difficult today, for example, to envisage a United Nations without peacekeeping of some sort, notwithstanding the absence of any clear textual basis for it in the Charter.

As the United Nations has exercised ever greater powers of governance over populations and individuals, the *input legitimacy* of its decision-making processes has attracted increasing critical attention. The twin principles of democracy and the rule of law are most salient here; neither fits very comfortably with the United Nations's structures and procedures. The United Nations's democratic deficits are well known. The Security Council, which has sole authority to make binding decisions on matters of international peace

and security, has a limited membership of 15; as is well known, one-third of those seats are held by the leading Allied powers, selected at the end of World War II, each of whom wields a veto (including over amendments to the Charter, thus entrenching their own higher status). The General Assembly, which wields much less power than the Council, includes all UN member states, but many of these are not democratic and hardly representative of their populations. While efforts have been made to increase the participation of NGOs, social movements and affected populations in the United Nations's development activities, UN peace and security operations remain, by and large, under the control of states. By holding some members effectively above the law and failing to constrain the arbitrary use of power, the United Nations's institutional architecture contravenes the basic notion of the rule of law. Furthermore, the *ad hoc* nature of the United Nations's evolution is inconsistent with rule of law principles and expectations regarding generality, prospectivity, stability, and coherence (Brunnée and Toope 2010).

A separate set of concerns regarding the United Nations's *output legitimacy* has been consistently raised since its establishment. The organisation's inability to implement the Charter provisions on collective security and the repeated blocking of Security Council decisions by the veto in its first decade quickly led many to the conclusion that it had failed in its primary purpose (Luard 1982: 364–72). More recently, military actions taken by 'coalitions of the willing', and led by permanent members of the Security Council, often with no or scant basis in Council resolutions, have again created an impression that the organisation is impotent. Academic studies have shown that UN peacekeeping is generally effective in keeping the peace, shortening conflicts and reducing violence (Bara and Hultman 2020); nevertheless, operations are regularly criticised for not achieving their aims and, as mentioned earlier, several have failed with tragic consequences. The move to more robust peace enforcement and stabilisation missions has resulted in the United Nations effectively taking sides—usually with the existing state government and against insurgent groups—putting at risk the organisation's reputation for impartiality and increasing the likelihood that it will become yet another warring party (Mégret 2015: 120–23). With the widening scope of peacekeeping operations, a wider scope for bad behaviour on the part of their personnel also becomes more likely. The United Nations has thus come under increasingly harsh criticism for its mishandling of complaints against peacekeepers for sexual abuse and misconduct (Boon and Mégret 2019) and for failing to accept responsibility for a cholera outbreak in Haiti that had catastrophic humanitarian consequences (Alston 2016; Pillinger, Hurd and Barnett 2016).

Additional legitimacy problems arise from the difficulty of managing the tensions among the United Nations's various missions and the diverse sources of authority on which it draws. At least one analysis ascribes the United Nations's failure to intervene in Rwanda to a conflict between the United Nations's moral principles and legal-rational bureaucratic procedures which demanded a certain level of support from member states before action could be taken (Barnett and Finnemore 2004). There are inherent tensions, also, between the United Nations's avowed principles of peace, security and human rights, and its goals of development and protecting the environment. From time to time, UN bodies engage in creative reinterpretation of their aims and principles, linking them in new ways that may for a time seem compelling—such as in the concepts of 'human security', 'civilian protection' or 'sustainable development'. Yet these concepts do not resolve the underlying tensions, which eventually re-emerge in practice. For example, a nexus between security and development concerns underpinned peacebuilding practices during the 1990s and 2000s, combining traditional strengths of the United Nations

(Chandler 2007). However, that nexus appears to have become too difficult to sustain in recent stabilisation missions (de Simone and Iocchi 2022), leaving peacekeeping without a compelling ideological framework beyond simply pacification.

These dynamics are made even more complicated by the manifold relations and interactions between the United Nations and other actors, which have their own—sometimes complementary, sometimes conflicting—missions and sources of authority. Peacekeeping operations may benefit from the combination of 'universal' and 'regional' authority when the United Nations and organisations such as the African Union or Economic Community of West African States (ECOWAS) cooperate. Conversely, however, these forms of authority can come into tension with one another, creating problems of input legitimacy. The United Nations's 'universal' authority can be perceived and portrayed as representing a kind of neo-imperial interference from outside the region, especially when it is required to cooperate with peacekeeping forces from European states and organisations (Spandler 2020). Complex multi-actor peace operations also raise more mundane issues regarding leadership and coordination, which can negatively affect their results and output legitimacy. Additional legitimacy concerns arise in relation to cooperation between the United Nations and private actors; while such cooperation might redound to the benefit of the United Nations's output legitimacy—though this is not always the case—it can undermine the United Nations's input legitimacy, which derives in part from the sense that it is a public authority promoting public goods (Bogdandy *et al.* 2010). In all these instances, operational linkages with other actors—whether conceptualised as delegation, decentralisation, partnership, or otherwise—tend to diffuse responsibility. This, in turn, makes it difficult for the United Nations to meet standards of transparency and accountability now expected by many member states, affected populations and wider publics (Kingsbury and Casini 2009).

Conclusion: Possibilities for the Future

The United Nations's role in the early 21st century contrasts starkly with that envisaged in the UN Charter and enacted by it in the years immediately following World War II. Established as the 'general' international organisation at the centre of a functionally decentralised 'family' of specialised agencies, the United Nations was clearly expected to carry out a coordinating role in relation to a wide range of social and economic issues. On its face, Chapter VII of the Charter appeared to empower the Security Council with the authority to take decisive action, up to and including the use of military force, to maintain international peace and security. Yet the Charter's veto provision also established a 'safety valve', insisted upon by the victorious 'great powers' who were to become permanent members of the Security Council, to forestall action on matters where their (self-defined) vital interests were implicated. Nevertheless, the United Nations's intended centrality was evident in the lip service paid to the Charter in the constituent instruments of both NATO (1949: preamble art. 1) and the Warsaw Pact (UNTC 1955: preamble art. 1). Moreover, the United States was able to use its dominant position in the organisation to shape it to its ends, whether through the 'Uniting for Peace' resolution or otherwise.

By comparison, the United Nations today finds itself embedded in a very different set of arrangements for global governance. UN entities are enmeshed in multi-layered networks of actors: states and the remnants of empires; other international organisations, both within the 'UN family' and without; informal international groupings, such as the

G7 and the G20, which play important ‘steering’ roles in the global economy; NGOs; transnational corporations; public-private partnerships; and more. The United Nations both empowers and relies on these other actors to achieve its goals, including in the field of international peace and security. Notwithstanding its claims of global leadership, the ability of the United States to play the kind of role in the United Nations that it did in the postwar and the post-Cold War years has been undermined by successive misadventures and missteps, as well as by the rise (or return) to power of states such as China. In all this, the United Nations faces a range of new challenges and opportunities while still working within essentially the same textual framework it had at the outset.

This chapter has identified the central dynamics of ‘organic evolution’ in international organisations and illustrated these dynamics through a short history of changes in the United Nations’s structure and activities; it also outlined the key legitimacy challenges that arise from those changes. The United Nations as it exists today is clearly very different from the organisation envisaged by the representatives of the 50 founding member states that gathered at San Francisco. The collective security mechanism they enshrined in the Charter was never put into effect. Indeed, the relatively clear-cut interstate wars to which they were accustomed, and which that mechanism was designed to address, have largely been displaced by a series of complex, drawn-out intra-state conflicts involving a variety of state and non-state actors. As a second-best technology originally devised to facilitate the orderly transition from a world of empires to a world of nation states, UN peacekeeping has been sporadically adapted to fit these changed circumstances and needs, often linking up productively with the United Nations’s burgeoning programmes for development and human rights. Nevertheless, the UN Security Council remains persistently and frustratingly paralysed when it comes to any conflict where the perceived interests of its permanent members do not align. Notwithstanding a proliferation of programmes, funds and offices, the hierarchies of state power reflected in the United Nations’s core structures and decision-making procedures often seem frozen in time at 1945.

Given the mounting, cross-cutting challenges to the United Nations’s legitimacy outlined in this chapter, four overarching (and interacting) questions seem crucial for determining its future. First, should UN members give up on collective security as a utopian ideal that can never be achieved or continue the struggle to realise it effectively? Most discussions of UN reform—and there have been many over the years—centre on this issue (Müller 2016). There is widespread agreement that the membership structure of the Security Council and the veto power vested in its permanent members constitute the primary obstacles to a well-functioning system of collective security. However, this is where the agreement usually ends. Which states, if any, should replace the current permanent members on the Security Council; how to ensure adequate representation of each continent or region, both on the Council and in any standing international peace force; how to guarantee that the states with the largest and most powerful militaries remain positive contributors to the scheme and do not act as spoilers; and how to avoid the current permanent members simply vetoing any proposed reforms—these are among the thorny issues that must be resolved in order for progress to be made on this front. In the meantime, using the ‘Uniting for Peace’ mechanism to bypass the Security Council’s dysfunctions seems appealing in principle but only rarely works out in practice, particularly where a permanent member is already involved in a conflict (Carswell 2013).

Second, how can the United Nations consolidate and strengthen its legitimacy in the eyes of both its member states and other broader constituencies? The Security Council reforms already discussed would affect both input and output legitimacy. Aside from the Security Council, one long-standing proposal to improve the input legitimacy of the General Assembly is to weight votes according to the populations of member states (Clark and Sohn 1958);¹⁷ another is to supplement it with another, more representative plenary organ, such as a World Parliamentary Assembly (Lopez-Claros, Dahl and Groff 2020). Greater involvement of civil society organisations in UN decision-making is sometimes advocated, but without safeguards, this is likely to mean that the best-resourced NGOs, foundations and think tanks with headquarters in the Global North will dominate this channel of input, with inevitable distortions and biases (Reydam 2016; Wade 2009). In terms of output legitimacy, cooperation with other organisations and agencies, while unavoidable and probably beneficial overall, will require careful monitoring and management. More urgently, steps need to be taken to ensure that the United Nations accepts—and is seen to be accepting—moral accountability and legal responsibility for any breach of human rights, humanitarian and environmental norms by its organs, officials and agents. Otherwise, the organisation will be at risk of losing its hard-won legitimacy in the eyes of many, and rightfully so.

Third, do the overlapping mandates among UN bodies, and between the United Nations and other agencies, call for efforts to rethink the United Nations's organisational structure? The United Nations's notoriously complex, sprawling and decentralised structure is an outcome of many historical contingencies, decisions and path-dependencies; it is certainly not how one would design the organisation if one were starting from scratch today. Here, one might wonder whether it would make more sense to consolidate some programmes and funds; to redistribute tasks between UN agencies that find themselves working in the same areas, even competing for resources; and to renegotiate the divisions of labour between UN and non-UN bodies. Beyond simply devising fresh organisational charts and entering into new relationship agreements, this exercise would require rethinking the United Nations's *raison d'être* and the problems it faces today rather than 75 or even 25 years ago.

Lastly, how should these and other changes to the United Nations be implemented? The history of the United Nations's evolution, as this chapter has shown, has mostly consisted of informal adaptations, sometimes called 'de facto revision' (Engel 1952), carried out through interpretation and practice. This has provided a considerable degree of flexibility and allowed the United Nations to experiment with new institutional forms and techniques without necessarily committing to them once and for all. However, the time might have come to codify some of these practices—and other reforms as discussed in this chapter—through more formal means, whether by amending the Charter or replacing it with an entirely new constituent instrument.¹⁸ Adopting such a formal approach might provide an occasion to consult widely beyond governments and NGOs, engaging populations and individuals directly through a process similar to constituent assemblies. This might seem unduly risky at a moment of populist anxieties; however, recent research suggests that there is broad popular support for the United Nations across a variety of countries (Ghassim and Koenig-Archibugi 2022). Taking the opening words of the Charter as more than a mere rhetorical flourish,¹⁹ such an approach would allow the peoples of the world some part in deciding how they wish to be governed and would invest the world organisation with a renewed stock of legitimacy with which to face the future.

Notes

- 1 The term ‘global governance’ originates in the post-Cold War era (Bevir and Hall 2011). I thus use the term somewhat anachronistically to indicate the changing practices, institutions, norms, and political imaginaries comprising international relations from 1945 onwards.
- 2 For example, the UN Human Rights Council (2023), its special procedures and various human rights treaty bodies.
- 3 Useful partial narratives can be found in Luard (1982, 1989) and Sayward 2017.
- 4 The specialised agencies of the United Nations include the Food and Agriculture Organization (FAO), the World Health Organization (WHO), the International Labour Organization (ILO), and the UN Educational, Scientific and Cultural Organization (UNESCO).
- 5 See United Nations 1945: art. 1: ‘The Purposes of the United Nations are: (1) To maintain international peace and security...’.
- 6 ILC (2011): art. 2(a), defines ‘international organization’ as ‘an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality’.
- 7 These include specialised agencies; international economic institutions, including World Bank (WB) and the IMF, both of which, strictly speaking, are specialised agencies, as well as others such as the Asian Development Bank (ADB) or the Organisation for Economic Cooperation and Development (OECD); and a whole range of regional and sub-regional organisations, from the European Union to the African Union and the Economic Community of West African States (ECOWAS).
- 8 In a more complex example, the General Agreement on Trade and Tariffs evolved an informal organisational structure which was formalised and merged into the World Trade Organization in 1994 (Kim 2010; McKenzie 2020).
- 9 Articles 23 and 27 of the UN Charter (1945) were amended in 1963, with effect in 1965, enlarging the Security Council’s membership from 11 to 15 and changing the number of votes needed for decisions to be made. Article 61 has been amended twice, in 1963 (effective 1965) and in 1971 (effective 1973), enlarging the membership of ECOSOC from 18 to 27, and then to 54. Article 109, which was amended in 1965 (effective 1968), concerns arrangements for a conference of UN members to review the Charter—a conference which has never been held.
- 10 International relations ‘realists’—who view international relations as structured by competition, the search for security and the struggle for power among rational, self-interested states—have always considered international organisations to be epiphenomenal, reflecting extant power relations and having only a marginal impact on state behaviour (Mearsheimer 1995). From this perspective, the United Nations is particularly weak, and was made so by design, given its lack of independent funding and the veto power granted to the ‘great power’ members of the Security Council.
- 11 The United States and other permanent members of the Security Council have been reluctant to use this resolution, as it weakens the role of the Security Council and circumvents the veto (Carswell 2013).
- 12 Peacekeeping is described here as a ‘technology’ in the sense of a complex assemblage of heterogeneous elements through which power is made operable (Dean 1996). Armed peacekeeping operations in this period involved situations arising out of decolonisation at the end of European empires, such as in the Middle East and the Congo. For example, in addition to being the largest and most expensive peacekeeping operation to date (and for a long time thereafter), the Congo operation (1960–64) involved an extensive civilian corps of some 2,000 experts and technicians, together with funds, training programmes and equipment, all brought together to reconstruct the institutions of government in that country (Sinclair 2017).
- 13 Concerns about the inconsistent application (or non-application) of all three principles arose as early as the Congo operation of 1960–64 (Sinclair 2017). Similar concerns have arisen again in recent decades with the emergence of robust peace enforcement and stabilisation missions, as described later in this chapter.
- 14 These include the Singer-Prebisch theory, concerning the deteriorating terms of trade experienced by countries in the global periphery that mostly exported natural commodities (Jolly *et al.* 2004; Toye and Toye 2004: 111–28).
- 15 These include functional commissions on statistics, population and development; social development; and women, all of which were established in 1946, and regional economic commissions for Europe (1947), Asia (1948), Latin America (1948), and Africa (1958) (Berthelot 2004).

- 16 The NIEO advanced many specific proposals for the reform of international trade, the international monetary system and international financing. Some aimed to shift (or return) resources to the Global South, including demands for preferential treatment for developing countries, transfers of technology, the regulation of transnational corporations, and permanent sovereignty over natural resources. However, the NIEO also promoted mainstream liberal economic goals, such as the removal of restrictive business practices and tariff and non-tariff barriers to trade, the promotion of industrialisation in developing countries, adjustments in developed country economies to allow greater competition by exporters in developing countries, and new markets between countries in the Global South and across Cold War divisions. As several authors have shown, there was considerable consistency in the ideology and demands of Global South states from the 1950s through the 1970s (Dietrich 2017; Murphy 1984).
- 17 A variation on this approach proposes to weight votes in the General Assembly based on relative population shares and relative contributions to world gross domestic product (Lopez-Claros *et al.* 2020).
- 18 Either approach would also provide an opportunity to remove or heavily modify anachronistic Charter provisions such as Chapter XI (Declaration Regarding Non-Self-Governing Territories), Chapter XII (International Trusteeship System) and Chapter XIII (Trusteeship Council), and to redefine the relationships between the United Nations and other international organisations, long past due, in Chapter VIII (Regional Arrangements), Chapter IX (International Economic and Social Cooperation) and Chapter X (The Economic and Social Council).
- 19 The Charter's (United Nations 1945) preamble begins: 'We, the peoples of the United Nations'.

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14 Towards Global Parliament

An Affirming Reassessment after 22 Years

Andrew Strauss and Richard Falk

In this chapter, we reassess our advocacy of a Global Parliament over two decades following our earlier promotion of the idea.

When in the 1990s we began our efforts to advance the Parliament, it seemed as if economic development would supersede international conflict. But then came the 9/11 attacks on the United States. Almost immediately, this produced what Barry Buzan and others have called the ‘securitisation’ of international relations (see, for example, Arcudi 2006; Buzan, Wæver and de Wilde 1998), a series of wars and interventions, leading to a drastic recalibration of earlier prospects that democratisation at the United Nations and elsewhere would underpin global governance arrangements.

This re-militarisation of foreign policy was accompanied by a surge of nationalism, at least in part as a reaction to the culturally detached privileging of capital over people during the market-driven globalisation wave of the 1990s. Reviving the advocacy of a Global Parliament in such an atmosphere might seem a fool’s errand. But we write from a strong conviction that the twin pressures of global-scale challenges, including nuclear weapons, climate change and pandemics, together with a rising chorus of anxious demands emanating from civil society for a greater voice in the formation and implementation of global policy may come to exert decisive pressures for more effective and inclusive problem-solving mechanisms. Under such circumstances, we believe that a Global Parliament could play a constructive role in correcting the shortcomings of existing structures and behavioural modes of global governance.

The 2001 Case for a Global Parliament

On January 1, 2001, our article making the case for a Global Parliament appeared in the journal *Foreign Affairs* (Falk and Strauss 2001). We argued that the two trends defining the previous decade of the 1990s, democratisation and globalisation, were for the first time in history converging to make the initiation of a popularly elected Global Parliament a realistic political project. After all, in an increasingly democratic world, we reasoned, wouldn’t the contradiction between an undemocratic global order and a globalising economy, which required global decision-making, eventually collapse under its own weight? The catalyst for the Parliament, we suggested, could be the rise of global civil society and transnational business, which, in their role as powerful non-state actors and constituents for the Parliament, might be encouraged to support its initiation.

Of course, even back in the ostensibly halcyon era of the 1990s, we acknowledged that a parliament—if regarded as an incipient centrepiece of a powerful world government—was not a realistic, nor likely well-advised, political project. Instead, we offered an incremental transition strategy to an-as-yet inchoate system of democratic global governance. If as few as 20 to 30 economically and geographically diverse countries were to agree on a treaty framework for free and fair elections and an organisational structure for an initially advisory body, such a political project might become an achievable goal.

This incremental transition strategy was responsive to the challenges that likely would emanate from the large geopolitical actors, the United States, Russia and China, with veto power in the United Nations. Their non-participation in such initiatives as the International Criminal Court and the recently ratified Treaty on the Prohibition of Nuclear Weapons (UNODA 2021) is indicative of the kind of opposition to be expected from states that are most reluctant to weaken their sovereign autonomy and freedom of international manoeuvre for the sake of strengthening global governance.

Once in place, we anticipated that the Parliament's visibility and singular claim to global democratic legitimacy would draw both state and non-state actors into its orbit. Useful to both as a vehicle to identify global problems (including those that were not receiving required attention), once they found themselves with a seat at the table, and became collaborators in the Parliament's processes, they would likely participate in the Parliament as a vehicle for consulting on appropriate political accommodations. In this way, the mere existence of a Global Parliament would mount a challenge to existing patterns of governance and give it a platform over time to enhance its own influence, prestige and, ultimately, legal authority.

This projection was not merely a product of our fertile imaginations. Rather, it is inspired by the trajectory that the directly elected European Parliament has followed. At its inception in 1958, that body's powers were largely advisory, but appealing to its status as the only popularly elected mechanism to provide democratic checks and balances within the European architecture,¹ it has gradually attained more powers for itself in successive European Union treaties.² Today, it holds status as a primary law-making body alongside the European Commission and the European Council. A similar pattern would likely evolve with the Global Parliament as a direct outgrowth of its ability to build its own support network from a wide range of constituencies, including those asserting dissident views that would otherwise go unheard.

Our assessment of the Global Parliament's potential evolution based upon the experience of the European Parliament does not depend upon a romanticised view of the European Parliament. In fact, it is quite the opposite. The European Parliament's trajectory towards greater and greater importance has continued despite a good deal of often justified criticism of its institutional weaknesses, including charges of co-optation by special interests and elections manipulated by money and national governments. Just as is the case with the European Parliament, a Global Parliament, to be viable, would not be another worldly utopian institution but rather one grounded in the same kinds of real-world challenges that plague parliamentary institutions the world over, and like them, it would have to struggle to sustain a reputation of political independence and overall legitimacy.

While not naïve to the Parliament's potential shortcomings, we believed at the time, and still believe, that the global governance argument for the establishment of a Global Parliament is strong. Not only did we suggest that it would bring much-needed equity, as well as democratic checks and accountability to the global system, but the Parliament

could over time act as a force to bring states under a functional system of democratic administration of the rule of law. As we put it in the *Foreign Affairs* article,

Unlike the United Nations, this assembly would not be constituted by states. Because its authority would come directly from the global citizenry, it could refute the claim that states are bound only by laws to which they give their consent. Henceforth, the ability to opt out of collective efforts to protect the environment, control or eliminate weapons, safeguard human rights, or otherwise protect the global community could be challenged.

(Falk and Strauss 2001)

If the organised constituencies whose compliance states must command to maintain their power—i.e., corporate and civil society interests—were to be drawn into the Parliament's democratic processes and correspondingly accept the legitimacy of its results, the stage would seem set for the transfer of increasingly binding authority to the Parliament.

In a world that is still preoccupied with war, seemingly much more poised for a civilisational or even species-ending conflagration than it did 22 years ago, the further case for a Global Parliament, as a precursor to peaceful coexistence, has only grown stronger. Existing global governance structures bolster the war system with their dependence on heavily armed nation states, and on particular leading states, which continue to invest billions in militarised forms of security. In our view, then and now, because elected delegates would represent individuals directly instead of states, they would not feel as obliged to vote along national lines. Thus, in the politics of the Parliament, shifting and problem-solving pacific coalitions, formed along the lines of interests, values and ideology—as occur in many national parliaments of democratic countries—would supplant states as the constituent units of decision-making. As we explained in the *Foreign Affairs* article:

[C]ompromises among such competing but nonmilitarized coalitions might eventually undermine reliance on the current war system, in which international decisions are still made by heavily armed nations that are poised to destroy one another. In due course, international relations might more closely resemble policymaking within the most democratic societies of the world.

(Falk and Strauss 2001: 217)

At the time of the writing of the *Foreign Affairs* article, we were also making the case for a Global Parliament in many other venues, including a series of articles in the *New York Times International Edition*, the *Nation* and many other academic journals and books, and we spoke about it widely. While the proposal never came close to fruition, the receptivity that many in the mainstream media and elsewhere had to such ideas and proposals reflected the more globalist *zeitgeist* of the times and the sense of progressive possibility in the air as a dual consequence of the end of the Cold War and the trade and investment successes of economic globalisation.

Assessing the Possibilities in 2023

Looking back 22 years later, that *zeitgeist* and sense of possibility have been supplanted by the worldwide spectre of ethno-nationalist-authoritarianism. The seeds of unravelling were already sown in the 1990s by the decade's greatly expanding economic inequalities

and the missed political opportunities offered by the end of the Cold War. Nevertheless, if the cascade of events leading to the currently gloomy global situation could be pinpointed to a particular place and time, it would be the United States in the first year of the new millennium: namely, January 20—19 days after the publication of our *Foreign Affairs* article—with the inauguration of the George W. Bush administration and nine months later, with the 9/11 attacks on New York’s World Trade Center and Pentagon, edifices which many considered to be the symbolic touchstones of the world’s most powerful country. With these seminal events, and the second Iraq War that followed, the momentum for a post-Cold War global vision that sought to bring the nations and peoples of the world together around an ostensibly more harmonious order came to a screeching halt. And in its place, we have been watching as a two-decade descent towards global discord and disunion continues to unfold.

In many ways, the initiation of a Global Parliamentary body as a pluralistic antidote to ethno-nationalist authoritarianism is needed now more than ever. For it could give motivation and hope to those aspiring to a benevolent future for humankind. Given the current climate, however, and today’s weapons of mass destruction and fragile ecological conditions (principally brought about by climate change), is there any conceivable prospect for the initiation of such a body before the world community experiences a global disaster on a scale as great, or greater than, the two world wars?

There are many reasons to be pessimistic. Ethno-nationalist authoritarianism is on the march around the world. But even among progressively minded citizens, there is widespread disillusionment with democratic politics and with so-called global institutions. Despite all of this, we still hold out hope for the viability of the parliamentary project. In a rejoinder to our sober-minded detractors, who even in the aftermath of the post-Cold War optimism proclaimed us to be utopian idealists,³ we firmly believe that political forecasting cannot ultimately assess when history—making a creative advance into novelty (to borrow from Alfred North Whitehead⁴)—will produce a Global Parliament as a progressive initiative that gains credibility by means of strong civil society support throughout the world.

By way of comparison to political forecasting, it is well known that financial analysts have a notoriously poor record of predicting trends in the capital markets.⁵ While assessing the accuracy of political prognosis defies, for example, the simple up or down, right or wrong, calculus of stock picks, there is every reason to think that the technology of political prognostication is no better than that applied to finance.

With only 5 per cent of the Universe actually observable—roughly 68 per cent of the Universe is made up of opaque dark energy, and 27 per cent is made up of opaque dark matter—we have an extraordinarily limited understanding of the basic forces of nature that act upon us. To the extent that the primary dynamics that animate history are even intrinsically knowable—a big question in itself—we have only a very dim view of what those forces are or how they operate.

It is no surprise, therefore, that almost all of the major political discontinuities of the past generation have taken political experts completely by surprise: Lech Walesa’s jump over the Gdansk Shipyard wall, leading to the end of the Soviet empire; Mohamed Bouazizi’s self-immolation in Tunisia, launching the Arab Spring; and Donald Trump’s election to become the President of the United States, leading to the political upheaval that followed. In a bleak time like the present, contradictory currents cloud even the ability to extrapolate from current trends. The disposition to dispel cynicism that novel change is possible is not only born of a healthy cosmic humility, but it leaves open the

possibility that hope in itself can induce such transformative feelings, thoughts and collective action as to make credible the self-fulfilling possibility of a better future.

With full acknowledgement of our own limited abilities to predict fundamental discontinuities from the political past, we can, however, glean several trends that augur well for the initiation of a Global Parliament in the present world. The decline of the United States as the *hyper power*, as accentuated by the rise of China and the emergence of an increasingly multipolar world, may lead, before long, to a new openness by the United States and its allies to geopolitical alternatives. When the United States was more powerful and more respected, *Pax Americana* constituted a powerful geopolitical force and the organising principle that militated against the creation of a more diffuse and democratic structure around which to organise the global polity. For example, implicit in the writings of many American-oriented elites during that period is the concern that more inclusive global structures would indirectly weaken its control over the flow of history. Such a development may still seem at odds with the current U.S. commitment to huge permanent peacetime military budgets, augmented by far-flung commitments to defend the status quo in all parts of the planet. However, if the future alternative of a more pluralistic global model looks to be domination by another state, the calculation of leaders from the United States and its allies may become less hostile to experimenting with global democratic alternatives to a hegemonic oligarchy of powerful states, especially as the dangers from unattended global risks grow worse by the year.

With democracies very much on their heels, a receptive ear for a Global Parliament may also be found among those who feel the urgent need to secure their own democracies, given that the best road to maintaining national democracies may, in fact, run through a democratic global system. Within entrenched multilevel democratic countries, it is difficult, if not impossible, for one subcomponent of the system, say one town, to carve out for itself an authoritarian enclave. That is because the town is embedded in a mutually overlapping and reinforcing democratic structure. Because citizens are typically constituents of local, subnational and national parliamentary structures, it is difficult for aspiring local despots to convince or coerce enough of their would-be subjects to follow their commands so as to make their rule impermeable to the broader democratic structures. At the national level, however, there is no higher democratic structure to buttress democratic rule. At present, when authoritarians seize control of national governments, the international system, despite quixotic and inconsistent protesting, has little choice but to deal with such leadership as the chosen representative of the sovereign state.

Another phenomenon giving rise to confidence that the geopolitical context could be open to the possibility of a Global Parliament is the resilience of globalisation against the rising tide of tribalism. Given the economic nationalist headwinds, there has actually been relatively modest cross-border economic decoupling. To be sure, there is much current discussion in the West about ‘de-risking’ from China, and transformative new trade agreements along the lines of the General Agreement on Tariffs and Trade (GATT), the World Trade Organization (WTO) or North American Free Trade Agreement (NAFTA) have largely come to a halt. Nevertheless, despite a few high-profile challenges to the global trade and investment order (such as the *Trump tariffs* against China), international trade and cross-border capital flows stand at, or near, all-time highs,⁶ and global foreign direct investment remains robust (OECD n.d.). Thus, the imperative for the continued development of a functional global system of collective decision-making continues as in the 1990s, but with an admitted anti-globalisation, quasi-autarchic pushback.

As Anne-Marie Slaughter argued in her 2004 book, *A New World Order*, much of this decision-making is linked to communications in the digital age and is taking place under the radar among informal networks of bureaucrats, judges, and civil society and corporate actors (Slaughter 2004). It, therefore, seems likely that despite the visible geopolitical fault lines, this process of incrementally weaving together structures of global governance in response to regulatory needs is likely to continue. As early as the 1940s, David Mitrany and the other so-called international relations functionalists—and their successors, the neo-functionalists—developed a useful depoliticised framework for describing the geography of regulations in the decentralised international system (Mitrany 1966: 93–97).

For Mitrany and his successors, the path towards a more governable global system was not being developed and would likely not emerge from a utopian vision to create a centralised sovereign authority. Rather, individual regimes were being created to deal with specific regulatory challenges (see, generally, Mitrany 1933). In the functionalist telling, if pathogens were spreading across the planet, a sensible response would be to establish institutional capabilities of the sort associated with the World Health Organization. If transitional air travel had to be coordinated, then the response would be the involvement of the International Civil Aviation Organization. If industrial standards had to be harmonised, then the response would be the introduction of the International Standards Organization, and so on (Rosamond 2000).

Over time, Mitrany thought that the growing problem of what is currently called *fragmentation*—the phenomena of the myriad of different international regimes creating mutually inconsistent rulings over areas of overlapping jurisdiction—would lead to the need for greater and greater global coordination. As we have argued before, some ultimate authority with a superior claim to legitimacy will be the best candidate to exercise supervision over a globalised bureaucracy that has been built up from the ground, blade by blade, along the lines that functionalists predicted and promoted. Even today, despite sharp criticism on the part of both transnationalists and democratic decision-makers, there is no more obviously legitimate alternative for achieving a wider policy input and more promising dialogue than a parliamentary assembly that is organised in such a manner as to incorporate the ethos and practices of procedural democracy.

The final and arguably most compelling rationale for the viability of a Global Parliamentary project in the intermediate term is its potential influence as an animating force for countering the disturbing ethno-nationalist-authoritarian perspectives now driving much of the global discourse. Despite a tremendous, almost palpable, yearning on behalf of tens of millions around the world for a progressive alternative to the dead-end offered by ethno-nationalist-authoritarianism, current prevailing forms of parliamentarianism and internationalism are failing, even in democratic societies, to galvanise the public's imagination. National parliamentary systems and global cooperation, to the extent present, are largely taken for granted. They are acknowledged (if at all) by the global public more for their inward-oriented limitations and corrupt practices than for their potential contributions to a more functional and satisfactory global governance that reflects the imperatives of equity and empathy in the quest for solutions to global challenges that threaten the well-being of humanity as a whole.

Unlocking this dormant energy behind aspirations for a better world will come if organisations promoting the initiation of a Global Parliament, such as Democracy Without Borders (n.d.), can come to link the parliamentary project with the deep-seated aspirations of many for that better world. In this regard, perhaps a leaf can be taken from the

books of the various nationalist partisans who have connected inspirational modes of nationalism with deeply held religious and spiritual sentiments (e.g., Davutoglu 2020; Falk 2001; ‘Fred Dallmayr’ 2022; Kung 1998).

One of the most significant social developments of the last half-century has been the widespread emergence of a popular new religious and spiritual orientation that does not fit neatly within traditional religious structures. Often referred to by self-adherents as ‘spiritual but not religious’, it manifests in such cultural phenomena as the worldwide spread of heretofore Eastern practices of yoga and meditation, a new genre of best-selling literature that focuses on new-age spiritual growth, the growing interests in various ‘non-rational’ forms of knowledge and a quest for a sense of connected wholeness to all humanity, Gaia and even the cosmos.⁷

This emerging religious and spiritual sensibility, lacking the institutional structures of traditional organised religions, remains largely politically inchoate. However, should a congenial initiative, such as a campaign for a Global Parliament—representing a holistic planetary consciousness sensitive to the practical urgency of human unity—successfully tap into it, the unlocked power could be potentially explosive. Perhaps it is not too much to hope, then, that the transformative aftershocks from that explosion could come to provide an antidote to the worldwide spread of ethno-nationalist-authoritarianism.

Concluding Remarks

Charles Dickens’ famous observation, referring to the state of affairs in Paris and London in the era of the French Revolution (Dickens 1960) that it was the ‘best of times and the worst of times’, applies to the global contradictions of the present day. This period of our writing, some two decades after the publishing of our *Foreign Affairs* article, carries its own unique set of contradictions and confusing signals as to the direction of the global order. Seeing, admittedly, therefore, through the glass darkly, we offer our updated assessment of the potential for, and benefits of, a Global Parliament in the hope that we might constructively contribute to finding a way out of the present morass.

While we suggest what we regard as a practical plan for how the Parliament could be brought into existence, our intention is only to provide a general schematic to demonstrate concretely that there is a conceivable real-world path to the creation of such a body. Within the community of activists dedicated to the establishment of a Global Parliamentary body, there are various approaches and plans for how the Parliament might come to fruition and how it might be structured (e.g., Brauer and Bummel 2020; Strauss 2007). Our desire at this important historical moment, therefore, is to participate in encouraging an interactive, broad-based global discussion about how the Parliament might be established and what its agenda and sense of mission might be rather than to presuppose final outcomes.

Past institutional innovations in governance have come about through the blending of ideas and action; these have taken place in contexts where change is needed, and risks of systemic collapse are in the foreground of political consciousness. Governments have been slow to address longer-range issues, and it is high time that the peoples of the world raise their voices, not only for their own protection but to assert concerns for the well-being of generations to come, as part of what the French philosopher Jacques Derrida meant by his call for ‘a democracy to come’.⁸

Notes

- 1 Direct elections to the European Parliament first occurred in 1979.
- 2 The Lisbon Treaty (2007) consolidated many of the considerable powers of the European Parliament and introduced the concept of digressive proportionality for the allocation of parliamentary seats among the European Union's 27 member states. At present, the European Parliament has 705 deputies, with the largest contingent coming from Germany, with 96 deputies. Malta, Luxembourg and Cyprus have six deputies each.
- 3 See for example, Kennedy (2006): 'The practical and political problems with this sort of utopian thought are numerous' (214); and Anderson (2011): 'Some dreamers dreamed—and still do—of a planetary parliament directly elected by populations around the world. Most others—even many who are otherwise deeply committed to the political ideals of global governance in a globally federal system—accept that planetary democracy in that sense is meaningless and unachievable' (871, footnote omitted).
- 4 For general background on Whitehead's cosmology, see Whitehead (1929).
- 5 See, for example, Burton Malkiel's (1973) classic work, *A Random Walk Down Wall Street*. In one famous demonstration of the unreliability of analysts' predictions, the *Wall Street Journal* had a running series comparing stock picks by professional analysts with those of chimpanzees throwing darts at boards and found that the chimpanzees frequently outperformed the analysts. See the McGriff Alliance (2017).
- 6 For trends in international trade flows, see World Trade Organization (2023), and for trends in cross-border capital flows, see Milesi-Ferretti (2022).
- 7 See, generally, Wilber (2017), examining the evolution in human spiritual consciousness towards greater holism and integration. See also Heelas and Woodhead (2005) exploring the rise of spirituality and the decline of traditional religious institutions in Western societies.
- 8 For background on Jacques Derrida's notion of *a democracy to come*, see Derrida 2005 and 2010.

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15 Global Governance for Civilisational Crises

Sundeep Waslekar and Ilmas Futehally

Civilisational Crises

More than a thousand kilometres beyond the Arctic Circle in Norway, in a frozen mountain, there is a high-security zone. It is one of the world's remotest sites. Inside the frozen mountain is the Svalbard Global Seed Vault.

The Svalbard Global Seed Vault aims to preserve all possible seeds on the planet. It is a backup for 1,700-odd gene banks in the world. As of 2022, it has more than a million samples of different crops representing 13,000 years of agricultural history. There are seeds from North Korea and Syria, along with those from the United States and Russia. The primary purpose of the seed vault is to preserve biodiversity from tragedies such as wars and flooding that destroy gene banks. For example, copies of seeds from the Philippines can replace the loss caused by floods in that country, or those of the seeds from Syria can replace the gene banks destroyed by war. However, the long-term value of the project is that it will survive nuclear wars and climate catastrophes which might destroy the human civilisation. If another civilisation rises after 10,000 years and discovers Svalbard, it will find millions of different crop seeds to begin a new life. There is a lurking thought in the minds of those who have promoted the global seed vault that the end of the present human civilisation cannot be ruled out and that something should be done to preserve its signature for a future civilisation.

There are many symbols of existential risks to our civilisation. The Bulletin of the Atomic Scientists established the Doomsday Clock to measure how far humanity is from Apocalypse. The organisation has over a dozen Nobel Laureate scientists on its board. It designates midnight in the Doomsday Clock as the end of human civilisation caused by a global nuclear war or climate catastrophe. In January 2022, and the earlier two years, the Bulletin set the clock at 100 seconds to midnight, the closest it has been since World War II (Mecklin 2020). In January 2023, it was brought further forward to an unprecedented 90 seconds to midnight.

In June 2019, four Nobel Peace Laureates, Jody Williams, Mohamed El Baradei, Leymah Gbowee, and Denis Mukwege, came together with social thinkers Anthony Grayling and Sundeep Waslekar at the Normandy World Peace Forum in Caen to issue the Normandy Manifesto for World Peace. They warned,

The existential question posed by the Russell-Einstein Manifesto in the midst of the Cold War is even more pressing today than it was then. Nuclear weapons are several thousand times more deadly. Over 2,500 warheads are on hair-trigger alert. Deadly pathogens may threaten life as we know it. And with major powers preparing to deploy

killer robots, we are on the edge of a black hole; the possibility of machines determining our fate is morally repugnant. Global military expenditure has doubled since the end of the Cold War. It is set to increase further with plans to modernise existing weapons and develop new systems of destruction and decimation. The risk of a war by accident, incident or intent remains a distinct possibility against the backdrop of climate crisis, growing inequality, ultra-nationalism, and the erosion of ethical values.

(El Baradei *et al.* 2019)

While the world has been facing crises, including pandemics, natural disasters and wars, every day for thousands of years, they have been limited to specific geographies. Some crises affect the entire world, but they do not threaten the survival of human civilisation. Since the beginning of 2020, the COVID-19 virus has infected more than 676 million people and killed more than 6.7 million people from 200 countries. It caused worldwide economic lockdown, the grounding of the world's airlines and the closure of many industries. It affected the entire world, but it did not pose an existential threat to human civilisation. We do not know if there will be an outbreak of more dangerous pandemics in the future, perhaps killing hundreds of millions. With progress in transport and communication, it has become easier for viruses to spread across the planet much more rapidly than ever before.

Climate change is another global crisis. It has led to heat waves, drought, floods, forest fires, and extreme weather events. The 2020s may prove to be the hottest decade in recorded history. Climate change poses the risk of the loss of biodiversity, agriculture and glaciers over the next few hundred years. It is a cause of concern for people in small island nations and coastal areas who risk losing their land due to sea level rise. Climate activists consider climate change to be an existential threat to human civilisation. It may prove to be so in a few hundred years. In the next few decades, climate crisis will erode human civilisation but not end it.

The most dangerous crisis that can end human civilisation in a global war is the shifting of the nuclear arms race to a higher gear in the 2020s to incorporate artificial intelligence, lethal autonomous weapons and hypersonic missiles. In the last week of December 2019, just as the coronavirus attacked the world, Russia was busy installing Avangard hypersonic missiles in its military. It is the world's most sophisticated hypersonic glide vehicle. It travels at 27 times the speed of sound on top of an intercontinental ballistic missile and can carry a two-megaton nuclear payload. Because it determines its own flight path, it cannot be detected by a U.S. missile shield. In the third week of March 2020, when the world was entering an economic lockdown due to the COVID-19 pandemic, the United States tested a hypersonic vehicle at a missile facility in Hawaii. The vehicle can travel at five times the speed of sound at a low altitude, carrying nuclear bombs. The Chinese already have a DF-17 hypersonic glide vehicle that travels at five times the speed of sound. And they have a DF-41 missile that has a range of 15,000 kilometres and can hit the United States in 30 minutes. It carries ten independently targeted nuclear warheads. India tested their own hypersonic missile in September 2020. Other countries may soon catch up. The hypersonic missile race between the United States, Russia and China proves the absence of a multilateral framework for restraining the spread of deadly weapons and the risks that this poses for future global security.

Such hypersonic missiles can destabilise the nuclear deterrence that has provided a tenuous strategic stability over the past few decades. It is difficult to predict when and how nuclear deterrence will collapse, as it almost did during the Cuban Missile Crisis of 1962 and in various accidents since then that, fortunately, were averted. Hypersonic

missiles make a nuclear attack swift, stealthy and unpredictable. Once such a missile is pressed into action, by intent or accident, nuclear deterrence is over. The subsequent developments carry the risk of the extinction of our species.

About ten thousand nuclear warheads are in readiness for the next war. More than 2,500 of them are on hair-trigger alert and can be launched in 10 to 15 minutes. Country after country is becoming battle ready. Even Japan and Australia, known for their relatively pacifist postures, want to deploy missiles. Sweden and Finland have applied for NATO membership. Azerbaijan used lethal autonomous weapons against Armenia in September 2020, taking the warfare to a level beyond human control.

The arms control regime is a relic of the past. The Intermediate Nuclear Forces Treaty has crashed. The United States under the Trump administration ended the Iran nuclear deal, and there is no significant progress under the Biden administration to revive it. And although President Joe Biden and President Vladimir Putin decided in February 2021 to renew the New START Treaty that places restrictions on the number of deployed nuclear warheads and missiles, U.S.-Russia strategic stability dialogue came to a standstill following the Russian invasion of Ukraine in February 2022 (Reif and Bugos 2021). In January 2023, the U.S. State Department accused Russia of not engaging in consultations or allowing on-the-ground inspections to resume.

Nuclear-armed countries and their allies have refused to sign the Treaty on Prohibition of Nuclear Weapons adopted by the United Nations. All countries that are acquiring killer robots are refusing to negotiate any treaty to ban lethal autonomous weapons.

The absence of an effective multilateral crisis-prevention machinery increases the risk of a collision between the superpowers. The war in Ukraine is evidence of such a risk. From time to time, the media speculates about the risk of Russia using nuclear weapons in this war, prompted by Russian President Putin's announcement in February 2022 that his country was placing the nuclear arsenal on high alert. And the risk of a global war is not confined to enlargement of the war in Ukraine involving NATO. It is possible that in future, Russia might attack other sovereign countries, or China might attack Taiwan, or a future President of the United States might engage in highly provocative acts impelling its adversaries into a war. UN Secretary-General Antonio Guterres declared on August 1, 2022, while opening the NPT Review Conference, 'Humanity is one miscalculation away from nuclear annihilation'. If we look ahead two or three decades, there are other risks. Germany and Japan may renounce their relatively pacifist postures and join the nuclear arms race by the 2030s or 2040s.

In the next few decades, human civilisation faces existential risks if a global nuclear war takes place, either by intent, accident or a series of incidents. In the next few centuries, human civilisation faces the risk of being eroded by climate change. And any time in the future, if a pandemic several times more dangerous than the COVID-19 pandemic breaks out, human civilisation faces the risk of being seriously disrupted. Of these civilisational risks, the possibility of a global nuclear war is the most unpredictable and perhaps immediate. The growing military application of artificial intelligence and the malignant uses of other high technologies are likely to increase such a risk many times over in the next two decades.

Artificial Intelligence

Artificial intelligence (AI) represents a combination of machine learning and automation. AI has several applications for enhancing the efficiency and productivity of the economy. As with any technology, politicians can use AI for beneficial purposes to improve the lives

of citizens or for authoritarian purposes, such as social control, using it for facial recognition or military objectives. The overarching risk is that the combination of machine learning and automation embodied in AI generates extraordinary speed, thus reducing decision-making time for humans receiving such input and making them susceptible to mistakes. A direct consequence of the higher speeds is compression of timeframes available to decision-makers. The margins for de-escalation are invariably reduced, with the risk of strategic miscalculation.

The second overarching risk is that the tools and weapons produced with AI mostly operate in stealth, making them difficult to detect and leading to various scenarios, including some caused by misinterpretation of signals. AI depends on access to massive amounts of data. In the case of nuclear attacks, pattern recognition may have to be generated with computer simulation rather than credible data, and this can lead to serious error.

The interface between AI and nuclear weapons can pose accidental or deliberate risks. Accidental risks can occur due to the use of machine learning to facilitate autonomous early warning systems and intelligence, surveillance and reconnaissance (ISR). In this case, signal misinterpretation or data poisoning can occur, which can lead in turn to errors that are not only unpredictable but also undetectable, escalating the situation to the imminent launch of missiles with nuclear payloads. Furthermore, accidents can also occur due to overreliance on AI, known as automation bias, in which the humans in charge of decision-making end up putting more credence in the machine rather than their own judgement and experience. The growing automation of tasks in analysis and decision-making could lead to a flash crash, leading to unintended consequences.

Accidental risks can also occur when certain actions involving AI in a conventional war are misinterpreted by one of the parties to the conflict, leading to the use of nuclear weapons. For example, autonomous UAVs (Unmanned Aerial Vehicles) and UUV (Unmanned Underwater Vehicles) might be deployed for remote sensing operations, but an adversary might assume that they have been deployed for either conventional or nuclear attack. In a further escalation, the deployed vehicle carrying conventional arms can be mistaken for one carrying a nuclear weapon. Faced with a possible nuclear attack and thus a risk to the survival of its nuclear deterrent (second-strike capacity), the adversary may opt for a pre-emptive strike. Unmanned vehicles can also cause confusion, in which a state may assume it belongs to an adversary and, depending on the geopolitical situation and the level of mistrust, nuclear weapons might at least be put on high alert. The adversary state, not being responsible for the unmanned vehicle, could then perceive this as a provocation.

Deliberate escalation is also a likely scenario in the case of asymmetry created by AI favouring one state. To offset this relative disadvantage, the adversary might engage in brinkmanship or launch a conventional attack. In an extreme case, if a state fears the survivability of its nuclear deterrent capability, it might also opt for a pre-emptive first strike.

The pathway to deliberate risks would involve eliminating the second-strike capacity of the adversary, thus dismantling the basis of deterrence. Without a second-strike capacity, there might be temptation to launch a massive first strike. AI technologies could enable sharpened tracking and the targeting of Intercontinental Ballistic Missiles (ICBMs) enclosed in silos, as well as submarines and mobile stealth vehicles, making it possible to use conventional warfare to launch attacks on them. Such capabilities would be especially destabilising because decision-makers could threaten to employ conventional

weapons much more plausibly than any kind of nuclear attack. A conventional threat would place the adversary under enormous pressure during a crisis, which could force it to capitulate or spiral into nuclear war. Such a deliberate escalation could happen if the adversary feels the need to use its nuclear weapons before its striking capacity is obliterated or after an unsuccessful strike on its deterrent forces.

There is nothing unusual about military planners using AI technologies for destructive purposes. There are many examples in history of beneficial technological innovations being used for warfare. An aircraft is a simple example. Although it has revolutionised transport and trade and brought the world closer, militaries began using aircraft for bombing adversary targets within a decade of its invention. The Wright Brothers flew the first aeroplane in 1903, and the Italian armed forces used aircraft to bomb a Turkish base in Libya in 1911. Many other inventions, ranging from chlorine gas to the radio, which were developed for the improvement of human welfare, have been used by armed forces of different countries for killing people. Thus, it is not surprising that the evolution of AI has attracted the attention of military planners. The habit of misusing science and technology to ravage societies in the game of war has brought us to the point where a combination of AI, nuclear weapons and their delivery systems can lead to the extinction of our civilisation.

Nationalism

When the world is facing civilisational crises, including existential risks posed by a global nuclear war triggered by a human decision or AI, we need a civilisational mindset to address these crises in a collective spirit. These crises do not recognise borders. It is obvious that pathogens, greenhouse gases and nuclear radiation do not require passports and visas to cross frontiers. Even if the crises were engineered by a few nations, the consequences would be global. If carbon emissions are generated by some countries more than others, it is not only the emitters but also nations from all corners of the globe which will be affected by the heatwaves, the melting of glaciers and the sea level rise. A virus may originate in one country, but as we saw in the case of the coronavirus in 2020, it can spread in a matter of days or weeks to all countries in the world. Only nine nations may possess nuclear weapons, and perhaps a dozen more may aspire to have them, but a nuclear war in one corner of the world can bring about nuclear winter for the entire planet, devastating agriculture and causing environmental and health hazards.

Our tendency is to craft a national response to civilisational crises. When the coronavirus pandemic spread across the world, some countries were involved in a competition of national egos for the development, production and distribution of vaccines. A global vaccine alliance known as COVAX was formed which delivered more than one billion doses by early 2022, but many poor countries could not acquire the necessary quantities. Countries come together in an annual Conference of the Parties (COP) on climate change and make promises, but the results are abysmal. For instance, at the Paris COP in 2015, a global agreement was finalised on creating a Green Climate Fund with annual commitments of US\$100 billion. But the fund could not collect even half of that amount cumulatively over the following seven years, despite the fact that it is estimated that the cost of transitioning to a renewable energy economy will be in the tens of trillions of dollars by 2030.

Our failure to address these civilisational crises, despite some global initiatives, can be traced to the growing force of nationalism. In the last few centuries, nationalism has been increasing in many parts of the world. Over the course of the 20th century, nationalism

played a constructive role by bridging different religions, tribes and other identities into nationalist movements that struggled for liberation from their colonial masters. However, it also resulted in violent struggles for power between nation states, leading to the two world wars that killed almost a hundred million people. Nationalism, perceived as a love for one's country, can be a constructive ideology, mobilising people of different parochial identities in a collective process of growth and development. It can also motivate affected populations and their neighbours to mobilise resources at times of natural disaster. It can even lead to the creation of new art forms.

However, if nationalism is conceived as a doctrine of superiority over others, it leads to competition which can turn violent. In an era when lethal weapons, including nuclear arms and missiles, prevail, they can threaten the existence of human civilisation.

In the last century, the two world wars were the most devastating expressions of competition driven by nationalism in the countries possessing economic and military might. Since the end of World War II, several regional wars have exploded on the basis of competitive nationalism. The turmoil in the Middle East, the arms race in South Asia, tensions over Taiwan, the dissensions within the European Union, the invasion of Ukraine—all can be attributed to waves of nationalism. When President Putin annexed Crimea, his popularity was bolstered among the Russian population. He was, therefore, emboldened to continue warfare in Donbas from 2014 and directly attack Ukraine in 2022.

There are many theories of nationalism. The concept denotes love for people on the basis of commonality of language, history, race, ethnicity, or ideology. If this is what nationalism is all about, it can be a force for good. But often, there is a tendency to assume that one's own nationalist belief system is superior to others. When such superiority is established by force, violent conflicts take place.

Nations participate in the fora of international cooperation, such as the United Nations, from a nationalist perspective. The United Nations was created with the objective of ending war for all humanity. However, nation states use it as a forum to bargain for their national interests without consideration for global interests. The same attitude prevails in the functioning of other intergovernmental organisations dealing with trade, health, aviation, and the environment. The annual meetings of the United Nations General Assembly, as well as the annual COP conferences on climate change, are theatres of diplomatic conflicts between seemingly opposing national interests.

When the national ego, sense of superiority and ambition are inflated, they fuel the arms race. At any given time, the world's most powerful countries, having resources to spend on weapons, are the ones leading the race to develop instruments of annihilation. A century ago, the United States, the United Kingdom, Russia, and Germany were involved in the most intensive arms race. In the 21st century, it is the United States, Russia and China which lead the race for annihilation of humanity, followed by the United Kingdom, France, India, Israel, Saudi Arabia, Iran, North Korea, and, increasingly, Australia. Nationalism and militarism are thus interwoven.

The most significant outcome of the growth of nationalism is the weakening of multilateralism. Wise minds often provide creative solutions, but the combination of nationalism and militarism can undermine them. The League of Nations collapsed because some of its leading members, including Italy and Japan, wanted to promote their narrow nationalist agendas. The United Nations is often paralysed, particularly in its principal mandate of the maintenance of peace and security, because the five permanent members of the UN Security Council (P5) use the veto to serve their national interest, blocking any

movement towards common solutions. The P5 do not accept the compulsory jurisdiction of the International Court of Justice. They have created a class by themselves in the nuclear nonproliferation regime. The behaviour of the P5 has motivated other nation states to follow their example in safeguarding what they see as their own national interests.

The net outcome is that the present multilateral system is proving incapable of addressing civilisational crises. The United Nations and other organisations have delivered on some of the developmental objectives ranging from the eradication of polio to raising awareness of climate change, as well as scientific and technical cooperation in many fields. However, the failure of the present multilateral system is most evident in the area of peace and security. The result is arms race, wars and fear of nuclear Armageddon.

Reform Debate

The evident failure of the United Nations in saving succeeding generations from the scourge of war, as envisaged by the founders, has generated a vibrant debate on the reform of multilateral institutions, particularly the United Nations. The organisation was founded in 1945. On its 75th anniversary, on September 21, 2020, the General Assembly adopted Resolution 75/1 which committed Heads of States and Governments to abide by the UN Charter and the principles of international law. Such a commitment to the UN Charter and international law can be seen in the global reform debate as the cornerstone of the multilateral order in the future.

The main problem is the difference between words and deeds. On June 1, 2021, the Foreign Ministers of Brazil, China, India, Russia and South Africa issued a joint statement, which states,

The Ministers reiterated their commitment to multilateralism through upholding international law, including the purposes and principles enshrined in the Charter of the UN as its indispensable cornerstone, and to the central role of the UN in an international system in which sovereign States cooperate to maintain peace and security, advance sustainable development, ensure the promotion and protection of democracy, human rights and fundamental freedoms for all with the aim to build a brighter shared future for the international community based on mutually beneficial cooperation. They reaffirmed the principles of non-intervention in the internal affairs of States and the resolution of international disputes by peaceful means and in conformity with the principles of justice and international law as well as the inadmissibility of the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes and principles of the UN. They stressed further the imperative of refraining from any coercive measures not based on international law and the UN Charter.

It is significant to note that Russia was one of the five signatories to this statement which committed to ‘non-intervention in the internal affairs of states and the inadmissibility of the threat or use of force against the territorial integrity or political independence of any state’. And yet within a year, Russia invaded Ukraine. Russia’s violation of international law in Ukraine is a recent example of how powerful countries have little regard for global norms, but it is not the only one. In the last 20 years, the United States has attacked Iraq, Syria and Libya without compunction. In the early 1990s, Serbia attacked Bosnia and seized the city of Sarajevo for three years. If we look at the history of the last 75 years,

many such examples of intervention in other countries can be found. The debate at the official level, whether in the United Nations or in regional groupings of states, has proved to be hypocritical. The states are willing to reaffirm their faith in the UN Charter and the principles of international law again and again, but their actions violate their own words. Ukraine is the most evident illustration of such hypocrisy, but it is certainly not the only one. Syria, Yemen and Iraq are among many other examples that prove the hollowness of signatures to the declarations of faith in the principles of international law.

The discourse on multilateral reform is often aimed at restructuring the UN Security Council. The P5, comprising the United States, Russia, China, the United Kingdom, and France, each with a veto, was determined towards the end of World War II. Seventy-eight years later, that structure is archaic. Delegates to the UN General Assembly have made repeated demands to include new permanent members in the Security Council to reflect changed geopolitical realities. On one hand, the inclusion of Germany, Japan, India, Brazil, Nigeria, and South Africa would restore geopolitical balance. On the other, an increase in the number of veto holders may render the body even more inefficient than it is today.

The UN Security Council is often paralysed because the competing permanent members use their veto power to suit their narrow political interests. The introduction of more veto-holding members could lead to even greater paralysis. Such a reform would make the UN Security Council appear more democratic, but it could make its decision-making process grossly dysfunctional.

The international diplomatic community has discussed adding new permanent members, but without a veto. Such an arrangement offers prestige and the opportunity to intervene, but without obstructing decision-making by the Security Council. This arrangement would create three layers of membership.

A radical departure from the present debate would be to abolish the veto system. In the last phase of World War II, the Truman administration began to formulate proposals for the United Nations. President Harry S. Truman assigned Leo Pasvolsky, a State Department official, to prepare a blueprint for such an organisation. Pasvolsky's draft proposed equal membership in the United Nations for all member states and did not include veto power for any of them. But this view was not subscribed to by many others in the U.S. government and Senate. However, Stalin's officials insisted on the veto for the five victors of the war. Thus, the UN Security Council, with veto power for all five members, which has made the world body dysfunctional, is essentially a Stalinist vision imposed on the world. At present, all five powers covet this Stalinist project and do not want to give up the veto. But we should not forget that the world came close to establishing a fair and democratic institution of global governance in early 1945. Indeed, in 1943, the idea being debated in the State Department envisaged a world legislature with the capacity to create international law binding on its members.

Augusto Lopez-Claros argues in a blog article for the Global Governance Forum on April 28, 2022,

The UN veto power has paralysed the UN at a time when the multiple global crises we confront call for an effective, problem-solving organisation that will enhance our capacity for international cooperation. If it is not abolished it will not only hamper the organisation in its effort to remain faithful to its noble founding principles, but it will ultimately corrupt its remaining moral authority without which it cannot hope to remain relevant in an interdependent world.

Hannah Ryder, Anna Baisch and Ovigwe Eguegu (2020) argue, 'The only way forward is to acknowledge the key difference between 1945 and 2020, decolonisation, and abolish the permanent members of the Security Council altogether', Many other scholars have expressed similar views.

These are not lonely voices. In a plenary debate of the UN General Assembly in the 73rd session on November 20, 2018, several member states called for the abolition of the veto of the permanent members. As could have been expected, the representatives of some of the permanent members opposed the calls for any change in the use of the veto.

In view of the opposition by the permanent members to abolish the veto, some efforts are being made to introduce accountability in its use. In April 2022, the UN General Assembly decided that its President shall convene a formal meeting of the General Assembly within ten working days of the casting of a veto by one or more permanent members of the Council and shall hold a debate on the situation concerning which the veto was cast, provided that the Assembly does not meet in an emergency special session on the same situation.

Further, the Assembly would invite the Council, in accordance with Article 24(3) of the Charter of the United Nations (1945), to submit a special report on the use of the veto in question to the Assembly at least 72 hours before the relevant discussion is to take place. The resolution, tabled by Lichtenstein, was criticised by two permanent members.

The permanent members are bound to oppose any call for the abolition or amendment of their supreme power represented by veto. They would like to maintain the status quo. But the reformers need not be deterred by what might be politically feasible in the current political framework. It is necessary to envision a future that is desirable, though not necessarily immediately possible. If the Security Council veto system is an obstacle to the maintenance of peace and security and preventing the scourge of war, the primary objectives of the United Nations, then we must advocate its removal and mobilise global public opinion in support of such a reform. In fact, it is necessary to go beyond the proposal for veto abolition and reinvent the multilateral order with new concepts and tools.

Global Governance Grid

The focus of the UN reform debate is largely on the Security Council. However, the Security Council has several limitations. It mainly acts in response to the conflicts which are likely to surface or have already begun. It does not act on long-term civilisational crises such as the arms race in weapons of mass destruction, climate change, and pandemics. There are specialised agencies of the UN which address such issues. The Conference on Disarmament deals with arms race and the weapons of mass destruction. The UN Framework Convention on Climate Change acts as the main catalyst for addressing climate change issues. The World Health Organization addresses pandemics and other health crises. These organs are essentially negotiating platforms where countries bargain to protect and promote their own national interests. They are not designed to allow civilisational concerns to override national interests.

The world needs a governance mechanism which can address civilisational crises from the perspective of humankind and not individual nations.

The Global Governance Grid would fill the vacuum created by the inability of the Security Council to address structural issues and limitations experienced by specialised bodies. It would represent and serve humankind. It would not be a bargaining forum for the nation states. It would be associated with the United Nations, with operations

independent of it. The grid would be made up of three bodies: a Leaders Panel, a World Parliamentary Assembly (WPA) and a Conflict Resolution Forum.

The Leaders Panel shall be tasked solely with protecting humanity from cataclysmic warfare, pandemics, disasters related to climate change, the misuse of AI, and other existential threats and not be bogged down with the day-to-day conduct of international affairs. The members of the Leaders Panel will be serving in their personal capacity and not as representatives of nations, which is the case with the ambassadors designated to the United Nations. Presently, even the Secretary-General of the United Nations, members of various high-level panels and the heads of multilateral organisations are nominated by nation states. Their election sometimes precedes lobbying by the home countries. The candidates are therefore obliged to their home countries. This in itself raises questions about their loyalty.

The members of the Leaders Panel of the Global Governance Grid must not be affiliated with, or be representatives of, individual governments. They will be elected by the General Assembly; their qualification for office will be based on their high moral authority, scientific expertise and intellect. The nominations for the Leaders Panel can be made by the UN Secretary-General, President of the WPA, Justices of the International Court of Justice, and Nobel Laureates. Governments of nation states will not be able to nominate candidates. Generally, the candidates will have previous leadership experience in multilateral organisations, international civil society organisations, international scientific bodies. They might also be eminent scholars, philosophers, authors, scientists, jurists, having recognition beyond their national boundaries. The candidates will not normally include individuals who have only worked in governments of nation states without multilateral experience. It would be necessary to create an acceptable methodology for the formation of such a body through worldwide deliberations.

The Leaders Panel will be responsible for delivering an annual report to the General Assembly on progress in safeguarding humanity from catastrophic risks. The resolutions by the Leaders Panel to eliminate risks to humanity's survival will be binding on nation states. It will name and shame the countries and leaders showing themselves to be obstacles to progress in safeguarding humanity from catastrophic risks and therefore responsible for the potential collapse of our civilisation. It will galvanise global public opinion to support its agenda. It will mobilise civil society groups to increase pressure on national governments to take steps to eliminate the risk to human existence from the threats mentioned earlier: pandemics, climate change, the nuclear arms race, threats from other weapons of mass destruction, conflict between superpowers, and the misuse of AI to develop lethal autonomous weapons.

The second body of the Global Governance Grid, the WPA, will link the Global Governance Grid with the peoples of the world. Lopez-Claros and Bummel (2021) have proposed such a concept with a pragmatic approach.

A swifter and more feasible option to build democratic accountability would be the establishment of a directly elected United Nations or WPA as an advisory body to the General Assembly. This WPA would help bridge the democratic legitimacy gap that arises when an organisation's actions affect people's welfare without the input of those affected. By forging a firmer linkage between the United Nations and the world population it seeks to serve, a WPA would be imbued with the credibility and legitimacy that the Security Council and the General Assembly, under the one-country-one-vote system, currently lack. Because its members would be accountable to the people who elected them, they could be expected to rise above purely national interests and to consider problems

through the lens of humanity's best interests. A WPA points in the direction of a global two-chamber system that was promoted by democratic leaders such as Vaclav Havel: an upper chamber representing member states through appointed diplomats and another one composed of citizen-elected representatives.

The two authors argue that there is considerable support for the idea of a WPA in some form in some parts of the world, including Europe, Africa and Japan.

Such an idea can evolve over the years. A beginning can be made by electing representatives to the WPA from the existing legislatures. There can be more than two representatives from each country representing both the ruling and opposition. Such a proposition is bound to encounter difficulties from the states that do not hold elections for their own national legislatures or are ruled by single parties. There are no easy answers, but a process of worldwide consultations, particularly involving the single-party states, can find a way.

It might be worth examining whether the Inter-Parliamentary Union (IPU) can evolve into the WPA. It has parliament members from 178 out of the 193 member states of the United Nations. Its members include parliaments from Azerbaijan, China, Russia, North Korea, Saudi Arabia, and other countries which are not multi-party democracies. The IPU was established in 1889 and has evolved over more than 125 years. It can evolve further in the decades to come.

A UN parliamentary body made of representatives from the existing parliaments, whether through the evolution of IPU or otherwise, can be only a beginning. In the long run, the objective must be to form the WPA with directly elected people's representatives to the United Nations who would think through a global, and not national, prism.

The third body of the Global Governance Grid, the Conflict Resolution Forum, will settle conflicts between nation states through arbitration, negotiation and dialogue. It should have the competence to take up disputes referred by the WPA or by any affected countries, including affected third parties. It will not function as a judicial body to provide a verdict on the right and wrong of a dispute but as a forum to engage parties in exploring common ground. With this wider mandate, it will differ from the International Court of Justice (ICJ), to which only a state party can bring a dispute. The superpowers refuse to take their disputes to the ICJ, especially those that concern their own citizens, their perceived national pride or core national interests. At present, no forum exists to resolve conflicts between the superpowers. The UN Security Council, in theory, could provide such a forum, but its power has been paralysed by the constant use of the veto by the five permanent member states. Thus, a new Conflict Resolution Forum must be embedded in the Global Governance Grid that supersedes the Security Council.

The idea of a Global Governance Grid is not in tune with our current mental framework. It may appear utopian in the face of our vanity, greed and nationalism. It will require that nation states compromise their sovereignty and surrender their national authority. It will also require that they renounce deadly weapons in keeping with the norms and agenda determined by the Global Governance Grid. The question is whether and why the established superpowers will voluntarily give up their authority, lethal weapons and the control of global security. No ideology reigns the world forever. When people discover that nationalism causes more damage than good, they will gradually turn away from it. It may seem a difficult proposition in the 2020s. But a different political paradigm might gain acceptance in 25 to 30 years if the world does not end up in a hyper-sonic nuclear war in the meantime.

There is ample empirical evidence showing that societies can reject the values that they once held dear. In the 16th century, we saw Europe breaking away from the Roman Catholic vision. In the 20th century, we saw the German people turning their backs on fascism, the South Africans rejecting racism, the Romanians and Hungarians ending communism, and the British and the Austrians accepting the end of imperialism. Empires and ideologies are not permanent. When people are willing to look at a more enlightened architecture of global governance, we must have a soft infrastructure of ideas ready. Therefore, it is necessary to prepare now. Just as the warmongers continually prepare for global war with new types of arms, those concerned about the survival of humanity must continually prepare for global peace with new concepts of global governance.

Global Movement

It would be naïve to believe that the superpowers will allow such a Global Governance Grid to come into existence merely because there is historical evidence of successful challenges to the status quo. It would be equally naïve to believe that a new institutional framework will eliminate the malaise that has brought humanity ‘one miscalculation away from nuclear annihilation’ or the erosion of our civilisation by the climate crisis or the sudden disruption brought about by a future worldwide pandemic.

It is necessary for the people of the world to understand the moral and practical imperative of a new approach to global governance. It is necessary for visionary and courageous leaders to emerge at the global level who are not blinded by nationalism and who believe in the future of human civilisation. The elements of a new humanitarian order already exist, as seen when 122 of the 193 member states of the United Nations adopted the Treaty on the Prohibition of Nuclear Weapons in 2017. More than 150 nations incur an annual military expenditure of less than a billion dollars. Over 20 nations have renounced their armies.¹ If we analyse the data closely, we will find that most of the US\$2 trillion spent on armaments every year are accounted for by 20–25 countries. Only nine nations have nuclear weapons, and a dozen more may aspire to have them, either by producing their own arsenal or by importing or stationing the missiles and warheads of their allies. Only a dozen countries are involved in the production of killer robots. We do not have credible information on the development of killer pathogens, but it cannot be more than a handful of countries secretly involved in such an endeavour. Thus, almost two-thirds of countries in the world are not involved in a race to annihilate our civilisation with weapons of mass destruction. Our civilisation is being held ransom by some 25 to 30 powerful countries and their leaders.

The world must realise that accidents, miscalculations or deliberate decisions by a few leaders can terminate the existence of our species. Therefore, the majority of countries, which are not culprits but potential victims, should come together to launch a campaign for a civilisational approach to global governance. Similarly, civil society in the powerful countries will also need to mobilise public opinion in their societies in support of the survival of human civilisation. The nuclear disarmament movement of the 1980s and the climate change movement of the 2020s demonstrate the potential of mass mobilisation. Thought leaders need to support such campaigns with information, analyses and ideas. The movement must remind itself again and again that reformation happened in Europe, apartheid was dismantled in South Africa and climate change is accepted by the majority of the world. No empire has survived forever. The transformation of the world is possible, and we have to make it happen.

As the Normandy Manifesto for World Peace appeals,

We have a tendency to establish peace only after a prolonged devastating war. The Treaty of Westphalia, the Final Act of Vienna, the League of Nations, the UN, were all conceived after millions of young men lost their lives, families were ruined, and humanity was shamed. There will be no opportunity to negotiate a new Peace Agreement after the next world war, because there will be no negotiators, no people, no flowers and no trees.

Let us conceive and establish sustainable peace before someone initiates the next war. If we do not, we will be sleepwalking into collective suicide. If we do, we will have the possibility of achieving the apex of humanity and entering an era of *Summum Bonum*.

(El Baradei *et al.* 2019)

Note

- 1 Andorra, Costa Rica, Dominica, Grenada, Iceland, Kiribati, Lichtenstein, the Marshall Islands, Mauritius, Micronesia, Monaco, Nauru, Palau, Panama, St Lucia, St Vincent and the Grenadines, Samoa, Solomon Islands, Tuvalu and Vanuatu.

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16 The International Court of Justice and Its Role in the Peaceful Settlement of Disputes in the 21st Century

From Quick Wins to Tectonic Shifts

Philippa Webb

Strong judicial institutions are vital to effective and legitimate forms of global governance. International law is generated by states (as customary international law or general principles) and agreed to by states (in treaties), but it is international courts that have the role of interpreting and applying such law. As Judge Lachs observed in the *Lockerbie* case (ICJ 1992), ‘In fact, the [International] Court is the guardian of legality for the international community as a whole, both within and without the United Nations’.

The International Court of Justice (ICJ) is both the principal judicial organ and one of the United Nations’ six main organs. It remains the ‘court of reference’ for identifying customary rules of international law. Until recently, its role in the peaceful settlement of disputes was largely in relation to territorial and maritime disputes—occasionally of marginal importance (*Pedra Branca* 2008), sometimes of existential importance to the states involved (*Guatemala v. Belize* 2008; *Guyana v. Venezuela* 2018), but rarely in relation to global catastrophic risks. However, in 2022, the Court had before it cases concerning the first war in Europe since World War II, characterised by shocking aggression and atrocities (*Ukraine v. Russian Federation* 2022), and a genocide unfolding in Asia (*The Gambia v. Myanmar* 2019), and it may soon be asked to pronounce on the question of state responsibility for climate change (United Nations 2023).

This chapter considers what aspects of the ICJ could be strengthened to make it an international court capable of meeting the demands of the 21st century. It proceeds from the easiest reforms—‘quick wins’ to be gained from updating procedures and broadening access—to more ambitious proposals that would require tectonic shifts in law and, just as importantly, the mindset of the Court and its constituents.

Updating Procedural Mechanisms

There are a series of ‘quick wins’ that may be achieved through updates to the ICJ’s procedure. This could be done relatively easily through amendments to the Rules of Procedure. As former ICJ President Rosalyn Higgins has explained, the Court entrusts its Rules Committee ‘with a “watching brief” on particular Rules that are proving problematic in the practice of the Court’, and the Committee makes proposals for their amendment (Higgins 2009a: 1123–24). Another option is for the Court to update its Practice Directions (updated 17 times since the Court’s adoption in 2001) (ICJ 2001a).

There has been an evolution in the ICJ’s caseload and in the parties coming before it. As of March 2023, the pending contentious cases concern eight parties from Latin America and the Caribbean, eight from Eastern Europe, six from Western Europe and others, three from Asia, and three from Africa. The steady stream of cases involving parties from

Latin America (28 as of September 2022; see, for example, ICJ 1949, 1986b, 2022i) is an example for the rest of the world, given the relatively small number of states which accept the compulsory jurisdiction of the Court. It leads to the logical conclusion that Spanish should be an official language of the Court, alongside French and English. To date, parties have had to organise their own Spanish translation and interpretation. For example, in *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)* (ICJ 2018b: para. 18), the ICJ noted that documents relied upon ‘were drafted in Spanish, and have not always been translated by the Parties into an official language of the Court in an identical manner’. In these circumstances, ‘the Court will, for the sake of clarity, reproduce the Spanish original of those documents, and indicate which Party’s translation is being quoted as well as any material variation in the translations provided by the Parties’. However, Spanish, one of the six official UN languages, should be a standard option for interpretation of ICJ proceedings.

Many cases involve challenges to the Court’s jurisdiction, necessitating an exchange of written and oral pleadings on ‘preliminary objections’. In fact, as of September 2022, out of 140 contentious cases before the ICJ, 50 have involved preliminary objections. The Court has already sought to speed up the consideration of preliminary objections by dispensing with the need for judges to produce a ‘Note’ on their tentative view in advance of the deliberations (Higgins 2009b: 1084). But more can be done to fast-track this procedure. At present, a Respondent has to raise any preliminary objections within three months of the filing of the Memorial by the Applicant (ICJ 1978: Art. 79*bis*). However, the *Application*, the document filed to institute the proceedings, must ‘specify as far as possible the legal grounds upon which the jurisdiction of the Court is said to be based’ (ICJ 1978: Art. 38(2)). There is, therefore, no need to wait for the Applicant to file its Memorial, a process that usually takes nine to 12 months. A Respondent should be required to lodge any preliminary objections within three months of the Application, leading to a time-saving of a year on average per case.

Increased use of technology would be another ‘quick win’ for the Court. The ICJ ‘is a place where formality reigns and time seems to stand still’ (Pinzauti and Webb 2021: 1). For the first seven decades of its operation, in-person meetings and hard-copy documents were standard practice. Some judges would exclaim, ‘If it’s not on paper, it doesn’t exist!’ (ibid.). E-mails were printed out and delivered by hand on a regular basis (Pinzauti and Webb 2021: 1). This changed in 2020 when the pandemic swept the world. The ICJ radically and rapidly changed its working methods and ‘produced perhaps the greatest change to the Court’s procedure in the shortest period of time’ (ibid.). Judges and legal officers worked from home or even from abroad. On April 23, 2020, the Court held the first remote plenary meeting in its history (ICJ 2020c). New arrangements were made for the electronic filing of certain documents, such as reports on the implementation of provisional measures and judges’ folders for oral pleadings (Pinzauti and Webb 2021: 3).

On June 25, 2020, the Court amended Arts. 59 and 94 of the Rules of Court to permit the holding of hearings and the reading of judgements ‘by video link’ in whole or in part, if health, security or other compelling reasons so demand (ICJ 2020d). Five days later, the Court held its first remote hearing in *Guyana v. Venezuela* (2018), followed by four other virtual hearings between August 2020 and June 2021 (see, for example, ICJ 2020b and ICJ 2021e). From October 2021 to April 2022, six hearings were conducted in a hybrid format (see, for example, ICJ 2021d and ICJ 2022e), and in September 2022, the Court returned to in-person hearings, with limited capacity in the Great Hall (ICJ 2022g).

On June 3, 2022, the ICJ announced ‘a return to in-person working methods for the Court’s public hearings and ... for its private meetings’ (ICJ 2022j). Despite hopes that the Court ‘will harness the wider benefits’ (Pinzauti and Webb 2021: 14) from the changes to its procedures that resulted from the pandemic, this announcement indicated a return to the status quo. However, the return to traditional ways of working will inevitably be partial instead of total. Judges, officials and parties are now much more familiar with technology, and it is likely that improvements in efficiency gained through remote hearings will become embedded in practice.

The Court should continue to embrace technology: filings and judges’ folders should be electronic unless otherwise agreed, and hybrid hearings and remote meetings should be offered to enable the participation of state officials who may not be able to travel to The Hague. One commentator has suggested the Court could use technology to increase public access to the Court: the President could try an #askmeanything! (BIICL 2020a).

Broadening Access to the ICJ to Non-state Actors

Art. 34(1) of the ICJ Statute provides that ‘[o]nly states may be parties in cases before the Court’. James Crawford, later an ICJ judge, observed that this rule restricts the capacity of the Court to directly articulate and fully pronounce on matters engaged in investor-state disputes, human rights cases based on individual communications and cases involving international organisations (Crawford 2017: 95). He also observed that the European Union cannot appear in proceedings before the ICJ but has routinely appeared before the World Trade Organization Dispute Settlement Body and also been a party to disputes before other bodies, such as the International Tribunal for the Law of the Sea (ITLOS) and arbitral bodies set up under Annex VII of the UN Convention on the Law of the Sea when parties have been unable to settle a dispute by negotiation, conciliation or other peaceful means (Crawford 2017: 107).

The idea of broadening access to the ICJ to non-state actors has been discussed for decades. Giving international organisations access to the ICJ was a popular idea in the 1950s, discussed by the Institut de Droit International and the International Law Association. Providing them access in contentious cases before the ICJ was discussed in 1975 by the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organisation (Special Committee) (Karl 2019: 1889–90).

In 1976, the U.S. Department of State prepared a study entitled ‘Widening Access to the International Court of Justice’ for the Senate, which brought together proposals for ICJ reform made by jurists, scholars and practitioners, and centred on the question of whether international organisations, corporations and individuals should have access to the Court (Karl 2019: 1890–91). It did not gain traction.

In 1992, there was an extensive debate in the UN Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (Special Committee) on the issue. Consensus could not even be reached on the less ambitious idea of empowering the Secretary-General with the right to request advisory opinions from the Court (United Nations 1997: para. 102). In 1997, Guatemala proposed to the Special Committee that the Court’s jurisdiction be extended to contentious proceedings to encompass disputes between states and intergovernmental organisations, noting that ‘intergovernmental organisations played an ever-increasing role in international affairs and conducted extensive activities involving States and their Governments’ (*ibid.*). A discussion ensued in which it was rightly noted that amending Art. 34 of the ICJ

Statute would be extremely difficult, if not impossible. Running like a thread through these discussions is the state-centrism of the United Nations, abetted by the veto held by the permanent five members. The UN Charter affirms the relevance of international law on the one hand (see, for example, Arts. 1(1) and 13), but its operational mode of working and being amended indicates that the ‘state’ (indeed, a few chosen states) is at its centre.

In addition to the amendment issue, there are practical concerns. Kolb (2013) has observed,

The Court is already heavily laden with cases. ... The idea of burdening it with a great number of further cases lacks either foresight or wisdom. An overburdened court has insufficient time to address itself to really important questions; its procedures inevitably slow down, justice is delayed, and the pressures on the court’s time lead to a decline in the quality of its pronouncements.

(1208)

However, there are ways to broaden access to the Court to non-state actors that do not require amendment of the Statute and Charter. Three examples of non-state participation demonstrate the utility of this potential route.

First, in the *Wall* Advisory Opinion, the Court noted that the United Nations General Assembly had granted Palestine a special status of observer and that it was co-sponsor of the draft resolution requesting the advisory opinion. It, therefore, permitted Palestine to submit a written statement and take part in the hearings (*Legal Consequences of the Construction of a Wall* (ICJ 2004: paras. 4–5).

Second, in the *Kosovo* Advisory Opinion, because the subject of the question was a unilateral declaration of independence, the Court decided that the authors of the declaration were likely to be able to furnish information on the question and accordingly invited them to make written and oral contributions to the Court (ICJ 2010a: paras. 3–8).

Third, the European Union became involved with the proceedings in *Ukraine v. Russian Federation* (2022) by furnishing the Court with relevant information under Art. 32(2), ICJ Statute and Art. 69(2), Rules of the Court (ICJ 2022k).

Revitalising the Use of Chambers; Diversifying the Court’s Composition

The ICJ operates in nearly every case as a plenary—with all 15 judges and 1 to 2 judges *ad hoc* participating in all phases of the case. This results in thorough, learned judgements that reflect the status of the institution as the principal judicial organ of the United Nations. But it is also a fairly slow and often cumbersome process and naturally limits the number of cases that the Court can consider in parallel.

Other international courts use chambers to allocate and expedite their work. The European Court of Human Rights (ECtHR), for example, has five sections (administrative entities), within which a chamber is formed. The chambers are composed of the President of the Section to which the case was assigned, a judge elected by the state against which the application was lodged and five other judges designated by the Section President in rotation. Once a chamber judgement has been delivered, the parties may request referral of the case to the Grand Chamber, composed of the Court’s President and Vice-Presidents, the Section Presidents and the national judge, with other judges selected by drawing of lots. The Grand Chamber may also exceptionally hear a case relinquished by a chamber.

The possibility of using chambers is already in the ICJ Statute. Art. 26 provides that the Court may ‘form one or more chambers, composed of three or more judges as the

Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications'. The Court may also 'form a chamber for dealing with a particular case'. A judgement given by a chamber 'shall be considered as rendered by the Court' (Art. 27).

Over the decades, there have been various attempts to make greater use of the possibility of chambers at the ICJ. In the *Gulf Maine* (1981) case, for example, Canada and the United States agreed to submit to a special chamber of the Court a question as to the course of the single maritime boundary that divided the continental shelf and fisheries zones of the two parties in the Gulf Maine area. Chambers were also used in *Burkina Faso v. Mali* (1983), *El Salvador v. Honduras* (1986) and *Benin v. Niger* (2002), where the parties agreed to submit to a special chamber of the Court to resolve disputes concerning delimitation of their common frontiers. The United States and Italy also agreed to submit to a special chamber in *Elettronica Sicula* (1987), a dispute over alleged violations of the Treaty of Friendship, Commerce and Navigation 1948. Regarding formation of a chamber under Art. 26(1) of the Statute, in 1993, the Court created a Chamber for Environmental Matters. However, in the chambers' 13 years of existence, not one state ever requested that it deal with a case (it may be that states with disputes concerning environmental issues prefer to have the authority of the full Bench associated with the case), and the Court accordingly decided in 2006 not to hold elections for the Bench of the chamber, essentially terminating it (United Nations 2007).

Former ICJ judge, Judge Simma, has recommended that '[t]he ICJ should work with two chambers (having identical jurisdiction) and the number of ICJ judges increased to the extent that both chambers would fulfil the criteria of representativeness required by the Statute' (BIICL 2020b).

The composition of the Bench more generally has been the subject of reform proposals. Current Judge and former President Yusuf described the current method of electing judges as a form of 'polycentric governance', meaning the election process 'does not rely on a single organ alone to elect judges' and instead 'spreads the election process among multiple actors at different stages' in entrusting it to the General Assembly and Security Council, acting separately (Yusuf 2019: 4). In his view, this contributes to 'safeguarding the judicial independence and integrity of the Court's membership' (ibid.). However, others have been less certain. Former Judge ad hoc Dugard (2020c) has stated,

The appointing of judges to both the ICJ and ICC must be re-examined. The rules for independent nomination in the Statute of ICJ are ignored by most states. Instead, persons close to government are preferred. Trading votes between States is disgusting. Present practice ensures that few independent judges are appointed.

A frequent advocate before the Court, Professor Payam Akhavan has observed,

Geographical distribution in the election of judges ensures that the ICJ reflects the diverse post-colonial membership of the UN; but the bench is still far from achieving gender balance. The composition of the self-constituted ICJ bar is even less inclusive, with a notable absence of both women and persons of colour, replicating the same historical inequities that we claim to challenge through the legitimacy of international law. It is high time for our community of practitioners to open the doors and lead by example.

(BIICL 2020c)

The agenda of the 11th session of the UN General Assembly in 1956–57 included the question of amending the Statute of the ICJ to necessitate an increase in the number of judges (United Nations 1956–1957: 5). This proposal was, however, rejected (Karl 2019: 1889–1982). Kolb argues that an increase in the number of ICJ judges is not an adequate solution to the Court’s growing number of cases. He reasons that, for the Court to retain the ‘quality and unity’ of its jurisprudence, it must remain limited in size (Kolb 2013: 1208). He instead suggests that reinforcing the chambers would appear to be a precondition for expanding the ICJ’s competence (by, for example, giving it an appellate jurisdiction or having the Court decide questions of international law for the benefit of other tribunals) but also notes that this would risk fragmentation in the Court’s jurisprudence (Kolb 2013: 1208).

In my view, the ICJ’s way of working—in which judges deliberate carefully and are directly and intensely involved in the drafting of judgements—is a strength that should not be diluted by a larger number of judges. It may be interesting to compare the working methods of the ICJ with courts that have more judges, such as ITLOS (21 judges), the International Criminal Court (ICC) (18 judges) or the ECtHR (46 judges). It can be assumed that none of these courts have judges as closely involved in deliberations and drafting. The ICC and the ECtHR operate through sections or chambers, and ITLOS is increasingly exploring hearing cases in special chambers (ITLOS 2019). An option for the ICJ may, therefore, lie in the use of chambers, but this would have to be welcomed by the parties who use the Court. And there would need to be communication and coordination, facilitated by the Registry, to avoid the fragmentation risk that Kolb identifies.

Expanding Its Advisory Function

For Alter, although the ICJ has retained its ability to rule on diverse legal issues (Alter 2021: 20), the ICJ’s interstate nature is ‘the fundamental factor’ limiting the ICJ from self-expanding its advisory function. Although the UN General Assembly, over the years, may have referred controversial cases that states would likely not pursue to the ICJ, states remain likely to react poorly to efforts to use the Court’s advisory role in expansive ways. This, Alter argues, results in the ICJ being ‘hesitant to embrace legal efforts to cajole it beyond a narrow and fairly formalist interpretation of its advisory decision function’; what is required is ‘efforts to formally expand the ICJ’s advisory role’ (Alter 2021: 18–19). She submits that this could allow the ICJ to ‘play an administrative review and constitutional role if its advisory jurisdiction were actively engaged by UN bodies and specialised agencies’ and could result in the ICJ playing a larger role in enforcing and developing international law (Alter 2021: 21).

Another idea is that the Court’s advisory function could be expanded by giving ‘wider access to the advisory procedure to international organisations [...] on the basis of authorisation by the UN General Assembly’ (Kolb 2013: 1206). The African Union could, for example, be authorised by the United States to request an opinion on the scope of head-of-state immunity (Heller 2022). Another option is for there to be ‘a compulsory request for an advisory opinion whenever a Member State declares that a UN organ has exceeded its powers under the Charter’ (Kolb 2013: 1206). To resolve uncertainties in international law, Kolb suggests that the Court ought to be given the right to give declaratory judgements on points of law, unrestrained by the condition as to a ‘present interest in taking action’ (Kolb 2013: 1206).

These reforms may not be necessary given the recent flourishing of advisory proceedings before international courts and tribunals, including the ICJ. On December 30, 2022, the General Assembly adopted resolution 77/247, by which it decided, pursuant to Art. 65 of the Statute of the Court, to request the ICJ to render an advisory opinion on *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (United Nations 2023). On February 20, 2023, a coalition of states led by Vanuatu formally tabled a final draft resolution requesting an ICJ advisory opinion on the obligations of states in respect of climate change (ibid.). Meanwhile, the ITLOS has also been asked to provide an advisory opinion on climate change obligations, focused on obligations to prevent, reduce and control pollution of the marine environment and to protect and preserve the marine environment in relation to climate change impacts (ITLOS 2022). On January 9, 2023, Chile and Colombia requested an advisory opinion from the Inter-American Court of Human Rights (IACtHR) on the scope of state obligations for responding to the climate emergency under international human rights law as well as the American Convention on Human Rights (Colombia Ministry of Foreign Affairs 2023).

The ICJ's response to the two advisory opinions before it will be a good indicator of whether formal expansion of its advisory role is necessary or desirable.

Becoming a Site for Strategic Litigation

A classic definition of strategic human rights litigation is legal action that 'seeks to use the authority of the law to advocate for social change on behalf of individuals whose voices are otherwise not heard' (Open Society Justice Initiative 2013: 5).

Until 2017, the ICJ was infrequently used for this type of litigation. There had been the *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* lodged in 2009 (with Belgium submitting that Senegal violated Art. 7 of the Convention against Torture (United Nations 1984) by failing to prosecute or extradite Mr. Hissène Habré, former President of Chad), and then a long pause. After that, a series of cases came in quick succession. In 2017, Mauritius gained sufficient support in the General Assembly for that principal organ to request an advisory opinion from the ICJ on, *inter alia*, whether the process of decolonisation of Mauritius was lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law. This brought to the Court a dispute that had been simmering for decades, an aspect of which had been heard by the ECtHR, an ad hoc international tribunal, and the English courts (Webb 2021). The question of sovereignty over the Chagos Archipelago was also an issue in the case before the International Tribunal for the Law of the Sea (2019) between Mauritius and the Maldives (*Delimitation of the Maritime Boundary between Mauritius and Maldives*).

In 2019, the Gambia instituted proceedings against Myanmar alleging violations of the Genocide Convention through 'acts adopted, taken and condoned by the Government of Myanmar against members of the Rohingya Group'. It referred to acts by the Myanmar military and other security forces that were

intended to destroy the Rohingya as a group, in whole or in part, by the use of mass murder, rape and other forms of sexual violence, as well as the systematic destruction by fire of their villages, often with inhabitants locked inside burning houses.

(*The Gambia v. Myanmar* (ICJ 2019))

Among other remedies, the Gambia asked for reparation ‘in the interest of the victims’, including safe return, respect for full citizenship and human rights. It also lodged a request for urgent provisional measures (*The Gambia v. Myanmar* (ibid.)).

What is the interest of the Gambia in the plight of Rohingya, 11,500 km away? The Vice-President of the Gambia said it is ‘a small country with a big voice on matters of human rights on the continent and beyond’ (United Nations 2019). The Attorney-General said he wanted ‘to send a clear message to Myanmar and to the rest of the international community that the world must not stand by and do nothing in the face of terrible atrocities’. The Application states the Gambia is acting on behalf of the 57 member states of the Organization of Islamic Cooperation (Dutch News 2019). Since 2019, the Maldives, the Netherlands, Canada, Germany, and the United Kingdom have announced their intention to intervene in the case in support of the Gambia under Art. 63, ICJ Statute.

On February 26, 2022, two days after the Russian invasion of Ukraine, Ukraine filed an application instituting proceedings against the Russian Federation concerning ‘a dispute ... relating to the interpretation, application and fulfilment of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide’ (ICJ 2022m). It contends that ‘the Russian Federation has falsely claimed that acts of genocide have occurred in the Luhansk and Donetsk oblasts of Ukraine, and on that basis recognised the so-called “Donetsk People’s Republic” and “Luhansk People’s Republic”, and then declared and implemented a “special military operation” against Ukraine’. Ukraine ‘emphatically denies’ that such genocide has occurred and explains that it submitted the Application ‘to establish that Russia has no lawful basis to take action in and against Ukraine for the purpose of preventing and punishing any purported genocide’ (ibid.).

In its Provisional Measures Order of March 16, 2022, the Court used direct language and went ‘out of its way to make points that it was not legally required to make but were required by the necessity of the moment’ (Milanovic 2022):

The Court is profoundly concerned about the use of force by the Russian Federation in Ukraine, which raises very serious issues of international law. The Court is mindful of the purposes and principles of the United Nations Charter and of its own responsibilities in the maintenance of international peace and security as well as in the peaceful settlement of disputes under the Charter and the Statute of the Court. It deems it necessary to emphasize that all States must act in conformity with their obligations under the United Nations Charter and other rules of international law, including international humanitarian law.

(ICJ 2022c: para. 18)

Ukraine had requested a measure linked to the Genocide Convention, given that it formed the jurisdictional basis for the case (ICJ 2022c: para. 5). Interestingly, the Court reformulated the measure so that no link to the Convention was required, making it an even broader call for Russia stop its aggression (ICJ 2022c: para. 86(2)). A record number of states have declared their intention to intervene in the case in support of Ukraine (19 states as of September 2022) (ICJ 2022a).

From a practical perspective, there are various constraints on using the ICJ as a site of strategic litigation. Only states may bring contentious disputes. Its jurisdiction requires

consent, which is often on a piecemeal and limited basis (Ukraine's case, for example, may be said to be really about aggression and war crimes rather than genocide per se). There are remote prospects for substantial compensation, and it can take decades to achieve—in *Armed Activities on the Territory of the Congo (DRC v. Uganda)* (ICJ 2022f), the ICJ awarded the DRC a total amount of US\$325,000,000. Ukraine estimates its losses amount to over USD\$1 trillion (Tsyrennikov 2022).

Moreover, the ICJ is a traditional, permanent, interstate court of general jurisdiction. It is not known for being nimble, innovative or activist. As the most prominent counsel before the Court, Professor Alain Pellet has observed,

[No!] Salvation does not lie in the compulsory jurisdiction of the Court but in the patient learning by States of the virtues of settling disputes by judicial means. It is not major and politically sensitive disputes that should be submitted to the Court, but the 'lambda' disputes that poison bilateral relations [without threatening international peace and security].

(BIICL 2020b)

However, the momentum at the ICJ defies Professor Pellet's observation. As noted earlier, Vanuatu has been spearheading a movement to request an advisory opinion on climate change (Vanuatu ICJ Initiative n.d.). The initiative has been motivated by the potential role of general international law in complementing and plugging gaps in ambition, accountability and fairness in the climate regime (Rajamani *et al.* 2021). Specifically, general principles of international law may help in determining fair shares in state efforts to combat climate change and reduce emissions (Rajamani *et al.* 2021). At an event on the sidelines of COP26, Professor Rajamani explained that an advisory opinion could clarify the 'nature and extent' of states' obligations on climate change in the wider context of international environmental law, bringing cohesiveness to states' fragmented international obligations in this area. In other words, an advisory opinion could 'concretize' state obligations by 'identifying benchmarks to assess state actions and giving national courts tools to scrutinise those activities' (CISDL Secretariat 2022).

The climate change resolution's language draws on a huge range of international law instruments and principles, referring to

Charter of the United Nations, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognised in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment, and the duty to protect and preserve the marine environment.

(United Nations 2023)

It represents a new type of case for the Court—a grassroots movement growing into a diverse coalition, a question affecting every state and people, a major and politically sensitive issue, and one on which Court may either dodge the difficult questions (*Nuclear Weapons* (ICJ 1996)) or lay out a road map for future generations.

Introducing Mandatory Jurisdiction

Professor Makane Moïse Mbengue has observed,

A Court without Justice to entertain, is like a tree without roots. Consent is the invasive species that harms the ecosystems of the Forest of the common concerns of humankind. Here is the path to the sustainable restoration of these ecosystems: consent as the default rule; non-consent as the exception.

(BIICL 2020c)

Calls for the ICJ to have mandatory jurisdiction over disputes between UN member states have been made for decades, albeit less poetically.

The call to accept the Court's jurisdiction under the Optional Clause has been issued regularly by UN Secretaries-General. For example, in 2008, Ban-ki Moon noted,

Violations of international law are still too frequent, means of accountability too few and the political will to ensure compliance with international law too weak. To advance the rule of law at the international level, the work of the International Court of Justice and other international dispute resolution mechanisms must be strengthened.

(United Nations 2008: para. 30)

He stated,

With a view to achieving that goal, I recommend that Member States and other rule of law stakeholders, where appropriate: ... Accept the jurisdiction of the International Court of Justice, in accordance with its Statute, and strengthen the work of the Court and other international dispute resolution mechanisms.

(United Nations 2008: para. 76)

The number of states that have heeded the call has remained stable at around 70 (73 as of September 2022) (ICJ 2022i), amounting to just over one-third of member states. And many of their declarations under the Optional Clause are carefully circumscribed by reservations.

Introducing mandatory ICJ jurisdiction would not be possible to achieve without a seismic shift in the attitude of states and, to a lesser extent and as a consequence, in the working methods of the Court. We can contrast the ICJ with the ECtHR, a court with mandatory jurisdiction over all states parties to the European Convention on Human Rights. The ECtHR has a complex case processing system whereby applications can be decided by a single judge, a committee of three judges, a chamber of seven judges, or, by referral or relinquishment, by the Grand Chamber of 17 judges (ECtHR 2022). Its 46 judges never sit as a plenary, and it relies heavily on a Registry composed of 640 staff members (European Council n.d.). In 2021, it had a backlog of 65,000 cases, and this represented a reduction from 160,000 cases in 2011 (ECtHR 2021).

For the ICJ, a change in mindset would also be required. D'Aspremont has observed that regional courts 'have found that the idea of an international legal system carries some benefits, can preserve their autonomy, and can improve the persuasiveness of their decisions'; they are therefore interested in 'system-building' (D'Aspremont 2017: 375). In his view, the ICJ has no such interest; it

feels that it is not only the central magistrate of the UN dispute settlement mechanism but also the central plumber of the international legal order. Yet, the ICJ does not go as far as claiming some monopoly on the design of the systemic features of international law.

(D'Aspremont 2017: 374)

Hernandez, writing in 2013, argued that the ICJ also took a limited view of its status and role: it sees itself as 'merely a creature of its Statute that settles disputes and issues advisory opinions' and expresses 'great ambivalence in respect of jus cogens norms and obligations erga omnes ... [and] has resisted arrogating for itself a centralised interpretative role in articulating these controversial concepts' (Hernandez 2013: 58).

The rise in strategic litigation, especially of an advisory nature, and the ICJ's robust response to date to the Russian invasion indicates that a shift may be taking place within the Court and in the interaction between the Court, the parties and the general public. This shift—while far from seismic—is tangible. The greater interest in the Court, its role in the headline stories of the time and the multiple interventions in support of Gambia and Ukraine may foreshadow a higher uptake of the Optional Clause by states wanting the ICJ to play a bolder role in the settlement of their disputes.

Revolutionising the Court's Role under Chapter VI of the Charter

On paper, the ICJ is the linchpin of Chapter VI of the UN Charter dedicated to the peaceful settlement of disputes. Under Art. 33(1), it is part of the 'judicial settlement' that parties may use to seek a solution to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security. Under Art. 33(2), the Security Council 'shall, when it deems necessary' call upon the parties to settle their dispute by means, including judicial settlement by the ICJ. More specifically, under Art. 36(3), in making recommendations for the procedures of methods for settling a dispute, the Security Council 'should also take into consideration that legal disputes should *as a general rule* be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court' (emphasis added).

However, in practice, Art. 36(3) has 'never been expressly invoked', although implicit reference has very occasionally been made in UNSC resolutions (Higgins *et al.* 2017: 1112; see, for example, United Nations 1945a–1954: 321–23; United Nations 1947: para. 2; United Nations 1955–1959: 399–400; United Nations 1976: para. 4; United Nations 1980a, 1980b, 1980c). There has been only one occasion in which the UNSC asked the ICJ for an advisory opinion on an issue related to the peaceful settlement of disputes in *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (ICJ 1971).

Calls to enhance the ICJ should be put in the context of broader, longer-term reforms aimed at strengthening Chapter VI and overcoming the veto in Chapter VII. The revitalisation of Chapter VI can also be used to buttress Art. 94(2) of the chapter on implementation of ICJ judgements. As Almeida and Sorel point out, 'Art. 94 (2) UNC is not the only means of recourse to the Security Council for reaching the implementation of a judgement'. The creditor of the judgement could also proceed under Chapter VI, which relates to disputes 'the continuance of which is likely to endanger the maintenance of international peace and security' (Art. 33 UNC) or 'which might lead to international friction' (Art. 34 UNC) (Almeida and Sorel 2017: 138).

Taking its rightful place at the heart of Chapter VI may also encourage the ICJ to engage, where relevant, in judicial review of decisions of other principal organs—there is currently ‘no general procedure by which the legality of decisions of the UN or its organs can be subjected to judicial scrutiny’ (Higgins *et al.* 2017: 352; see also Alvarez 1996; Brownlie 1994; Franck 1992; Gill 1995; Gowlland-Debbas 1994; MacDonald 1993; Martenczuk 1999; Reisman 1993; Watson, 1993).

The ICJ is the ‘guardian of legality’ under the UN Charter, with an influence that extends across borders and transcends jurisdictions. It can play—and should play—a central role in post-crisis rethinking of the global governance architecture. International law has been invoked by all sides of current conflicts, often in a self-serving manner. Russia, for example, has invoked the obligation to prevent genocide to justify the invasion of Ukraine (ICJ 2022b), and China has condemned European Union sanctions related to human rights abuses in Xinjiang as violations of international law (Ministry of Foreign Affairs of the PRC 2021). We need strong judicial institutions to interpret, apply and develop the law with credibility and independence. The ICJ can gain some ‘quick wins’ in terms of efficiency from updating its procedures and learning lessons from the technological adaptations required by the pandemic. But it is more ambitious thinking that is needed: embracing its role under Chapter VI of the Charter, expanding access and advisory functions, diversifying the Bench, and heeding the call—that is already being made in the climate change litigation—for the Court to be a beacon in dark times, guiding present and future generations to a more stable and cooperative future.

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17 Prospects for Operationalizing UN Charter Article 26

Andy Weber and Christine Parthemore

The architecture of international treaties and organisations formed early in the 20th century to reduce deadly conflict and foster stability, with the UN system at its core, seems more strained than at any time in its history. In that era, several nations developing and using chemical, biological and nuclear weapons served as an impetus for that historical shift to a better world order. Today, new signs of nuclear arms racing are occurring as cooperation among nuclear-armed states is stagnating and as most of these nations are modernising and expanding their nuclear arsenals. The nuclear Non-Proliferation Treaty (NPT) and the Biological Weapons Convention Review Conferences the United Nations convened in 2022 made scant progress. Chemical weapons have been used numerous times into the 21st century. These are just a few signs of trends moving in the wrong direction.

Unfortunately, if the international system becomes strained enough to fully break—or, short of that, be rendered largely irrelevant—there is little hope today that most nations of the world will once again unite to create replacement agreements. It is, therefore, critical to strengthen the existing system governing weapons as much as possible, with urgent focus on those elements that govern nuclear, chemical and biological weapons.

It is easy to see why experts are renewing efforts to identify methods for strengthening the existing system as much as possible. One area of inquiry involves whether more can be done to enact Article 26 of the UN Charter or, short of actions directly tied to this article, more robustly pursue its intent. Article 26 states,

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating ... plans to be submitted to the Members of the United-Nations for the establishment of a system for the regulation of armaments.

(United Nations 1945)

While governance of armaments broadly is an important topic, in this chapter, we will focus mainly on the subject in the title of this book: *the need to manage and mitigate global catastrophic risks in the 21st century*. As such, we will focus mostly on governance of nuclear, biological and chemical weapons. This focus reflects these rising threats, the challenges to their collaborative governance that the world is witnessing and the existing foundation upon which to build in addressing these risks. Throughout, we aim to highlight how measures that meet the spirit of Article 26 are important to rebuilding trust in

international cooperation. It also argues that the best way to move towards the aim of Article 26 is for nations to double down on efforts to reinforce existing arms control and disarmament treaties; commit to specific steps towards their full implementation, such as Article VI of the NPT; and continue adding layers of cooperative measures to fill gaps across current treaties.

This chapter begins with background behind the early years in which implementing Article 26 was considered, followed by the status of the major current weapons of mass destruction (WMD)–related treaties. Throughout, we describe key trends in the global security environment today that are shaping the status quo, offer ideas for how to strengthen weapons governance in these areas and provide context for what has changed since the inception of Article 26 and what remains possible in terms of meeting its ideals.

The Early Years of the United Nations

The agreement that created the United Nations, and multiple preceding agreements aiming to reduce conflict and its brutality, stemmed from both significant destruction and enlightened thinking about how nations should be expected to behave in advancing their interests and settling disputes. While no precise totals exist, the best estimates indicate that around 15 million people died in World War I from 1914 to 1918, with an equal or greater number injured. The suffering from the war included extreme agony caused by the horrific use of chemical weapons on both sides of the war.

These effects contributed to an acceleration by diplomats, lawyers and political leaders of multiple countries who set about exploring designs for international agreements and organisations—such as the League of Nations and the Geneva Protocol of 1925—seeking to prevent warfare, outlaw the unchecked use of chemical and biological weapons, focus more resources on economic stability, and other objectives. As is well known to history, these efforts shaped some behaviours of nations, yet failed to meet their intended goals and ultimately were unable to stem the trends that contributed to the even more destructive World War II.

That conflict drove even more concerted attempts at similar goals, even as the war raged across much of the globe. Early into World War II, leaders of the Allied powers and other nations were devising ideas to accelerate towards a future in which most resources could be dedicated to economic growth and stability, and concepts for how warfare could be reduced. The clear pathway was set by nations creating cooperative bodies to address issues and set acceptable norms of behaviour that did not include widespread reliance on military force—of course, only after the Axis powers had been defeated.

The Charter of the United Nations was signed in June 1945, just weeks after the end of World War II in Europe, and entered into force in October of the same year, weeks after the end of the war in the Pacific. This world-changing diplomatic achievement provided a stark and hopeful contrast to the war's destruction. It is estimated that more than 75 million people died or were injured over the course of the war, including the 110,000–210,000 dead and likely far more than 100,00 injured in the Hiroshima and Nagasaki nuclear bombings alone (The National WWII Museum n.d.; Wellerstein 2020).

At this time, many nations planned to draw down defence forces from their large-scale wartime mobilisation levels. Others were left with little choice given their realities of devastated military capabilities, civilian populations, infrastructure, and economies. Stemming from these different but related conditions, nations around the world put faith in international collaboration on a grand scale to avoid future conflict and create

pathways towards peaceful development. The years proceeding from World War II saw stark rhetoric from leaders around the world positioning economic advancement and investments in military forces as zero-sum and opposing concepts. For the United States, this was clear in how its leaders described the importance of the massive economic development effort that would become the Marshall Plan in 1948.

Meanwhile, significant diplomatic energy went towards exploring ways to turn the UN Charter into action, including the regulation of armaments described in Article 26. Given the use of chemical, biological and nuclear weapons in both world wars, and the precedent set by the Geneva Protocol, the question of whether to govern these types of weapons separately from the wide range of conventional arms was always a central one from the start.

In January 1946, the first UN resolution set a strong precedent for unique governance of WMD by establishing an Atomic Energy Commission to begin working on ways to implement safeguards and ensure peaceful uses of this technology (United Nations 1946). When the United Nations established the Commission for Conventional Armaments in February 1947, it was explicit that its jurisdiction excluded the work of the Atomic Energy Commission (United Nations 1947). By the end of the year, the Commission confirmed that its mission encompassed all weapons and armed forces, aside from nuclear, radiological, biological, and chemical weapons, and ‘any weapons developed in the future which have characteristics comparable in destructive power’ to such weapons (United Nations 1948). The Soviet Union objected to this separation on the grounds that an all-out arms race would ensue without more explicit agreement on disarmament of nuclear, chemical and biological weapons—foreshadowing the Cold War in general and its first nuclear weapon test in August 1949 specifically.

While many Security Council members and UN Charter signatories professed hope in these pursuits, in deliberations of its working group, the Commission also noted that global cooperation in disarmament of conventional weapons and forces would only transpire in an environment of security and trust. In particular, they noted, progress would hinge on implementation agreements to advance Article 43 of the UN Charter, by which nations agreed to make armed forces available to the United Nations, and to the establishment of global governance of atomic energy and an end to national-level possession of nuclear, chemical and biological weapons (United Nations 1948).

Many participants in these proceedings appear to have taken the pursuit of these goals quite seriously. As World War II veteran and long-time UN leader Brian Urquhart described in a 1993 article, the United States pondered the potential of providing ‘over 300,000 troops—a very large naval force, 1,250 bombers and 2,250 fighters’ (Urquhart 1993). However, the emerging Cold War intervened. The Soviet Union effectively ended cooperation in the Commission on Conventional Armaments in 1950, and the United Nations voted to formally dissolve the Commission in January 1952 (United Nations 1952). Since that time, multiple efforts, albeit plodding, have carried forward the aim of regulating conventional arms, including having the United Nations establish a public Register of Conventional Arms and the Arms Trade Treaty, which finally entered into force in 2014. For the most part, since the earliest years of work to govern armaments, such work has proceeded separately from the extensive efforts to limit and seek disarmament of nuclear, chemical and biological weapons.

Indeed, to date, this separation has largely been productive for mitigating catastrophic weapons risks. Even during the height of the Cold War, the world saw progress in developing multiple treaties aiming to limit and, in some cases, eliminate nuclear, chemical and biological weapons, even with less progress towards the full vision set by the UN Charter.

Today, the core UN treaties regarding these weapons, and their related implementation bodies for nuclear and chemical weapons, are nearly universal and widely considered to be respected by nearly all nations of the world. However, many challenges to this regime and trends in the global security environment are calling into question what could or should change to reflect today's realities.

The issues at hand are extensive. Several nations have used chemical weapons in recent decades, including attacks carried out after the Chemical Weapons Convention (CWC) entered into force. UN Security Council members and other nations are concerned about others possessing biological weapons, and this issue remains at the heart of dramatic misinformation and disinformation campaigns. All bilateral nuclear arms control agreements between Russia and the United States but one have ended, with no replacements yet in sight. After decades of progress in reducing nuclear weapons arsenals, as required by the NPT, many nations have reverted to *expanding* the types of nuclear weapons they possess. Issues of offensive and defensive capabilities, and nuclear and conventional weapons, are intertwined in the security strategies and concerns of nations, as witnessed by Russia's desire to include missile defences in nuclear arms control discussions. These are just a few of countless worrisome security issues that nations are grappling with, and it has once again sparked consideration of whether more can be done to move back towards the spirit of Article 26 or pursue a more literal implementation of it.

The history summarised in this section provides important context to such questions. From the earliest years of the United Nations, progress on control and disarmament of WMD has been viewed as a cornerstone of global security and stability and is often considered a prerequisite to broader progress in reductions in conventional arms. Though these are neither universal nor permanent sentiments, they are deeply rooted and widely held. There were valid reasons why the first officials charged with giving life to the UN Security Council viewed nuclear, biological and chemical weapons as requiring special treatment, including the concerns expressed by the Soviet Union that these weapons held the power to drive arms-racing behaviour that would shape or hinder progress on all else.

The remainder of this chapter, therefore, focuses on the revival of cooperation regarding these categories of weapons. In considering nuclear, biological and chemical weapons issues and prospects for improving their governance, we seek to highlight the status today at a high level and offer ideas for progress.

Nuclear Weapons

Concepts for the governance of nuclear weapons featured bold ideas but no progress in the earliest years of both the nuclear age and the United Nations. The Atomic Energy Commission lasted only a few years before disbanding after lack of agreement over concepts such as putting all atomic energy technology in the hands of an international body. The United Kingdom, Soviet Union and France advanced nuclear weapons programmes as other nations explored the idea. When full global governance of the peaceful nuclear challenge failed, limiting proliferation became a rising concern: how to prevent dozens of nations from developing these weapons, in particular given that there was widespread interest in expanding nations' access to nuclear energy.

Through the early 1950s, diplomacy proceeded, aiming to govern nuclear materials and technology and preventing their use for military purposes—work which featured no shortage of disagreements and compromises. This work led to the establishment of the International Atomic Energy Agency (IAEA) in 1957. It was clear that other measures

would still be needed to prevent the spread of nuclear weapons, including what would become of the NPT, which opened for signature in 1968, entered into force in 1970 and was extended indefinitely in 1995. In addition to work conducted via its own cycle of activities, the objectives of the NPT have been further pursued in other fora, in particular bilateral United States-Soviet and United States-Russia nuclear arms control agreements.

Though by many measures it has been an effective treaty, multiple, longstanding issues surrounding the NPT are well known. It discriminates between nations accepted as possessing nuclear weapons and those that are not recognised as legitimate possessors (thereby leading to their not being states parties of the treaty). The NPT enshrines the obligation of nuclear weapons-possessing states to work towards disarmament of these weapons, yet sets no timeline for advancing or completing this work. States parties can withdraw from the treaty—which North Korea has done.

The review conference held every five years to oversee the treaty's progress and direction has had a mix of successes and challenges. The 1995 review conference cemented the treaty's indefinite extension—a monumental success, given some of the intrinsic issues with the treaty mentioned earlier. The review conference in 2000 included nuclear weapons states recommitting to the treaty's disarmament requirement. Since then, the 2010 review conference was the only one to produce a final consensus document, which included a 64-point plan for progress in implementing the NPT (Government of Canada 2010).

However, further agreement among nations regarding how to move the NPT forward has been set back since then, including by another resolution adopted in 1995 that set forth an agreement to establish a WMD-free zone in the Middle East. Years of valiant efforts went towards this objective, though ultimately, WMD issues stemming from Iraq, Iran and Syria, and Israel's suspected nuclear weapons programme have proven too high a hurdle. Multiple other issues continue to linger, including nuclear-armed states showing signs of expanding their nuclear arsenals in capability types and numbers. Many nations are increasingly frustrated with the behaviour of the permanent members of the UN Security Council (P5), as shown by their support for the Treaty on the Prohibition of Nuclear Weapons.

However, there are still positive signs for the NPT. At the 2022 review conference—held after a two-year delay due to the COVID-19 pandemic—all states except Russia agreed on the final document. Russia noted many objections but focused its lack of willingness to agree to the document on language noting grave concern for safety and the upholding of nuclear norms in the wake of the Russian takeover of the Zaporizhzhia Nuclear Power Plant in 2022 (Lederer 2022). Moreover, the final document showed many signs of international unity on key issues and signs that nations are agreeing to prioritise steps that move the world towards the treaty's vision—even though many such steps in past years were seen as insufficient and denounced. A few particular examples stand out:

- Either through national statements or the final document or both, every party to the NPT affirmed that it is the cornerstone of efforts to reduce nuclear weapons risks.
- In the final document, states agreed that the risks of nuclear weapons *use* were rising as a result of the deteriorating security environment. The open acknowledgement of this reality should be used as a pivotal moment for galvanising support for action.
- A major theme of the conference discussions and final document was *risk reduction*. This also represents a shift; for years, many parties viewed risk reduction as an excuse to reduce pressures on nuclear-armed states to meet their disarmament obligations.

Among many positive aspects of the 2022 review conference, this sharpened focus on preventing the use of nuclear weapons and reducing the risks of nuclear conflict, misinterpretations and miscalculations should help nations come together and prioritise actions in the coming years that will have a meaningful impact. At the same time, we believe this links to the most promising pathway for reinvigorating the pursuit of the NPT's nuclear disarmament objectives over time.

In our work, we and several colleagues advocate for nations to pursue specific steps in nuclear restraint, responsibility and reductions that are prioritised by two driving factors: the types of nuclear capabilities that are most likely to raise the risks of the use of nuclear weapons in the near term and the geopolitical realities that will allow for progress among various sets of nations (or all nations, if possible). In particular, we have described that rising risks of miscalculation and misinterpretation are coming from the expansion of certain nuclear weapon capabilities—in particular, those that increase ambiguity (for example, dual-capable delivery systems that may be nuclear or conventional), lower-yield nuclear options that are considered by some to be more acceptable for nuclear war-fighting, and new nuclear capabilities that may disrupt strategic stability perceived between nuclear-armed nations (Council on Strategic Risks 2022).

This formulation holds great potential for nations to make progress before the next NPT review conference. In particular, there are many options for steps to address these concerns. For example, nuclear cruise missiles increase ambiguity and disrupt strategic stability, yet only three nations are known to possess stocks of them (Russia, the United States and France). To end this entire class of nuclear weapons, others would have only to agree not to develop them, while the three possessors certainly have a common security rationale for their elimination by all nations (Weber and Parthemore 2019). Progress could be even narrower to start; for example, bilateral or multilateral agreements not to pursue intermediate-range, ground-launched cruise missiles. Today, no nation possesses them (because they were previously banned by the United States-Russia Intermediate-Range Nuclear Forces Treaty), yet all major nuclear-armed nations are concerned that others will develop them as dual-capable weapons at the same time that they are increasing deployment of conventional versions.

In the years ahead, strengthening international governance of nuclear weapons must include concepts like these. While it may be a slower path to nuclear disarmament than desired, that work must begin by stopping the growing arms race and by pressuring countries to agree not to expand their ranges of nuclear capabilities in ways that heighten risks even more. While there are significant indicators that nuclear states will be reluctant to find a workable path along these lines, our private conversations with officials from adversarial nations over the years indicate that the potential is there if political will can be found, and historically, early explorations of feasibility and mutual benefits contributed to the creation of the political will required for many major arms control and nuclear weapons reductions measures to be implemented, even in harrowing times.

Risk reduction steps, such as preventing further arms racing and the use of nuclear weapons, need not be seen as small steps. Moreover, steps in this category are likely to halt the action-reaction cycles we see emerging today that could further weaken the norms set by the NPT if they aren't stopped soon.

In addition to reducing arms-racing behaviour and reducing the risks of nuclear weapons being used, narrowing the types of nuclear capabilities that nations possess should have positive effects on general momentum towards disarmament, as they would further limit scenarios of nuclear weapons use and also limit nuclear planning and postures accordingly.

Biological Weapons

Biological weapons became the first category of WMD to be banned outright in international law when the Biological Weapons Convention (BWC) opened for signature in April 1972 and entered into force just under three years later. These weapons reached this milestone soon after the NPT's signature due to numerous factors. Negotiators viewed chemical weapons as involving far more complicated calculations and wrinkles. Though this was not a unanimous view, many experts also considered biological weapons to serve more for deterrent and retaliatory purposes than military utility in the types of conflicts envisioned as possible during the height of the Cold War, including that Europe could become the most likely geography of use and the potential civilian implications of that. Discussion of banning biological weapons carried on through the 1960s, with the United Kingdom issuing a formal proposal in 1969. It gained momentum later that year when U.S. President Richard Nixon renounced the nation's biological weapons programme, to some extent due to public pressure surrounding the U.S. war in Vietnam and use of Agent Orange, and the effects this had on civilians and the environment (Tucker and Mahan 2009). This helped smooth the way for U.S. support and that of others for the treaty.

Sadly, although this was a historical achievement and definitely set a strong norm against them, it did not end biological weapons programmes. Most starkly, the Soviet Union actually ramped up its biological weapons activities after signing the BWC, work which eventually included experiments to engineer and enhance pathogens and industrial-scale biological weapons production facilities. These efforts also remained well hidden and were mostly revealed only after the collapse of the Soviet Union provided access to sites of this work in newly independent states such as Kazakhstan.

At the same time, the BWC continues to struggle in practice due to structural gaps in the treaty. For one, countries have not fixed the absence of agreed verification mechanisms. It lacks a permanent secretariat, and today, implementation is supported by only a few staff members. Dozens of member states conduct confidence-building work and take other steps to implement the treaty's vision, although this is not yet widespread. Member states must drive progress via review conferences held every five years, which leaves a perpetual risk that activities could effectively grind to a halt or continue to gain traction based fully on the will of nations.

The characteristics of the biological weapons challenge also increase the difficulty of governance in this area. Biology presents perhaps the most extreme dual-use problems. While most nations have not pursued biological weapons, all countries hold the prospect of doing so from a technological perspective if political decisions move in that direction. They can be produced with a very small and extremely hard-to-detect footprint—for example, by misusing legitimate laboratories and materials. Indeed, as the U.S. *Amerithrax* case showed, biological weapons can be produced by certain actors within nations that are otherwise complying with their international legal obligations not to, and such activities may go without detection. The evolution of technologies that can contribute to biological weapons production, and the dramatically declining costs associated with such work, are deeply alarming.¹

Biological weapons are also perhaps the class of WMD that sees the greatest heights of mistrust among many nations (including most within the UN Security Council). The United States destroyed its biological weapons upon the programme's end in the earliest years of the 1970s, and this, unfortunately, became a fact used against it as the Soviet Union and others raised doubts about whether the programme had truly ended and the

arsenal destroyed. At the same time, several nations distort legitimate public health and biosecurity cooperation among nations as part of deliberate disinformation and misinformation campaigns.

In particular, in 2022, Russia took its falsehoods that Ukraine produced biological weapons with the United States to new heights alongside its invasion. This process forestalled BWC progress, as the efforts of diplomats were distracted from seeking agreement on strengthening BWC implementation to refute Russia's formal allegations. Unfortunately, while Russia's accusations have largely fallen flat, they have still had influence in sowing deeper distrust among many nations around the world.

This all means that strengthening the BWC and seeking its verifiable enforcement will remain complicated. More than ever before, resources should focus on (a) developing cooperative and trust-building mechanisms that both support BWC implementation and eventual verification and (b) options that can meet similar aims via coalitions of willing partners outside of the formal BWC channel.

One area of good news is that the technological potential for addressing this problem is much greater than ever before and growing even more so at an incredible pace. Many believe it is becoming a technological reality to implement systems that would produce early warning of new pathogen threats from all sources, and this would be game-changing for public health and addressing biological threats. Moreover, significant progress is occurring in platform technologies to rapidly develop new medical countermeasures along with advanced manufacturing systems to produce them immediately. If these and other systems expand sufficiently, and if they are designed to account for deliberate and potentially engineered biological agents, they hold the potential to halt damage from all pathogens quickly after their release—essentially, rendering biological weapons obsolete as a catastrophic or mass destruction threat (Parthemore, Singh and Weber 2020).

This goal may take years or even a few decades to achieve; however, wide-ranging experts have agreed that it is a feasible goal and the appropriate long-term vision for all nations to set. It will also build on past successes, such as the widespread global surge in bio-surveillance capabilities that stemmed from the World Health Organization's 2005 prioritisation for all nations to advance systems to detect and characterise disease outbreaks and openly share data for response. The methods of minimising the mass destruction threats of biological weapons largely overlap with what is required to prevent future outbreaks from reaching pandemic (and even catastrophic) scales.

Of course, increases in biosecurity and biodefence investments may also drive further suspicion among nations, even if they often take the form of public health and societal resilience initiatives. As such, increasing transparency regarding such activities, as envisioned by the BWC, must become a high priority among responsible nations. Filling additional gaps in current global architecture, such as limited governance and oversight of high-containment laboratories, will become imperative as well. These concepts are far from new, as they echo proposals made at the BWC's earliest review conferences, yet they remain largely unrealised and are becoming even more important over time. In sum, this could be game-changing for how nations cooperate to strengthen governance against such weapons.

Chemical Weapons

The extensive use of chemical weapons during the world wars helped to trigger nations' uniting to address WMD and broader goals in how peace and security are justifiably pursued. Moreover, since the Geneva Protocol banned the use of chemical and biological

weapons but not their possession, multiple nations developed stockpiles of chemical weapons larger in volume than nuclear or biological weapons stockpiles (albeit not necessarily matching their destructive power). Additionally, the use of these weapons has continued well after the world wars, including use in the Iraq-Iran War and the Iraqi government's use against Kurdish populations.

These factors created a unique backdrop as nations developed the CWC, which opened for signature in 1993 and entered into force in 1997, as compared to its much earlier-negotiated nuclear and biological weapons counterparts.

The history regarding efforts to end these weapons also differs in several ways, including in scale and in the multilateralism involved. In terms of scope, this work has featured large-scale operations to verifiably destroy old stockpiles and production facilities—work which is nearing completion for declared arsenals—and ongoing smaller-scale requirements to destroy legacy remnants of chemical weapons that turn up in fields across Europe, in Panama and elsewhere.²

Chemical weapons demilitarisation and disarmament efforts have also involved a wider range of nations than similar efforts to dismantle nuclear weapon components and biological weapons capabilities. Nations that declared stockpiles and worked to eliminate them upon joining the CWC included Albania, India, the United States, and Russia. Under different conditions, Libya, Iraq and Syria followed suit. Efforts to destroy chemical weapons in these nations featured the extensive involvement of the United Nations and the Organisation for the Prohibition of Chemical Weapons (OPCW), as well as direct support from Germany, Canada, the United States, Greece, Italy, Switzerland, the United Kingdom, Finland, and others. Indeed, the multinational collaboration involved in implementing the CWC has been a significant point of strength of this treaty.

Today, OPCW tracking indicates that 99 per cent of declared chemical weapons stockpiles have been destroyed (OPCW 2023), though concerns remain that potentially significant undeclared stockpiles remain in countries such as North Korea. Unfortunately, the use of chemical weapons by Syria, Russia, North Korea, and the Islamic State over the past decade serves as a reminder that the threat persists and is evolving.

This makes it imperative that work continue to keep the CWC and OPCW strong, including ongoing efforts to adapt the treaty as chemical weapons threats evolve. In an important example, in 2019, the parties to the CWC agreed to add Novichok to the schedules of banned chemical weapons substances (Weber and Parthemore 2019). This may seem basic given that Novichok was used in a chemical attack in the United Kingdom perpetrated by Russia, but it was far from preordained, given ongoing challenges in getting nations to agree on major steps. Put in terms of the counterfactual example, failure to include Novichok, which was developed specifically as a powerful chemical weapon, would have certainly been seen as a sign that the CWC was weakening.

As times change, the OPCW is also evolving positively, as it is expanding how it promotes the treaty's tenets beyond the task of eliminating chemical weapons. It is expanding its work to help countries exercise transparency and meet reporting obligations to keep norms strong and encourage trust as mechanisms for minimising the risks of future breakout chemical weapons programmes. It is evolving its verification roles to include far more work with industry, including understanding how chemistry is itself changing. As this work expands in the coming years, it will surely hold lessons for the nuclear and bio spaces as well.

Steps to promote the strength of the CWC must include the pursuit of accountability for past uses. As one of this chapter's authors stated in a 2022 speech to U.K. and U.S. chemical weapons demilitarisation and defence leaders,

Strengthening norms against chemical weapons use, and WMD possession broadly, requires that the world continues to push for truth and accountability for past uses of chemical weapons such as attacks in Syria. It may seem futile at times, but even attempts that are blocked by countries in breach of international treaties or others have a strong purpose in affirming that the CWC and other treaties are not just documents.

(Council on Strategic Risks 2022)

Finally, as efforts to destroy known chemical weapon stockpiles draw to a close, these milestones should trigger new activities. For one, nations, the OPCW and the United States should actively celebrate all such final milestones, using these occasions to remind the world of the need to strengthen norms against WMD and remain united in ending the threats they pose. Second, nations and international organisations will need to determine mechanisms for maintaining technical expertise and keeping skills fresh in chemical weapons elimination and verification, given that fewer and fewer knowledgeable experts work in this field; chemical weapons programmes may reemerge in the future, and a few nations may still harbour them today.

Cross-Cutting Themes and Concepts

In addition to specific issues regarding each WMD-related treaty, and the many options to address weaknesses, there are several overarching issues and lessons that are instructive.

First, the past several decades have highlighted that mechanisms tied to the UN Security Council will remain necessary but not sufficient for addressing WMD threats. Even if unity should be sought in nearly all cases, it cannot be taken for granted, and at times, action to reduce threats and save lives will have to take other forms. The cases of Iraq in the 1990s and Syria over the past decade are instructive.

Though it was not fully appreciated until later, action through the UN Security Council to push back Iraq's invasion of Kuwait in 1990 and efforts to disarm Iraq of WMD over the following decade were highly successful. The United Nations Special Commission (UNSCOM) and the IAEA led efforts to catalogue and oversee the elimination of Iraq's chemical, biological and nuclear weapons capabilities, as well as its ballistic missiles beyond short range. Later, the Security Council came together to establish the UN Monitoring, Verification and Inspection Commission to continue monitoring Iraq's compliance with its treaty obligations to forgo WMD. As it became clearer after the United States and coalition invasion of Iraq in 2003 to topple the Saddam Hussein regime, these efforts worked. Subsequent investigations by the U.S. Senate confirmed that this was not well recognised before the war was launched due to flaws and gaps in intelligence analysis and intelligence related to Iraq's supposed possession of WMD and the UN missions being mischaracterised by top officials of the Bush administration (U.S. Senate Intelligence Committee 2008).

More recently, unity in the UN Security Council has been more difficult, as evidenced by how efforts to end the threat of Syrian chemical weapons required various entities and mechanisms over time. They have variously involved ad hoc coalitions of nations and the

OPCW, the UN Security Council and continuing work under OPCW auspices. The diplomacy that led to Syria's accession to the CWC and the declaration of its stockpile information involved Russia, the United States, Syria, and the OPCW. The work to remove and destroy Syria's chemical weapons materials stemmed from extensive U.S. planning; then, when put into action, it required in-kind and financial support by more than a dozen nations and the OPCW.

Efforts behind accountability for the chemical weapons attacks in Syria also show the need to work through and around the UN Security Council at various times. The initial fact-finding mission was established in 2014 under OPCW auspices to investigate allegations of chemical weapons use in Syria. The UN Security Council then came together to establish the Joint Investigative Mechanism in 2015 to identify the perpetrators of attacks. However, the Council failed to agree to renew its mandate not long after. The OPCW is attempting to pick up the task again via its Investigation and Identification Team (Üzümcü 2021).

Of course, it is clear that the Security Council is not the sole body that meets with dysfunction when nations cannot come to agreement. The CWC, NPT and BWC have seen similar issues in recent years. This shows further that disarmament and the programmes for the prevention of nuclear, chemical and biological weapons will require use of all the tools available that the international community has built since the inception of the UN Charter. It also shows that progress cannot be fully reliant on mechanisms tied to the UN Security Council.

A second related point is the need to continue developing new, ad hoc mechanisms that support the goals of the UN Charter and augment official work through related treaties. Multilateral and unilateral initiatives have proven remarkably successful at driving progress towards specific goals that strengthen norms and governance, and tangibly reduce threats.

One long-running example has been the Global Partnership Against Weapons of Mass Destruction, operated via the G7. The Global Partnership has helped nations set goals and make investments towards tangible outcomes, as well as a range of activities designed for strengthening norms in general. Today, among many important efforts, it is assisting in revolutionising biodefence and health security in Africa by swiftly expanding pathogen early warning capabilities. Another historic example was the Nuclear Security Summits process, by which nations committed to specific actions and then cooperated in carrying them out. Examples included multi-nation exercises to improve secure transportation of nuclear materials and initiatives to remove highly enriched uranium from research reactors.

It is also noteworthy that the final document of the 2022 NPT review conference even explicitly mentioned the importance of such work, given that some efforts may include collaboration with nongovernmental organisations. As it stated,

The Conference notes the bilateral risk reduction agreements and arrangements between some nuclear-weapon States. The Conference recognises initiatives by States parties to develop elaborated measures that can contribute to building confidence and reduce the risk of the use of nuclear weapons, whether intentionally, by miscalculation, miscommunication, misperception, or accident in the context of achieving nuclear disarmament.

(United Nations 2022)

Third, across the range of weapon types, it is critical to continue developing and testing bold ideas. Indeed, the dire status quo makes this more important than ever. The time

burden of that same environment also means that many good ideas are likely to come from outside of official government channels.

For our organisation, we previously outlined a few examples we believe are important. This includes pursuing policies to make biological weapons obsolete as a mass destruction threat and pursuing a strong nuclear risk reduction agenda that includes eliminating entire classes of nuclear weapons.

Indeed, there is no shortage of grand ideas that could be influential in the near term and possibly game-changing over time. One promising and creative approach is seen in the United Nations Institute for Disarmament Research's (UNIDIR) 'evidence of absence' series of work carried out over several years. This work envisioned how nations would verify the absence of nuclear weapons in a range of scenarios—from agreements not to nuclear-arm dual-capable systems or ban specific classes of nuclear weapons to full international disarmament of nuclear warheads (Podvig, Snyder and Wan 2018). The Nuclear Threat Initiative (NTI) has produced several new ideas in the biological space, including proposing DNA synthesis screening. They and others have focused work in recent years on strengthening the UN Secretary-General's investigation mechanism for potential biological weapons events, including achievable ways to improve how investigative reports are produced and used (McLeish and Moon 2020).

Evolving Roles of Defence Organisations

Another trend over the past eight-plus decades is important to consider alongside the historical context of the creation of Article 26. Many nations are showing positive signs of conceptualising security in broader terms that encompass economic development and issues that get to the root of whether societies can stave off instability, fragility and conflict. And for many nations, their armed forces play important roles in this work. This is a proper reflection of decades of evidence regarding drivers of conflict and instability. It also requires reflection as we consider how Article 26 could provide inspiration or be pursued today.

The modern sets of skills and missions that defence organisations bring to the peace and security picture are significant; in nations all around the world, they often play central roles far beyond tools of potential warfare. In an important example, for states that armed themselves with nuclear, chemical or biological weapons before the related arms control and disarmament treaties were enacted, defence organisations in these nations have led the work of verifiably dismantling these weapons.

This extends far beyond weapons elimination work. In the biological space, in many nations, defence agencies house unique medical expertise and technological capabilities that are critical to addressing disease threats and which contribute to both public health and biodefence. For example, for decades, Ebola was on the list of priority agents of concern for improving biodefence, including the fact that it was part of the Soviet Union's biological weapons experimentation. Investments by defence organisations from several countries became critical to developing vaccines, other countermeasures and diagnostic tests for Ebola that are now actively used to quash outbreaks. Likewise, many militaries are now actively contributing military knowledge, science and engineering expertise to addressing the climate crisis and environmental degradation. Across dozens of nations, their armed forces are advancing work to project climate change impacts and enhance resilience. In another example, the new president of Brazil recently announced plans for potentially using the nation's armed forces to address environmental crimes; this comes

after Brazil (like many other countries) mobilised its armed forces to help address major disease outbreaks. The list goes on.

The UN Charter was drafted at a time when, in the old-world order that reigned, settling political disputes through armed conflict was not only acceptable but expected. The context in which Article 26 came about has been positively shaped by over a century of efforts to build international norms meant to change that fact and foster cooperative bargaining towards mutual security goals among nations. This has shaped defence strategy, doctrine, training, etc., in ways that reflect the spirit of the Charter. As a result, armed forces today have a different relationship to the UN Charter's concepts than they did at the time of its inception.

Some past discussions of Article 26 have cast its implementation as a simplistic 'economic versus defence spending' equation, as described in the earlier section of this chapter. It is appropriate now to ensure that defence expertise is well represented in the conversation and that the full range of armed forces' roles in peace and security be reflected.

Indeed, deliberations of the Commission on Conventional Armaments linked implementation of Article 26 to nations aligning their defence forces to what is needed for the effectiveness of the UN Charter. While this did not occur at the time and arms racing moved in the opposite direction during the Cold War, defence forces are now increasingly involved with efforts that support the UN Charter in both deed and spirit.

Shaping the Conditions for Progress

As described earlier, in the early years of the United Nations, discussions of Article 26 implementation acknowledged that progress would require a conducive global security environment generally, in addition to direct cooperative actions by nations. The hope that such an environment would persist after the world wars lasted only a few years—just about as long as the commission tasked to determine how Article 26 might proceed.

There are signs that many nations are returning to this concept, with mixed implications. In 2018, for example, the U.S. Department of State announced an initiative called Creating an Environment for Nuclear Disarmament, or CEND. In early statements about CEND, diplomatic officials noted that work needed to be done to generally improve the strategic environment in order to make further progress towards disarmament. Specific conditions mentioned included '(i) robust and reliable non-proliferation assurances, (ii) successful curtailment of other WMD threats, (iii) verification of disarmament, (iv) stability after zero by non-nuclear deterrence, and (v) alleviation of the range of regional and global tensions' (Kurosawa 2020). Later, officials mentioned specific steps such as the verifiable disarmament of North Korea, the implementation of a fissile materials production moratorium and a build-up of verification capabilities.

Many ideas presented via the CEND work were promising and appropriate to the time—and perhaps better than ending all pursuit of disarmament given the grim outlook that has developed. It also included multiple measures that could be supported and monitored by nongovernmental organisations and non-nuclear weapon states. However, many viewed this work as a tactic to delay action towards NPT treaty commitments, including because the Trump administration was simultaneously pursuing an expansion of the U.S. nuclear weapons arsenal to include new types of capabilities.

Still, it is likely true in the near term that efforts to build trust, confidence and practical capabilities to implement full treaty aims and strengthen norms will be extremely important. As the CEND experience showed, this work must be matched by good-faith steps

towards progress, lest efforts to set conditions for peace be taken as merely steps to forestall progress towards disarmament. For the United States, an important step was the Biden administration beginning to cut back the nuclear weapons capability expansion plan and promoting a deterrence strategy directly linked to arms control. This is a first step in the right direction and serves as an example to all nations that improving conditions and concrete risk reduction steps can still occur even at times of the highest tension and conflict without being a detriment to the security of individual nations.

Conclusion

Strengthening global cooperation and governance of nuclear, chemical and biological weapons will be essential for mitigating catastrophic risks through this century. It is absolutely imperative, and there are many paths forward for such work.

Moreover, progress against WMD will almost surely have implications for whether nations can unite in addressing a far broader range of global risks and seeking fuller implementation of the vision set forth by the United Nations. As noted by many leaders who contributed to the founding of the United Nations, the catastrophic risks and arms-racing behaviour that are driven by these weapons heavily shape whether nations have trust in collaboration over wide-ranging issues, with implications for global governance contributing to fighting the climate crisis, avoiding ecological calamity or seeing large-scale conventional conflicts spread further.

Over the longer term, there may be even broader applications of Article 26, including expansion into conventional arms. The world continues to change in dramatic ways. Some stem from devastation from environmental degradation and the impact of climate change, which may prove irreversible. It is also being reshaped by machine learning, artificial intelligence, quantum computing and other emerging technologies that will alter the dynamics of deterrence and security so fundamentally that nations may have fresh incentives to fast-track disarmament efforts. It is a certainty that the 21st century will see incredible changes from forces that are already creating a different world than what existed a century ago. As such, the continuing examination of how to bring life to the UN Charter and keep its ideals strong will remain pressing if this changing world is to be tilted away from catastrophic outcomes.

Notes

- 1 The blurred nature of this field has featured heavily in the ongoing debates and uncertainty regarding whether the origin of COVID-19 was a natural event or the result of a lab accident. See, for example, Stolberg, Mueller and Zimmer (2023).
- 2 The chemical weapons found in Panama were remnants of U.S. research and testing conducted on a leased island across several years after World War II (Holl 2018).

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18 Finessing R2P, an International Peace Force to Protect Heritage and Humans

Thomas G. Weiss

The work of the International Commission on Intervention and State Sovereignty (ICISS) is a remarkable human rights achievement, despite the contested application and non-application of the Responsibility to Protect (R2P) norm—e.g., in Libya but not in Syria, Myanmar, and Ukraine (ICISS 2001; Weiss and Hubert 2001). In the interest of truth in packaging, this author was the ICISS research director (Weiss 2016). The ethical, political, legal, and operational foundations of this evolving norm provide a policy wedge for consideration, the specific task of protecting cultural heritage by an international peace force. Such a task for such a force could provide a building block for an international military capacity that could, if successful, be reinforced over time to help implement R2P to a greater degree and to higher legal and ethical standards than has been the case to date.

The politics that lead to substantial and contested differences in interpretation about when and where to intervene in specific crises to protect people do *not* characterise the destruction of cultural heritage by such non-state thugs as the Islamic State of Iraq and Syria (ISIS or by its Arabic acronym Da'esh) or such pariah states as the Taliban's Afghanistan, as well as such major and middle powers as China and Iran in their respective attempts to eliminate Uyghur heritage and what little traces remain of the Baha'i community. Such rogue actors are immediate targets for widespread, if not quite universal external opprobrium.

Hence, it could be politically advantageous to authorise interventions to protect heritage, arguably an easier political task than agreeing on measures to protect people. At the same time, such interventions would also protect individuals whose culture invariably and simultaneously is under siege.

Why does this recommendation make sense? First, because an international peace force could begin with this difficult but more plausible task, a response to the plea from the editors 'to make the intellectual effort to overcome the blockage of diminished expectations for global governance, and to map possible ways forward' (Lopez-Claros, Dahl and Groff 2020: xi). Second, this specific and manageable task could perhaps overcome the routine rejection of the feasibility of an independent peace force (or rapid reaction capability for quick-breaking disasters); although it has resurfaced regularly, this idea has been summarily dismissed as implausible since Trygve Lie's original 1948 proposal (Roberts 2008).

This chapter's first section briefly discusses the salience of the present moment before the relevance of R2P for the protection of cultural heritage. The third section continues with the value of inserting politics into what, for over a century, has been largely a legal conversation. The fourth section explores the possible 'force multiplier' from the use of

heritage protection as a more routine part of the peaceful resolution of disputes and of the mandates for outside military forces, more particularly still of an independent peace force.

Contemporary Heritage Destruction and Political Momentum

The destruction of cultural heritage amidst violence and atrocities is not new. Hitler's storm troopers, Mao's cultural revolutionaries, Soviet pogroms, and Pol Pot's killing fields provided some of the 20th century's most infamous images until the post-Cold War era resulted in not only death and displacement but cultural wastelands as well.

Russia's illegal war of choice in Ukraine is the most recent illustration. It has produced thousands of deaths and an unprecedented crisis of forced displacement of a quarter of its prewar population (some six million refugees and about the same number of internally displaced). Along with indiscriminate attacks on civilians, schools and hospitals, there is ample evidence to justify an investigation by the International Criminal Court (ICC) of Vladimir Putin's war crimes. Following requests from 43 member states, the ICC's Chief Prosecutor Karim Khan announced in March 2022 that he would investigate possible war crimes committed in Ukraine (including the crimes of aggression, war crimes, crimes against humanity, and genocide).

The evidence has increased dramatically since then, and in March 2023, the ICC issued arrest warrants for Putin and Maria Alekseyevna Lvova-Belova, his Commissioner for Children's Rights. The charges are their alleged responsibility for the war crime of unlawful deportation of a population (children) and that of unlawful transfer of a population (children) from occupied areas of Ukraine to the Russian Federation.

In addition to the hideous human tragedy—including the deliberate targeting of day-care centres, schools and hospital—was the ongoing threat to Ukraine's rich cultural legacy. Among other atrocities are Russian forces' destroying Ukrainian cultural heritage. For instance, they deliberately burned to the ground the Ivankiv Museum north of Kyiv, which housed precious Ukrainian folk art, in what local scholars called 'an unfolding cultural catastrophe' (quoted in Cuno 2022).

The irony of what is still labelled a 'special military operation' to liberate Ukraine from 'Nazis' was absent from Russian propaganda as they fired on and damaged the Holocaust Memorial in Drobitsky Yar on the outskirts of Kharkiv and the memorial park of the Holocaust memorial Babyn Yar. Ukrainian President Volodymyr Zelensky tweeted: 'What is the point of saying "never again" for 80 years, if the world stays silent when a bomb drops on the same site?' (quoted in Khurshudyan, Lee and Berger 2022). The United Nations Educational, Cultural and Scientific Organization (UNESCO) has compiled a seemingly ever-growing list that as of May 1, 2023, counted 255 sites that had been damaged or destroyed since Moscow's invasion began on February 24, 2022. It included 110 religious sites, 91 buildings of historical or artistic interest, 19 monuments, 18 museums, and 12 libraries (UNESCO 2023). The most severe humanitarian and refugee crisis in Europe since World War II and systematic destruction of Ukrainian cultural heritage have also witnessed what many experts say is the largest collective theft of artefacts since the Nazi plunder.

The year 2021 had two dramatic illustrations of the fraught relationship between targeting heritage and people. The messy U.S. withdrawal in August after the two-decade war in Afghanistan ushered in the return of the Taliban, a group responsible for arguably one of the most visible and infamous destructions of cultural heritage, the March 2001

demolition of the Bamiyan Buddhas. This Sunni Islamicist political movement's effective propaganda noted that international actors, particularly Western powers, cared more about the statues than desperate Afghans. The regime sought to conceal the human catastrophe in its accompanying campaign of atrocities against the Hazara ethnic minority. While not Buddhists, the Hazara respected the mammoth sculptures and lived in the valley where the Buddhas had dominated for 15 centuries. The Hazara were considered heretics by the Sunni Taliban; as Shi'ite Muslims, their crime was not idolatry but more crucially being members of the armed opposition.

In addition to the repression of basic rights, especially of women and girls, the Taliban's return was accompanied by the perilous potential for additional destruction of cultural heritage. Protecting the people of Afghanistan is paramount but so too is safeguarding their extraordinary cultural legacy. It is not hard to imagine a future fatwa that targets pre-Islamic statues and sanctuaries along with 'heretics' of all stripes.

While there was no heritage destruction, a telling illustration of the intimate links between crimes against people and culture occurred a few months earlier. In May 2021, Israeli police cut the speaker wires in the Al-Aqsa Mosque, thereby preventing the call to prayer and making more audible the Israeli President's competing address on Memorial Day. Al-Aqsa was another provocation that disregarded a community's cultural heritage at the beginning of Ramadan. Widespread violence, suffering and war crimes followed—on both sides but more numerous by the more powerful Israeli state—along with civil strife and mob attacks in mixed Palestinian-Jewish cities across Israel and the occupied West Bank.

A bit of good news surfaces amidst this gloom. Contemporary politics presents an opportunity to address the ancient tactic of attacking cultural heritage. The destruction of such visible sites as the Bamiyan Buddhas, as well as the Mostar Bridge, Palmyra, Sana'a, and Timbuktu, received a 'boost', if that is the term, with the worldwide outrage that greeted Donald Trump's threats against 52 Iranian cultural sites in January 2020, after Teheran menaced retaliation for the assassination of Maj. Gen. Qassim Suleimani. While he later retracted the menace—following pressure from, among others, the Departments of Defense and of State—Trump's initial statement drew attention to the role of cultural heritage in times of political and military turmoil. 'They're allowed to kill our people', Trump said. 'And we're not allowed to touch their cultural site? It doesn't work that way' (quoted in Haberman 2020).

Protecting heritage has become more prominent on the international public policy agenda. It is no longer a 'niche topic', the exclusive domain of cultural specialists. If further indications were necessary, the failure to protect adequately Iraqi cultural heritage during the initial U.S. occupation suggested the need to broaden perspectives and participation (Global Policy Forum 2007). Individuals caught in the crosshairs of violence and menaced by mass atrocities invariably encounter conscious cultural heritage destruction. Indeed, for those who analyse politics and design responses, including military ones, it is noteworthy that insiders at the North Atlantic Treaty Organization (NATO) underline the links between security and cultural heritage (Finkelstein, Gilman and Rosén 2022).

Could it be politically advantageous to intervene and protect heritage, which would protect the people whose culture is under siege? That question was the starting point for a J. Paul Getty Trust research project that explored normative developments for the protection of cultural heritage in a 2022 volume that James Cuno and I edited, entitled *Cultural Heritage and Mass Atrocities*. 'Yes' is the guardedly optimistic response from those pages (Cuno and Weiss 2022; Weiss 2022, 2023).

It is essential to underline that international action should embrace UNESCO's highly visible World Heritage sites *and* everyday tangible heritage—Uyghur mud-brick temples in China, Christian village cemeteries in Iraq, neighbourhood Rohingya mosques in Myanmar, and Tatar traces in occupied Crimea. Ordinary sites also have become a daily bill of fare of destruction. And they, too, are integral to attacking the people whose heritage they represent as part of efforts to annihilate histories along with human beings.

The R2P and Beyond

What can be done to counter the immoral, illegal and wanton attacks on heritage? Progress is possible on the normative and policy fronts to attenuate the deliberate destruction of culture for culture's sake, what former UNESCO Director-General Irina Bokova called 'cultural cleansing'.¹

While some observers see competition between a concern with bricks and with blood, the two are intertwined—indeed, inseparable. While analysts parse atrocities versus heritage, most publics easily link the images of heritage destruction to mass murder, forced displacement, rape, ethnic cleansing, sterilisation, human trafficking, slavery, and terrorism. They always take place in tandem. Is it possible to demonstrate unequivocally that the fate of vulnerable populations is as important as their cultures? Robert Bevan (2022: 332) replies, 'Incorporating cultural destruction in the definition of genocide is essential to making this happen'.

While many governments and citizens loudly deplore such devastation, they do little about it; indeed, they see little that they can do. Yet, collective steps are not only desirable but also plausible, part of what a future-oriented look at the United Nations recommended as a 'shift from defending and preserving multilateralism to strengthening and renewing it' (Bokova 2014). It is worth recalling that analogous reactions—glum resignation and throwing up diplomatic hands in despair accompanied by the gnashing of humanitarian teeth—once characterised the fledgling initial efforts to conceptualise action against those who murdered and abused civilians in the 1990s. That listlessness lasted until humanitarian interventions were followed by the 2001 ICISS report. That encouraging ideational and political process (Weiss 2013, 2016) and the subsequent normative itinerary have been thoroughly analysed (Bellamy 2009; Evans 2008; Hehir 2012; Orford 2011; Thakur 2017).

It is easy to overlook the pace of the breathtaking journey. The calculation by one of the ICISS co-chairs, Gareth Evans, remains accurate because the period since the publication represents 'a blink of the eye in the history of ideas' (Evans 2008: 28). Edward Luck, the first special adviser to the UN Secretary-General on R2P, recalled that the lifespan of successful norms is 'measured in centuries, not decades' (Luck 2011: 387). R2P has continued to advance from the passionate prose of an eminent group towards being a mainstay of international public policy debates, even if international actions remain painfully rare, tentative and inconsistent. The norm is embedded in the values of international society and occasionally in specific policies and responses to mass atrocities. Linking the protection of people and their heritage, one analyst working at the interface, Hugh Eakin (2015), noted, 'While the United Nations has adopted the "responsibility to protect" [R2P] doctrine, to allow for international intervention to stop imminent crimes of war or genocide, no such parallel principle has been introduced for cultural heritage'. Yet, we do not require another principle because of the intimate link between protecting heritage and protecting vulnerable populations. Attacks on culture invariably accompany

genocide, war crimes, crimes against humanity, and ethnic cleansing—the mass atrocities that the 2005 World Summit agreed should trigger an R2P response (United Nations 2005: paras. 138–140).

There are two reasons behind R2P's analytical, ethical and operational pertinence for cultural heritage. The first is the logic of ICISS's original three-part framework, which differs from former secretary-general Ban Ki-Moon's formulation of three pillars that now structure most UN deliberations (Ban Ki-Moon 2009). While his pillars are an easier political sell, the original three responsibilities of ICISS provide a more logical starting point to fashion a workable framework for protecting tangible cultural heritage amidst mass atrocities. Cultural specialists apply the same three concepts—to prevent, to react and to rebuild—in their approach to the protection of cultural heritage and its custodians. There is an imperative to prevent destruction, but when that fails, it is necessary to react; when both of those fail, as is too often the case, it is essential to rebuild. The second reason is that the major constraint facing robust international action to protect heritage usually is the same as efforts to safeguard vulnerable civilians: sacrosanct state sovereignty.

Normative advances do not guarantee action, but they are essential steps to move beyond ad hoc, inconsistent, local, and short-term responses towards more systematic, predictable, global, rules-based, and coordinated actions. R2P's normative journey is pertinent because it reflected and exploited an altered political reality: it was no longer taboo to discuss how best to halt mass atrocities. Despite the Westphalian origins of the UN Charter and protests to the contrary, state sovereignty was no longer viewed as sacrosanct but conditional on a modicum of respect for life. Although when and where to invoke R2P remain contested, virtually no commentators suggest that it is completely flawed for organising global conversations and responses to mass atrocities. Instead, discourse now is less about *whether* and more about *how*.

However, robust action does not necessarily follow—any more than it does for all challenges to world order—but the language and logic are now different. R2P occupies a prominent spot in mainstream policy debates. In May 2023, the Security Council invoked it in 90 resolutions and 14 Presidential Statements, and the Human Rights Council in 74 resolutions. The United Nations General Assembly's consideration of R2P in May 2021 was indicative: 115 for and 15 against (28 abstentions).² The normative shift is clear even if implementation is disputed, as, for example, regime change in Libya.

How best to come to the rescue of immovable cultural heritage amidst mass atrocities is at the beginning of a comparable normative itinerary. It could elicit enhanced international attention, growing consensus and more vigorous policies in a changing political landscape; perhaps action could occasionally follow as well. Similarities exist between today's political environment for protecting tangible cultural heritage and the 1990s, when states were searching for a rationale after doing too little too late in Rwanda and, some said, too much too soon in Kosovo. In short, destruction of immovable cultural heritage amidst state and non-state atrocities is not new, but today's better-informed politics may be propitious to facilitate additional normative and policy advances.

The link is intimate between protecting people and their cultures, whether one stresses the intrinsic or extrinsic value of tangible cultural heritage. Cosmopolitans emphasise the former as humanity benefits from all specific manifestations of culture and suffers from their disappearance. Humanitarians emphasise the extrinsic value because those who commit mass atrocities are aware that the annihilation of heritage is a prelude to, or an integral part of, targeting people.

There is no need to split intrinsic and extrinsic hairs. To repeat, the protection of people and of culture are inseparable. Moreover, there is no need for any hierarchy of protection because the choice between bricks and blood is false, as is the choice between people and the natural environment—breathable air, drinkable water and culture are essential for life.

It is useful to recall that the responsibility to react includes sanctions, international criminal pursuit and military intervention. Fewer intrusive options should be pursued before more intrusive ones. Hence, military force should be deployed in rare cases of profound humanitarian distress and, by extension, widespread attacks on immovable cultural heritage—for itself and as a precursor for the mass atrocities that undoubtedly follow. As mentioned, the World Summit's *Outcome Document* specifically enumerated four triggers: 'genocide, war crimes, ethnic cleansing and crimes against humanity'. As for just war theory, precautionary R2P principles (right intention, last resort, proportional means, and reasonable prospects) should also govern international measures in response to the destruction of cultural heritage.

R2P has the potential to evolve further in customary international law and to contribute to ongoing conversations about the characteristics of legitimate or rogue sovereigns. Compliance, as always, is another story. Yet, norms are where we start. Politics, not the law, got us this far. And it could get us further still.

The Dearth of Political Will, Not Law

Politics provides a clearer lens than the law through which to view a path towards improved policy measures, especially for arenas like cultural heritage where public international law is well developed. Bokova's 'cultural cleansing' resonates because, like 'ethnic cleansing', it is not a legal construct but has political traction. Like former U.S. Supreme Court Justice Potter Stewart's definition of pornography, we know cultural and ethnic cleansing when we see them, even if some lawyers wrangle about the absence of specific criteria and hard law.

That said, it is helpful to keep in mind the conventions deposited at UNESCO, which have garnered a large number of state signatories: the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict; the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (UNESCO 1972). Their common feature is the 'value' or 'importance' of heritage as the criterion to determine the status as cultural 'property' or 'heritage'. A growing preference, certainly mine, is for the latter because it stresses stewardship and trusteeship not the accidents of current deeds or contemporary national borders. The 1972 definition outlines the 'outstanding universal value' of an artefact or site that elevates it to protected status; the 1954 definition implies the same by pointing to 'the cultural heritage of every people'. The shared human value of immovable and movable cultural heritage in these two conventions is not limited to those who have inherited it directly or indirectly. They both stand in stark contrast with the state-centric 1970 one that makes 'cultural property' contingent upon that designation by a state; that label stresses ownership, not stewardship.

This body of heritage law should be viewed side-by-side with the substantial body of international humanitarian law (IHL) and international human rights law. All remain essential elements of international society, of course, but a broader, deeper and more adequate policy agenda should embrace other disciplines and orientations.

It is worth examining the politics behind the decision *not* to include the protection of heritage in what many would consider the hardest of international laws: the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. Although dismissed as academic toys, counterfactuals can focus the mind (Tetlock and Belkin 1996). What if Raphael Lemkin's vandalism had not been excluded from the 1948 Genocide Convention? Would the prospects for cultural heritage have fared better in ongoing tragedies in Syria, Yemen, Myanmar, Ukraine, and Xinxiang, as well as earlier ones in Afghanistan, Iraq, Sri Lanka, the Balkans, and Mali?

Scholars have paid fleeting attention to Lemkin's (1933, 1944) early work about the relevance of cultural *and* biological genocide. His 1933 submission to a League of Nations gathering stressed 'vandalism', as well as 'barbarity' (1933, 1944: xiii).³ However, the negotiators of the 1948 convention dropped cultural genocide. Ironically, as Luck pointed out, the politics at that time were a reverse geographical image of the contemporary reluctance about R2P in parts of the Global South versus its embrace in the North (Luck 2018: 23–27). The original opposition to 'vandalism' in the convention came from colonial powers (Belgium, Denmark, France, the Netherlands, and the United Kingdom) and settler countries (the United States, Canada, Brazil, Australia, and New Zealand). They feared condemnation and perhaps calls for reparations because of their crimes against indigenous populations. The debate resembled that concerning the possible inclusion of a Bill of Rights in the UN Charter, which was initially resisted by many of the same states whose governments worried about legal redress from disadvantaged minorities. It is ironic that, at the time, more enthusiasm for the inclusion of cultural genocide than for a Charter Bill of Rights came from independent developing countries and colonies about to become independent.

In an ironic twist of geopolitical fate, many countries are now among those that label R2P an unwarranted intrusion into their domestic affairs—at worst, a Trojan Horse for Western imperialism. The abuse of this norm, like all norms, is subject to self-interested manipulation and justification by diplomats and politicians. That reality is not new, but new counterfactual questions highlight an altered political reality: What if the 1948 debate had occurred in the post-Cold War era and after decolonisation? Would the politics have been different? Would the Global South have championed cultural and physical genocide in collaboration with industrialised countries?

In any case, governmental delegates in the 1948 negotiations agreed only to include physical genocide in the convention and eliminated cultural and social aspects from earlier drafts. Lemkin's experience during World War II led him to link both physical and cultural destruction—murdering people and their histories are two sides of the same coin. Ukraine provides the most recent evidence.

So, advocates for human rights and R2P should elevate, not downgrade, the destruction of cultural heritage because it reliably foreshadows mass atrocities and invariably accompanies them. We need to understand the range of conscience-shocking perpetrators, crimes and incentives characterising the connections between attacks on cultural heritage and on people. Attackers include such iconoclasts as ISIS on Palmyra, Islamists on the mausoleums and tombs of Sufi saints in Timbuktu, and terrorists on churches on Easter Sunday in Colombo. Alternatively, destruction may result from targeted military attacks by recognised governments: Russian bombardments of the Umayyad Great Mosque of Aleppo, Saudi jets of Sana'a, Taliban dynamite of the Bamiyan Valley, and Chinese desecration of Uyghur shrines.

Another reason to focus on politics is that public international law, here as elsewhere, does not impede action. Rather, it is the absence of political will to enforce the law. Gary

Bass, in his history of humanitarian intervention, provides an apt summary for this discussion as well: ‘We are all atrocitarians now—but so far only in words, and not yet in deeds’ (Bass 2008: 382). The lack of enforcement across every operational issue, even those with the most developed legal infrastructure like this one, is the largest deficit in global governance (Weiss and Thakur 2010); its absence renders tangible cultural heritage especially vulnerable.

It is worth noting that none of the ten distinguished international lawyers in our collection suggested refining cultural heritage law.⁴ Instead, a topic that has been dominated for over a century by the pursuit of better public international law should make room for the more pragmatic and strategic tasks of (1) strengthening the emerging R2P norm that includes the protection of cultural heritage and (2) mobilising the political will to act in a timely fashion to implement existing laws and enhance compliance.

There are political mobilisation tasks linked to existing law. An immediate priority is to encourage the over 60 reticent or hostile member states—there are currently 133 states parties—to ratify the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and Its First Protocol. The absence of three permanent members of the Security Council (China, Russia and the United States) is a particular weakness regarding the Second Protocol, which has only 84 states parties. This protocol strives to limit the broad interpretation of ‘imperative military necessity’ and expands the convention’s scope to cover civil wars and non-state parties. Its ratification is essential for dealing with contemporary armed conflicts.

Political pressure is also required to build on the precedent of the *Prosecutor v. Ahmad Al Faqi Al-Mahdi*, the ICC’s first sentence for the war crime of attacking cultural heritage, viz., the wanton destruction in Timbuktu. An essential diplomatic priority is getting the holdouts, especially the same three permanent members of the Security Council, to ratify the Rome Statute. Appropriately for our purposes, its Preamble states that ‘all peoples are united by common bonds, their cultures pieced together in a shared heritage’. Mali’s ratification of the ICC Statute was a prerequisite for the extradition, trial and conviction of al-Mahdi for this precedent-setting decision.

Finally, a word is in order about transitional justice, which is a related but not strictly judicial action that has been pioneered in peacebuilding following atrocities and mass violations of human rights. Could it also fruitfully be applied to the prevention of and reaction to cultural heritage destruction (Sands and Rais 2022)? Developed for post-conflict peacebuilding, the adaptation of transitional justice would not stress the letter of international heritage law but rather would provide practical solutions for communities that have suffered both heritage loss and mass atrocities. This tool opens space through the public airing and admission of past crimes but is not necessarily accompanied by punishments. Some 50 truth commissions have been used over the last four decades to address atrocities in countries as varied as Argentina, South Africa, Guatemala, Liberia, and Cambodia.

Truth commissions can go beyond current crises. For example, in 2021, France decided to organise a Commission ‘Mémoires et Vérité’ [Memories and Truth Commission] regarding the country’s role in the Algerian Civil War that had ended almost six decades earlier. Recent German and Belgian governmental commissions have documented colonial atrocities. The goal of cultural heritage commissions and transitional justice would be to not ignore cultural cleansing while simultaneously not exacerbating the fragile equilibrium of countries in transition. Such commissions would aim at a reckoning, which could help societies emerging from traumatic periods not only to confront their past and interrupt cycles of atrocities but hopefully also to turn the page on the conflict.

At the outset, I argued that the present political moment could be considered propitious. The destruction of cultural heritage has captured the attention not just of curators, archaeologists, historians, and activists but also of major media outlets and popular audiences. Cultural specialists always sound a clarion call when heritage is at risk, but there is now a wider recognition of the significance of contemporary damage. For instance, in 2022, specially trained experts became part of the U.S. Army Reserve to save artefacts in war zones, a version 2.0 of Monuments Men and Women (Stevens 2022). The Buddhas of Bamiyan were among the first cases to draw widespread attention, and media attention has continued with coverage of Al-Qaeda and ISIL attacks. Damage to Ukraine's cultural heritage became a feature of the wide condemnation of Moscow's onslaught against a people and their culture.

Further, the destruction of cultural heritage has become strongly associated in the public's mind and in government policy with widely reviled terrorist groups; protection of cultural heritage thus benefits from an association with the high politics of international security. Given the emotive power and political traction of the Global War on Terror (GWOT), the destruction of remote antiquities has drawn the ire of groups ranging from UN member states to domestic political actors, from nongovernmental organisations (NGOs) to individuals. Governments often frame the destruction of tangible heritage by terrorists as another front in the GWOT, and they interpret intervention on behalf of culture as one way to hamper financing. Hence, even hard-pressed fiscal authorities are amenable to dedicating resources to protecting cultural heritage.

This confluence of visibility and political salience provides the backdrop to generalise about possible concrete steps to prevent such damage, especially with its direct link to humanitarianism. Since the UN Security Council's 2017 resolution 2347, attacks on cultural heritage qualify as 'a threat to international peace and security', the trigger for council decisions. This shift resembles the expansion of the justification for the protection of war victims in the 1990s. At the outset of that decade, diplomats viewed humanitarian interventions in northern Iraq and Somalia as exceptional. Resolutions to protect Kurds followed the first UN enforcement action since Korea, and the resolution approving the Somalia intervention mentioned the word 'humanitarian' 18 times to suggest that no precedent was being set. Indeed, the 1995 report by the Commission on Global Governance proposed that humanitarian emergencies be the subject of a Charter amendment to permit Security Council action (Commission on Global Governance 1995: 90). When their report was available, that recommendation was moot, as the council had already so decided and acted in several additional disasters without any need for a Charter amendment. The Security Council defines actionable threats to international peace and security.

In brief, there are adequate international legal tools to protect immovable cultural heritage should UN member states so decide; there also is evidence that political will can be mobilised. That, of course, is not easy but requires addressing, among others, thorny military issues that cannot be finessed.

Protecting Heritage: A Force Multiplier for Outside Military Forces?

While peacekeeping was not in the UN Charter, this 'invention' by the world organisation has long been viewed as a legitimate deployment of outside military forces under UN command and control. Continual adaptations have characterised the evolution of peace operations, including, pertinently for our purposes, the evolution to more robust operations (on occasion, Chapter VII enforcement) and, more recently still, the inclusion of the

protection of cultural heritage as part of the mandate of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA). Thus far, this is the only such UN experiment, and that part of its mandate was eliminated after an initial two years. However, from the outset, NATO's Kosovo Force (KFOR) had, and continues to have, heritage protection in its mandate (Rosén 2017).

Rather than being peripheral and occasional, should heritage protection not become more central and routine? With numerous competing claims for limited resources, commanders in the field, as well as policy- and decision-makers in UN headquarters, often view such actions as distractions. The argument here is the opposite: the efforts to protect tangible heritage should be reframed as integral to protecting people and fostering peace processes. The value of heritage protection by an international peace force could be justified by attenuating the most obvious direct human costs of attacks on cultural heritage, which are borne by vulnerable populations: lost lives and livelihoods, forced displacement, reduced longevity, and misery. In terms of cultural heritage, protection by such a peace force could have a valuable preventive dimension. Curators and archivists, recognising the clear warning signals, have died while attempting to save tangible heritage in the face of violent attacks.

Heritage destruction sounds an alarm about forthcoming mass atrocities. The November 1938 Kristallnacht crimes of coordinated pogroms and cultural destruction by the Third Reich are perhaps the best-known example of the overture for subsequent human atrocities. However, there are far too many other instances across time and space. As indicated, Vladimir Putin's docket in The Hague is already lengthy, but the war crime of destroying cultural heritage is yet another reason to say 'nyet' to Russian recolonisation.

The brutal human costs are apparent and our point of departure, but conversations about tangible heritage loss should incorporate a full range of consequences in considering why it is worth protecting and why protection could be justified. First, destruction is ruinous for cultural identity and social cohesion. The buildings, museums, cemeteries, libraries, and infrastructure around which societies organise themselves help define a culture and people. Second, destruction of high-profile sites impedes post-crisis recovery; the negative impact on the economics of post-conflict financing is essential but often downplayed (del Castillo 2017). With the loss of tourist attractions comes the concomitant loss of investment opportunities, as well as the loss of employment related to care and upkeep, and revenue derived from tourism. Third, the destruction of heritage deepens a society's wounds and intensifies lingering animosities and the accounts eventually to be settled.

Destroying cultural heritage complicates reconciliation and unravels the safety net of resilience supporting strife-torn communities. A related concern is the intimate connection between cultural heritage and religious persecution. Again, examples abound. By their own admission, Iranian clerics are intent on destroying and eradicating every aspect of the Baha'i community, the largest religious minority in Iran and the only one whose faith is not recognised in the constitution. This illustration is especially pertinent for underlying the link between the use of religious persecution—against those who are called 'Islamic apostates'—to violate fundamental human rights (Amnesty International 2022; OHCHR 2022). With this reality in mind, for instance, the 1995 Dayton Accords addressed specifically the reconstruction of lost heritage as an essential component of peace, a necessary prelude to and prerequisite for peacebuilding in the former Yugoslavia. That insight was crucial; the impact was significant. The inclusion of cultural heritage protection in NATO's follow-up to the subsequent Kosovo War suggests the importance of that lesson.

The protection of cultural heritage as a routine task in mandates of an international peace force would encompass three tasks: removing hazards, suppressing looting, and deterring politically motivated attacks (Gowan 2022). The first is the technical task of removing such immediate hazards as land mines and unexploded ordnance near heritage sites. After initial dismal performances in Iraq and Afghanistan, NATO forces in Afghanistan helped around the Bamiyan Buddhas, as did MINUSMA in Mali. The latter also attempted to rectify some damage by launching short-term projects—so-called QIPs, or quick-impact projects—to foster the repair of libraries and religious sites around Timbuktu. MINUSMA also provided logistical support to experts from UNESCO, who were surveying damage and planning reconstruction.

The second broad task for an international peace force would be suppression of looting, a task that the Italian Carabinieri pioneered in 2003 in their area of operations while serving in the U.S.-led occupation force in Iraq (Russell 2008: 36). Through a mix of ground and helicopter patrols, the Italians disrupted looting at archaeological sites, an action largely absent from efforts by other coalition forces.

The third task for an international peace force draws on NATO efforts in Kosovo, which seek to deter and counter politically motivated attacks on cultural sites. In pursuing this protective task, KFOR initially set up static defence posts at prominent monasteries, shifting towards mobile patrols as a less militarily intensive approach when security conditions improved; eventually, Kosovo police assumed these responsibilities. Following over two decades of deployment, Frederik Rosén summarises that both tactically and strategically, ‘destabilising issues related to CP [cultural property] remain one of the top three reasons for NATO to sustain the mission’ (Rosén 2022: 3).

However unlikely, military intervention as an option for a UN force was a component of James Cuno’s five-point proposal to protect cultural heritage in Syria and Iraq, as well as to police borders to discourage trafficking in movable artefacts (Cuno 2016: 106). An international peace force would face many of the practical challenges of UN peacekeepers—namely, intelligence, resources, doctrines, and rules of engagement that shape and circumscribe activities, as well as the difficulty of sustaining complex operations for lengthy periods (Leloup 2019). Although difficult and politically fraught, none of these challenges is insurmountable, and they could arguably be more readily overcome for the less politically charged task of heritage protection. Fielding an international peace force is invariably political, but as Lopez-Claros, Dahl and Groff (2020) indicate, technical details matter.⁵

It would be essential for the members of such a force to contribute to longer-term efforts to protect heritage sites; tasks would include training the local military and police to assume direct protection, supporting preservation and reconstruction and helping improve the skills of heritage personnel. Training and technical projects are unlikely to succeed unless local political actors and populations buy into the overall need to protect heritage and own the effort.

How can tangible heritage protection be considered a distraction for external military personnel—often cavalierly dismissed as a ‘Christmas tree ornament’—within UN operational circles when they improve relations with the local community? Is this not valuable ‘mission creep’? If cultural heritage constitutes part of a ‘hybrid threat’, can it not also be a ‘hybrid benefit’? Rather than a bauble, could heritage protection produce a ‘virtuous circle and constitute a ‘force multiplier’? It is impossible to disentangle heritage protection from the broader reasons that justify the deployment of outside military personnel as peacekeepers or peace enforcers.

Beginning with the High-Level Independent Panel on Peace Operations (HIPPO), numerous UN documents looking to the future and gleaning lessons from the past prioritise that ‘politics must drive the design and implementation of peace operations’ (HIPPO 2015). Shortly before launching the 2018 ‘Action for Peacekeeping’ (A4P) initiative, for example, Secretary-General António Guterres noted that ‘peace operations are deployed in support of active diplomatic efforts, not as a substitute’ (UN 2017). As part of the need to ensure collective coherence in ‘political solutions’, negotiators should provide incentives and prioritise the essential need for tangible heritage protection because perhaps the most decisive factor in success is local buy-in. As such, it would make operational and ethical sense for future international military peace forces to incorporate the protection of tangible heritage as a routine component in standard operating procedures (SOPs)—indeed, as part of a relatively low-cost sales-pitch for outside assistance when parliaments are facing a budget request. Protecting tangible heritage helps win battles and wars, as well as works within occupations. The logic is not only ethical but strategic and tactical.

Conclusion

The R2P’s core ethical framework is to halt mass murder and mass forced displacement, ongoing or intended. War-fighting and high-intensity military force will certainly remain the remit of the militaries of major powers; to state the obvious, they are not a comparative advantage of the United Nations. An international peace force in any foreseeable future also would not have the airlift, logistics, intelligence capabilities, or hardware to accomplish high-intensity enforcement.

It is problematic to intervene with military force in high-intensity war and violence when vital interests are not perceived to be at stake. Yet, the use of an independent and well-equipped peace force could be an alternative to protect cultural heritage when destruction is a prelude to, or accompanies, mass murder and the perpetrators are not major powers—which get a pass here as elsewhere. The effective protection of cultural heritage requires the kind of ‘robust’ deployments that have come to characterise some UN and hybrid peace operations but fall short of war-fighting. Such protection could provide a concrete and doable initial task for an independent peace force. The development and emergence of R2P reflected an altered political reality: suddenly, it was no longer taboo to discuss how best to halt mass atrocities. Although specific decisions about when and where to invoke R2P remain controversial, few observers question whether global responses to mass atrocities are justified. Instead, the debate is how best to achieve R2P’s lofty aims.

An essential component of mobilising political will is determining what will work and what will not. The argument here is that the protection of cultural heritage could help mobilise political will *and* work. If so, it could help attenuate what even a relative enthusiast like Adam Roberts (2008) summarises as ‘grounds for scepticism about proposals for UN standing forces, [but] the crises which such forces are intended to address are both serious and urgent’ (100). Hence, a specific task to launch an all-volunteer force of some 5 to 10,000 soldiers would be the protection of cultural heritage. This number would fall far short of the 200 to 600,000 discussed in the late 1950s, but it resembles the more realistic size proposed in the early years of the post-Cold War era by Brian Urquhart, among others (Stanley, Lee and von Pagenhardt 1992: ch. 2; Urquhart 1993).⁶

This volunteer force would be useful in contexts where the destroyers are not a serious military force—e.g., to counter the Taliban’s attack on the Bamiyan Buddhas and

arguably the Iranian attacks on Baha'is. But such a force would certainly not be able to thwart Chinese attacks in Xinjiang, or Russian ones in Ukraine or the U.S. lack of protection for Iraqi artefacts. Indeed, one of the more useful and feasible tasks would be during Andrew Herscher's (2010) 'afterwar', or when 'the violence of war did not so much end as shift its direction' (124). The smallish volunteer force would have the advantage of not requiring an amendment to the UN Charter—something of a fool's errand short of the complete collapse of the current world order. Nonetheless, such a force could not avoid state decision-making to approve a deployment, not only for annual budgetary reasons but also for backup. It would not exclude the need for logistic support and reinforcements, in the direst of circumstances, from national forces. Planning on best-case outcomes and searching to finesse state approval is a gimmick that is dangerous and could backfire. Backup would be required for an initial deployment, as well as coming to the rescue, should worst-case scenarios take place and the survival of the independent force be threatened.

The idea of any type of standing UN force has virtually disappeared in recent years, so why propose mandating an international peace force to start with the protection of cultural heritage? Because the specific task is feasible and because the protection of tangible cultural heritage is not a distraction for proponents of the robust protection of people, an emerging norm that should be reinforced.

To repeat, the intersection between violent attacks on humans and their heritage means that there is no need to add another crime to the four mass atrocities agreed by the 2005 World Summit. Rather, protecting cultural heritage is a fundamental aspect of protecting people from genocide, war crimes, crimes against humanity, and ethnic cleansing. In addition, emphasising such protection within the R2P framework has the potential to widen support for that norm and its place in customary law, as well as contribute to ongoing conversations about the characteristics of legitimate sovereignty. Responsible states view mass atrocities as a matter of international and not merely domestic jurisdiction; the destruction of immovable cultural heritage should be viewed similarly because of its universal value and the intimate links between attacks on cultural objects, structures and monuments, on the one hand, and attacks on vulnerable populations, on the other hand.

Destroying cultural heritage is not new, but neither is the impulse to protect and preserve it. Thus, it is worth reiterating that the convergence of two factors has altered the possibilities for the politics of protection and the feasibility of international action, including an international peace force. The first is that the destruction of cultural heritage has riveted the attention not only of cultural specialists but also of pundits, the public and politicians. The second factor is that the destruction of tangible cultural heritage has become widely associated with terrorism, and its protection thus benefits from this high-priority link to international security. While not wishing to downplay the possible abuses of securitisation (e.g., tarring all dissidents as 'terrorists'), nonetheless, public resources to protect cultural heritage can be mobilised under the rubric of national security. If so, Charles Dickens's description of the French Revolution in *A Tale of Two Cities* could apply to contemporary world politics: 'It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness'.

Generalisations are limited about what Finkelstein, Gilman and Rosén (2022) have called the 'heritage-security nexus' because the range of destructive perpetrators is so mind-boggling. The specific conscience-shocking attacks in the contemporary era⁷ on peoples and their heritage vary across a wide spectrum of actors and crimes: by major

powers (China against the Uyghur communities in Xinjiang), by vengeful or rogue states (the governments of Sri Lanka and Afghanistan against ethnic minority communities in the northeast of Sri Lanka and in the Bamiyan Valley), by outside allies abetting repressive governments (Russia and the Assad regime in Palmyra and Aleppo, Saudi Arabia in Yemen), by non-state terrorists (Islamist militants in Timbuktu); by clerical intransigents in Iran (against the Baha'is), and by successive governments in a small state (against the indigenous Maya of Guatemala).

What remains of our ancient heritage is already suffering from wanton destruction, looting, neglect, reckless overdevelopment, and climate change. Now we face the likes of Vladimir Putin. Despite foot-dragging in parts of the Global South, the surprising solidarity that has emerged to confront Russian aggression and heritage destruction may be a harbinger of a wider change in international political culture. Let us hope so. It is time to begin a longer-term project of constructing an international regime to protect cultural heritage and the peoples who identify with and benefit from it. This could be a substantial part of a foundation for a better global governance mechanism for international peace and security.

It is worth repeating the necessity *not* to split hairs between protecting people and the cultural heritage that sustains them. All people share a common human heritage—intricate, complex and reflective of diverse cultures. This chapter draws attention to the plight of endangered populations and revives the case for the protection of tangible cultural heritage. The staffs from the Middle East Institute, the Asia Society and the Antiquities Coalition (2016) evaluated the region's devastation: 'The fight to protect the peoples of the region and their heritage cannot be separated'.

One political observation is in order by way of conclusion. Ironically, Putin's brutal invasion has backfired in numerous ways. Many have commented that the menace of NATO and the European Union and Western ties to Ukraine were a purported justification for the war, but the impact has been the opposite—namely, to strengthen Western solidarity. In a similar cultural irony, some Ukrainians are trying to erase Russia—and the Russian language—from their culture and landscape. In Ukraine's public squares and parks, 'de-Russification' is visible as statues of Russian poets and Soviet generals are being torn down or defaced, and public art and propaganda murals are being covered up or removed.

Hugo Slim (2012) provides an apt metaphor: 'Like oil and vinegar, ideals and reality never fully dissolve into one another and tend naturally to separate if left alone. To combine, they need to be regularly stirred up together if they are to make a good vinaigrette'. That culinary-cum-political advice applies to proponents of global governance who need to fuse idealism and realism in a 'vinaigrette global agenda'. Seeking a more ethical future without taking adequately into account power and interests is foolish, but power and interests are blind without an ethical foundation and a vision of a more desirable world.

Thus, it is essential to do the right thing even if it is less effective than I argue. As Scott Sagan (2022) reminds us, '[W]e should follow the law because it reflects who we are, or at least who we aspire to be' (496). Protecting humans and tangible heritage is an apt illustration.

Notes

- 1 She first used the term in December 2014 in UNESCO, *Heritage and Cultural Diversity at Risk in Iraq and Syria* (Paris: UNESCO, 2014), www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/CLT/pdf/IraqSyriaReport-en.pdf.
- 2 For up-to-date tallies, see the Global Centre for the Responsibility to Protect (2023).

- 3 For a discussion, see Waller (2016); Sands (2016: 160–01).
- 4 Patty Gerstenblith, Benjamin Charlier, Tural Mustafayev, Marc-André Renold, Allesandro Chechi, Francesco Francioni, Joseph Powderly, Savine von Schormerler, Philippe Sands and Ashrutha Rai, in Cuno and Weiss (2022: 367–478).
- 5 They overstate their case that it is ‘a matter of primarily technical, not political concern’ (Lopez-Claros, Dahl and Groff 2020: 180).
- 6 At about the same time, several governments (Netherlands, Canada and Denmark) tabled related proposals.
- 7 Successive centuries of attacks by colonial powers and settlers—motivated, for example, by the ‘Doctrine of Discovery’ against the indigenous populations of North and South America—are not the focus of this chapter.

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Part III

Governance for Climate and People

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19 Towards Effective Multilevel Environmental and Sustainability Governance for Shared Ecological Risks

Arthur Lyon Dahl

The Environment As a Source of Global Catastrophic Risks

Climate change; the collapse of biodiversity and ecosystem services; multiple forms of pollution, including plastic; and other environmental pressures on the planetary ecosystem are combining into existential risks to human well-being and even survival on this planet. A response is clearly needed through improved international cooperation, including mechanisms of global environmental governance. However, that alone will be insufficient. Governance improvements are needed at all levels in complementary approaches for a coherent response to these risks. Here we explore the requirements for effective multilevel environmental and sustainability governance able to address these shared ecological risks.

We first define the nature of our global environmental challenges that require governance responses. We then review briefly the principles of governance that are most relevant to ensuring the common good, defined here as a healthy planetary environment managed sustainably with justice for all Earth's inhabitants, and consider some of the governance gaps that must be filled to reduce the risk of environmental catastrophes. This includes structuring governance across multiple levels and identifying the functions relevant at these levels. In particular, we consider proposals for global environmental governance, with supporting measures at other levels. Institutions of governance cannot function in a vacuum but depend on a clear definition of the purpose of governance, the principles to be implemented, and the goals to be aimed for so that progress can be measured and learning applied. Since the future cannot be predicted, scenarios can help to identify surprises that might occur and alternative ways forward. Finally, designing the measurement systems and indicators appropriate to governance goals for human and environmental well-being can provide tools to reduce catastrophic risks and help governance institutions to build the better future we can all look forward to.

It should be noted at the outset that those in positions of governance at all levels presently fall far short of the ideals described here due to powerful egos, greed, corruption, vested interests, and lack of political will, even though they often agree in principle. This is not inevitable, and the emerging generation, with their more global perspective, has the capacity for fundamental transformation. This is addressed later in the chapter.

Global Environmental Risks

As a guide to decision-making, the recent Global Catastrophic Risk Index (GCRI) (Dahl, Lopez-Claros and Miller 2022) provides a synthesised index at the country level for global catastrophic risks, including environmental risks. The following summary of environmental risks of global catastrophe is based in part on that report.

The rapid growth in the human population and our material civilisation powered by fossil fuels are together overshooting the planetary boundaries of our life-support systems, creating a variety of global catastrophic risks. These are damaging or destabilising the complex systems that have allowed life to evolve and created a habitable environment for our human civilisation. These threats are accelerating, producing existential threats to human society at the global level. Our only hope is to transform the foundations and aspirations of our civilisation to reduce these risks.

The Intergovernmental Panel on Climate Change (IPCC), in its Sixth Assessment Report (IPCC 2023), warns about the destructive power and increasing frequency of climate catastrophes globally, including extreme temperature events, stronger cyclones, wildfires, floods and droughts, melting ice caps and rising seas. These disasters are already occurring at growing human and economic cost. Some changes are irreversible, such as rising sea levels from rapidly warming polar regions and melting icecaps, but most could be attenuated with rapid action toward both mitigation and adaptation in the next decade. The latest science warns that tipping points beyond which a return may be impossible are very close (WMO *et al.* 2022).

The collapse of planetary biodiversity is another accelerating and largely irreversible catastrophic risk. Millions of years of evolution have populated the planet with rich and productive ecosystems that maintain a liveable biosphere, provide invaluable ecosystem services, support human food systems, moderate our climate, and, last but not least, provide beauty and support mental health. In our inability to protect sufficient natural areas, prevent illicit wildlife trade, control pollution, and limit global heating, we are causing a sixth mass extinction event, in which one million species are threatened in the immediate future, and major ecosystems such as coral reefs and tropical rainforests are being degraded beyond recovery. Extinct species cannot be replaced, and without them, the complex web of life upon which we depend will be fundamentally weakened. Unfortunately, the human cost of our neglect will only be apparent after it happens unless we have the foresight to take preventive measures.

As much as we like to think that there is a technological solution for every problem, we cannot deny that we are biological organisms whose lives are dependent on food, water and some form of shelter. We cannot eat the money in our digital account or live entirely in the virtual world of social media. Imagine if the planet could no longer produce enough food to feed everyone or if natural systems were so degraded that the remaining photosynthesis by plants was insufficient to support all life on the planet, including ourselves. Climate change and unwise development are putting our water supplies at risk, and without water, the rest of development becomes meaningless. Our food systems—both the highly industrialised agriculture in some parts of the world and much subsistence farming in poorer rural areas—are poisoning and degrading soils, eroding the biodiversity on which crops depend and increasing the impacts of climate change. Some recent years have seen the world produce less food than it consumed, effectively signalling that we are living off reserves and, at the extreme, blindly failing to meet one of our most basic needs. Since the rich can always find a way to manage, such catastrophes primarily hit the poor and marginalised masses.

Pollution is another cumulative global risk. Industry manufactures and sells chemicals and materials such as plastics in massive amounts, some of which are discovered years later to be harmful to human health and the environment. We already fix more nitrogen through chemical synthesis and fossil fuel combustion than all natural processes together, contributing to global warming, eutrophication and oceanic dead zones without oxygen.

The global push for development to meet the needs of an expanding population has proceeded within the paradigm of linear supply chains and an economy maximising profits while treating environmental and social impacts as externalities. We have pillaged a major part of Earth's land surface and the natural resources with which our planet was once so abundantly endowed while generating massive pollution and waste. The oceans are similarly being stripped of resources, overwhelmed with plastics, acidified, and filled with our pollutants. This is a creeping catastrophe as non-renewable resources become increasingly scarce and expensive, while normally renewable resources are consumed beyond their rates of regeneration. To use an economic metaphor, we are living off the capital rather than the interest of our planetary biological capacity, with environmental footprints, especially of the affluent, far beyond what the Earth can sustain.

Environmental crises are affecting countries everywhere, and they are often compounded by economic vulnerability and social instability from poverty, poor governance, corruption, and conflict. Authorities must recognise that risks today come in complex forms, interacting and reinforcing each other, and could lead to major governance and societal failures with severe consequences for the global population.

Natural disasters of geological origin, such as volcanic eruptions, earthquakes and tsunamis, present risks that are generally local or regional. However, the risks of objects from outer space striking the Earth, such as the asteroid that wiped out the dinosaurs, or a giant coronal mass ejection that could break through the magnetosphere and grill everything electrical and electronic on the planet, would certainly be global catastrophic risks. Their frequency is impossible to predict, with the latter last occurring in 1859, damaging the telegraph system, starting fires and shocking telegraph operators. Since the human and economic costs of such catastrophes would be literally astronomical, some precautionary measures should be made to protect infrastructure and provide early warning with these risks in mind.

The GCRI maps risk-occurrence at the country level as a guide to decision-making. Each of the 118 countries covered by the GCRI is evaluated across more than 85 indicators, including 22 environmental indicators for both vulnerability and resilience. It demonstrates not only that no country is free of risk but also that policymakers globally have often failed to take collective action against systemic and environmental risks. While there is an obvious correlation between the general level of development and vulnerability to catastrophic risks, with poor countries with weak or failing governments and low investment in human capital clearly at much greater risk, there is, surprisingly, a much smaller difference with respect to environmental risks, showing that these largely planetary risks threaten countries more equally and must be addressed globally (Dahl, Lopez-Claros and Miller, 2022).

Countries may be exposed to catastrophic risks through poor policy, bad geography or bad luck. Their vulnerabilities need to be considered at two levels: first, those that can be addressed largely within a country by measures within its own control or management through internal policies and actions, and second, those external risks that must be countered collectively at the regional or planetary level with some form of global governance, where national actions will usually be limited to measures reducing vulnerability and increasing resilience.

Among the ten most environmentally at-risk countries in the GCRI, six are dynamic, high-growth economies: Hong Kong, Japan, Vietnam, Qatar, Singapore, and Bahrain. Geographically, these countries lie at a latitude where rising sea levels and/or increasing global temperatures create risks. Japan ranks high in environmental vulnerability because

of major earthquakes, tsunamis and the presence of active volcanoes. Singapore and Hong Kong are small city states whose economies are hubs of global trade and finance but face severe risk from sea level rise. It is not always those countries that are most at risk that address their environmental footprint. *There is in fact an inverse correlation:* it is those countries most sensitive to climate change that use less renewable energy, while countries relatively less sensitive to the effects of climate change derive a greater percentage of their energy from renewable sources (Dahl, Lopez-Claros and Miller 2022).

Principles of Governance

In considering environmental and sustainability governance for shared ecological risks, it can help to start with a brief systems view of the purpose of governance and the major components of any governance mechanism as a basis for considering where there are environmental governance gaps.

Governance, as developed at the national level, is a process, generally incorporated in institutions, by which a community organises itself to ensure the collective good and general welfare. The ultimate judgement about the effectiveness of governance would, therefore, be its capacity to maximise the common good of all. Extending the concept to the global level, governance should protect and maintain the environmental systems and resources necessary for all life and ensure their long-term sustainability. This would include minimising risks and vulnerabilities and removing anything that might lead to global catastrophic outcomes.

With this purpose in mind, institutions of governance should

- enable policy development and decision-making to draw on the best available scientific information about the environment;
- consider with equity the needs and capacities of all parts of the community served;
- create a framework of legislation and regulation to define and protect the common good;
- execute the actions necessary to implement its decisions, either directly or by empowering others, to resolve through judicial means any disputes or conflicts that may arise; and
- learn from experience to improve its performance to these ends.

However, institutions are only one part of governance since they are ultimately made up of individual people. Even the best-conceived institutions will be dysfunctional if the people within them do not share the institution's purpose—that is, achieving the common good. Our lower human nature, left unchecked, leads to power-seeking, conflict, selfishness, greed, corruption, and other forms of behaviour that produce governance inefficiencies, if not outright failures. Many efforts to build more ideal systems of governance include checks and balances to try to reduce the risks of such governance failures. In stark contrast, autocrats will create systems of governance that they can manipulate and control for their own selfish purposes or sovereign national interests, where the common good is regarded as irrelevant.

There are also those institutions outside of what is normally considered government that are also centres of decision-making with an important potential influence on the common good. For example, economic entities such as multinational corporations can be wealthier and more powerful than many national governments and may be driven by a

profit motive with no consideration for the common good. They are also very effective at resisting any attempts by governments to restrain or control them. This presents a particular challenge for global environmental governance, which must find ways to extend governance to cover these other actors in society. While governments may have some ideals defined in a constitution or founding charter, such values, sense of responsibility or aim to be of service to society are seldom present in corporate legal charters, limiting the scope for action of even the best-motivated corporate executives. Many of the present global catastrophic environmental risks, including climate change, biodiversity loss and pollution, are being created largely by corporate behaviour. This is a gap that must be filled.

Addressing governance gaps should simultaneously consider the principles of justice and equity underlying all good governance, the complete set of functions of governance, the appropriate institutions to carry out those functions, the inclusion of all of the relevant actors in the community or society, the access of the institutions to all the relevant information necessary for decision-making, and the training and motivation of all those who work within the institutions.

Multilevel Governance

Another value of a systems perspective is to demonstrate the need for multilevel governance (Karlsson-Vinkhuyzen and Dahl 2021). The planetary biosphere is composed of and maintained by a great diversity of complex, nested systems, including physical processes, chemical cycles and ecosystem services. These are dimensions of planetary well-being, a common good to ensure our own survival. Human society has created its own complex web of institutions, organisations, communities, processes, and other entities, interacting in economies, information systems and forms of communication, technologies, sciences, and cultures.

This complexity requires multiple levels of governance since decision-making is most effective when close to the scale of the system being managed and the actions needed for management, in what is often called subsidiarity. While planetary environmental systems require global governance, environmental diversity around the world requires a similar diversity of governance actions. Too much governance today is concentrated at the national level, while national boundaries seldom correspond to functional environmental units like river basins or ecosystems. Again, many decisions on environment and sustainability are best taken at the local level by those directly concerned with the reality of their local community. One of the challenges in designing effective environmental governance is to ensure coherence between all these levels. For example, a catastrophic risk may be first defined at the global level. However, it may play out differently in each national context, requiring a variety of national responses. Again, resilience in the face of such risks may best be built in each local community, where flexibility is necessary and social ties are the strongest when faced with threats.

Environmental Governance Functions

The biggest governance gap today is at the global level, where the environmental risks of catastrophe are the most threatening and the least managed. At the national level, we accept that a government should ideally protect the common interest of all in the country, with institutions to adopt the necessary laws, an executive agency to enforce them, and judicial procedures to resolve disputes and determine responsibilities, even if in practice

it may often fall short. It is only logical that the same institutions of governance are now necessary at the global level, able to adopt and apply global legislation to stay within planetary boundaries and to protect us from the global environmental catastrophes now threatening our future.

The process of building elements of global environmental governance began with some of the early environmental conventions and the creation in 1972 of the United Nations Environment Programme (UNEP) at the United Nations Conference on the Human Environment in Stockholm, Sweden. UNEP was designed at the time to be a small secretariat intended to catalyse and coordinate action across the whole UN system and its specialised agencies. It was to assess the global environment based on the best science and recommend environmental management measures to be implemented by others, including national governments. Over the years, many additional multilateral environmental agreements (conventions) have been adopted to address particular environmental challenges, one of the most successful of these being the Montreal Protocol to protect the ozone layer. The result is a patchwork of global and regional legislation, mostly voluntary and therefore unenforceable, while global environmental problems have continued to grow to become catastrophic threats. There have been many proposals to strengthen global environmental governance, but only by making some minor improvements, such as giving the UN Environment Assembly universal membership, unlike the previous UNEP Governing Council.

Most recently, the Policy Brief to the Climate Governance Commission *Towards a Global Environment Agency: Effective Governance for Shared Ecological Risks* (Karlsson-Vinkhuyzen and Dahl 2021) provides a detailed review of a proposal for the reform of UNEP and reform proposals for other institutions. The Brief describes why climate change requires a broader view of governance. It supports proposals for more general system reform (Lopez-Claros, Dahl and Groff 2020) and makes many other suggestions for ways forward. It explores principles for global governance, such as subsidiarity and governing complex risks. It identifies the essential governance functions of knowledge provision, deliberation and legislation, enabling and implementation, building trust and justice, and learning and reflection to make adjustments as necessary. These are followed by design proposals for how these functions could be incorporated into a Global Environment Agency. In suggesting ways forward, the Brief notes that the ideal would be to include these as part of general global governance reform. However, an institutional evolution of UNEP may be more immediately possible, giving it an orchestrating function across the UN system, while the UN Environment Assembly could take on legislative responsibilities related to planetary boundaries. A Global Science Council could provide integrated assessments across all dimensions of global environmental risks. An International Court for the Environment could take on judicial functions. Given the urgency of responding to the risks represented by climate change, effective global governance of this risk through binding global legislation could be a first step in building trust and establishing precedents for progress in other areas (Karlsson-Vinkhuyzen and Dahl 2021). These functions are elaborated briefly in the following sections.

Improving Science Advice

The foundation of scientific advice is adequate research and monitoring. While much is already being done, Earth observation systems need to be connected with participatory observations, including by indigenous and local communities and citizens in general, to

increase public understanding and support. Developing countries need the capacity to contribute to this research and monitoring. Monitoring is also needed of the direct and indirect drivers of environmental risk in social and economic systems. A transdisciplinary Global Research Council should fund research on emerging global environmental problems and on the effectiveness of response measures, aiming for the capacity to model the whole global system and to identify risks of major failures.

Scientific assessment processes (IPCC, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, Global Environment Outlook, etc.) need to be coordinated, perhaps under a joint administration, to build a more comprehensive assessment of the whole global environment, one that is linked to regional and national assessment processes and which feeds advice into all global and national agreements and decision-making mechanisms. A Global Science Council could provide integrated overviews of the whole planetary and human system, combining natural and social sciences. The results of scientific assessments should be arrived at transparently and distributed widely without government interference. Assessments should provide guidance for the necessary policy options, legislation and regulations to remain within planetary boundaries.

Global Environmental Legislation

The most essential step towards achieving global environmental governance and reducing the risk of catastrophic failures will be creating the capacity for binding global legislation where planetary boundaries are threatened or exceeded. Such legislation should be enforceable on all states; non-governmental entities, such as corporations; and individuals, with relevant penalties for infringements.

While considerable progress has been made in global environmental legislation through international conventions, such as those on climate change, biodiversity and chemicals, there are three basic weaknesses:

- agreements are adopted by consensus, representing always the lowest common denominator;
- they are basically voluntary, with no effective enforcement mechanisms;
- they are fragmented into many separate single-issue agreements with little possibility to integrate them or to address cross-cutting issues.

These weaknesses reflect governance founded on national sovereignty, with primacy given to the economy and its corporate embodiment.

An institution is needed that can deliberate effectively on the global common environmental good, including equity and inclusivity, one that is open to the voices of those potentially affected, in a common effort to ensure planetary security. A first step could be an expanded mandate and responsibility for the UN Environment Assembly. While states will obviously have a central role unless ultimately representatives can be directly elected by the peoples of the world, there should be consultation with civil society and other stakeholders, perhaps with an advisory Civil Society Chamber. The result should be binding legislation, perhaps adopted by majorities varying according to the issue, enforceable on states and other entities, even those that refuse to join in and blatantly fail to comply with actions necessary to protect the global interest of all.

One aim should be the adoption of a 'treaty of treaties' establishing the fundamental principles of international environmental law. Another would be to consolidate the many

existing provisions in multilateral environmental agreements into coherent global legislation applicable to all countries, not just those that are party to existing agreements, preserving the best of what has been learned and useful mechanisms for implementation. For adaptability to a constantly evolving global environment, there should be regular meta-deliberation on the effectiveness of global environmental governance itself to ensure necessary reforms while avoiding backsliding.

Polynodal Governance Implementation

At the apex of multilevel governance, there needs to be an institution, a Global Environment Agency (GEA) or equivalent body, responsible for the health and sustainability of the planetary environmental systems and able to minimise, if not avoid, global catastrophic risks. It should be neither simply catalytic and coordinating like the present UNEP nor an independent specialised agency, which would simply create another silo amongst others. It should have an orchestrating function, with the authority to determine the global actions needed and the roles of international agencies, nation states and other actors to implement them, and the mission to support all the different actors in carrying out their roles. This would include capacity-building, technical assistance and financial support when necessary. It would prepare regular reports on progress in implementation and compliance, and collaborate with other international institutions to incorporate environmental responsibilities into their statutes and work programmes. It would obviously need to have a secretariat with the staff and financial resources necessary to carry out its mission.

International Court for the Environment

Trust is necessary for effective governance. The institutions for global environmental governance should be trustworthy and should lay the foundation for trust among governments. They should have their own accountability mechanisms and procedures to ensure compliance by states, with the necessary incentives in rewards or sanctions, as well as assistance to states needing additional capacity and support.

Since there is always the potential for conflict among states, dispute settlement mechanisms are required, starting with negotiation and arbitration. As a final resort, the global judicial system should include an International Court for the Environment that is able to issue binding settlements and to interpret the law in specific cases. Standing should be granted to competent civil society organisations to present their observations in these cases. Governments will only give up clinging to national sovereignty when they can trust that justice will be done.

Learning and Adaptability

In a time of rapid environmental change, institutions need to be able to learn and adapt. They must listen to the Earth system, rethink core values and assumptions and adjust governance accordingly. This should include the capacity to share both good practices and the lessons learned from inevitable failures, to assess any unexpected environmental changes, to organise expert review and policy recommendations, and to communicate rapidly any necessary warnings and response alternatives.

There can be unanticipated impacts between social and ecological processes. A whole-systems overview is needed between developments in the economy, in national

planning, in the use of territory and resources, and their environmental and social consequences. Short-term actions frequently have a long-term impact. Global institutions need to be in constant dialogue with all the relevant parties to avoid negative consequences.

National Governance

The next level of the challenge is the inefficacy of environmental management at the national level. Even the most environmentally responsible governments balance environmental requirements against other economic and social priorities and pressures. National interests come before more vague or distant global risks, although the increase in disasters related to climate change has recently hit home. International agreements are easily signed, but implementation generally fails through a lack of political will and the power of vested interests to block action. Then there are all the countries where governments are more autocratic and concerned primarily with holding on to power, often linked to corruption. There, little or no priority is given to the common good, even national good, not to mention global security, with the result that environmental concerns may be denied or actively combatted as a threat to other interests. Beyond that are the failed states where government hardly exists, and conflict is rampant. All this makes effective international cooperation for global risks virtually impossible.

National action also needs to be reinforced against the pressure of economic actors intent on short-term profit from resource exploitation and pollution. As already mentioned, many entrepreneurs and corporations function in the present economic paradigm in which profit and short-term return on investment are the measures of success, and the ends justify any means. Natural resources are there for the taking, and any impacts are externalities to be ignored or taken care of by someone else. The fossil fuel industry has known for decades that its activities were leading to global heating without this knowledge having any impact on their business plans. Then there are all the illegal activities and organised crime which also have a significant environmental impact and are even harder to control.

Local Governance

In application of the principle of subsidiarity, more community empowerment needs to be another priority in governance. Local communities must acquire the capacity and knowledge to manage their own environmental resources sustainably and avoid, at their own level, contributing to global risks. This also will help them to reduce their vulnerabilities and reinforce their collective resilience, which, in many ways, is the best insurance against any global catastrophe that might occur. For example, a village or neighbourhood that encourages community gardens and local agriculture to increase self-sufficiency will have access to healthier food requiring less transport and build solidarity. Indigenous peoples had to evolve local food production that respected nature to ensure their survival.

Mechanisms should be created to build coherence across all these levels. Fortunately, there is an active ongoing discussion internationally concerning the need for global governance reform, stimulated by the UN Secretary-General's report *Our Common Agenda* (UN Secretary-General 2021), the work of the High-Level Advisory Board on Effective Multilateralism (Karlsson-Vinkhuyzen and Dahl 2021) and the Stockholm+50 International Meeting (Dahl 2022b), among others, leading towards the Summit of the Future in 2024.

Human Resources

One of the most important determinants of effective governance is the quality of its human resources, both of the governors and the governed. It is people who operate institutions and who implement or disregard their decisions. Therefore, their motivations and values, their education and understanding, their short- or long-term perspectives are of great importance. Any improvement in governance also requires attention to the human dimension.

Education is, therefore, an essential support to the kind of governance transformation that is called for to reduce global environmental risks (Lopez-Claros, Dahl and Groff 2020, ch.19). This necessitates a wide extension of environmental education and sensitisation at all levels so that the scientific reality is both known and understood. Particular attention is necessary to those who will be employed in the public service. What personal characteristics are required, and how can they be cultivated through education and training? This will need to go beyond technical training in specific areas of environmental competence. A desire to be of service to the common good of humanity and the natural environment will make a significant difference to effective governance.

It is probable that even deficient institutions run by officials having a true desire to serve could be more effective than perfect institutions in the hands of self-seeking officials concerned only about advancing their careers and material success. So many governments, in the hands of determined autocrats and despots, have ended in disaster. Institutions that share responsibility collectively, that provide for checks and balances, that encourage wide participation, will be less subject to the often-negative influence of individual personalities and motivations.

Information Resources

One governance challenge when relying on information systems, whether financial accounts or scientific assessments, is that they generally make the basic assumption that the past is a good guide to the future, with the result that they tend to support planning and decision-making based on business as usual, or at the most gradual evolutionary change. Unfortunately, as history shows, this is rarely the case. There are always surprises. These can be either negative, such as crises and catastrophes, or positive as a result of innovations that can change the course of social evolution (Bill and Melinda Gates Foundation 2022). Systems science already tells us that change is not usually linear but follows what are called punctuated equilibria, when some crisis or innovation changes the potential of the system, triggering a period of rapid change and innovation to adapt to the new environment which gradually settles into a new and more stable equilibrium until an external change precipitates a new leap forward. An innovation may come as a surprise, but it can also be intentional, designed to transform society.

Since such periods of rapid change are often unpredictable, those making recommendations to government can turn to tools, such as scenarios, stories that start with different sets of assumptions and imagine what the alternative future might look like. These can lead either to decisions that take into account the possibility of such transformations or at least contingency planning that can be turned to rapidly if necessary.

This is particularly relevant when trying to anticipate catastrophic risks. In most cases, plans are made to reduce some obvious vulnerabilities and to build capacity for the necessary response measures, at least within the limits of available resources. The GCRI is intended to help governments respond in this way (Dahl, Lopez-Claros and Miller 2022).

Positive Scenarios

A second possibility is to design positive scenarios for new directions for society that would reduce or eliminate the human-induced causes behind many catastrophic risks. These can build on human ingenuity and our capacity for innovation. Scenarios can then be consciously pursued, consulting widely on the alternative future that is imagined, attracting public support and hopefully building the political will to move forward in that new direction.

Negative scenarios are nothing new. Already in 1972, the report to the Club of Rome on *The Limits to Growth* (Meadows *et al.* 1972) used computer modelling of major world trends to show that business as usual would reach planetary limits and cause the collapse of civilisation by the mid-21st century. The message was rejected in economic and political circles, but repeated updates of the model have confirmed its general conclusion, and recent events are consistent with its projections. From the perspective of global catastrophic risks, these include an economic collapse, perhaps from a general debt crisis, with major currencies losing their value; a climate catastrophe with widespread environmental destruction and drought; rising sea levels and the mass migration of climate refugees; famines aggravated by the collapse of global trade; repeated pandemics; disruption of communications technologies and the Internet by natural events or human intent through cyberwarfare; a return to extreme nationalism, the rise of autocrats and dictators, failures of national governance; and a closing of frontiers as countries try to isolate themselves from chaos elsewhere; civil wars and even a world war between democracies and autocracies, possibly leading to a nuclear winter. In the integrated world economy of today, any one crisis could trigger others in a complex catastrophe from which the surviving remnants of humanity would only slowly recover. Scenarios in support of governance could explore each of these and suggest preventive or compensatory actions.

On the side of positive scenarios, two examples can illustrate what is possible: An economic transformation could include a rapid transition to a circular economy, with an end to excessive consumption and a return to a materially simpler lifestyle favouring social relationships and the growth in intangibles such as knowledge, science, art and culture. Community organisation would be at a more human scale of neighbourhoods and villages enjoying greater solidarity, including integrating migrants and refugees. There would also be a more balanced distribution of wealth between and within countries of the north and south, compensating for the historical impacts of political, economic and corporate colonisation while eliminating extreme poverty and providing meaningful work for all.

Systems science shows that a fundamental transformation is best practised first at the level of values (Meadows 1999). Many of our problems are due to collectively dysfunctional human behaviour that reflects a vacuum in what could be called ethical or spiritual values, leaving our animal nature to dominate, with egotism, greed, lust, pride, and even violence accepted as normal human behaviour. Yet there is a higher human potential that can be cultivated through education. In the past, these higher spiritual values originated with figures like Moses, Buddha, Christ, and Mohammed, founding faiths that led to the blossoming of whole civilisations. Can we not imagine a scenario for a leap forward in our spiritual evolution? This would involve a renewal of the universal values found in all religions, stripped of dogma and human interpretation, and updated for the needs of a unified world society, such as is envisioned by the Bahá'ís.

In this second scenario of spiritual transformation, where human values take priority over the material dimensions of life, everyone would find their place with dignity and the opportunity to fulfil their potential. Universal education would empower everyone with the values of unity in diversity, including marginalised and indigenous peoples. All the religions and spiritualities would recognise their essential unity of purpose. While being content with little materially, a rich community life would emphasise science, art, culture, and being of service to others. Technology and the economy would be of service to human well-being. Human society would be in harmony with nature, working to regenerate natural resources for a truly sustainable civilisation. Governance would be collective and participative without individuals exercising power. In such a scenario, transformation could begin at the grassroots in local communities, learning as they go and gradually scaling up through social action and public discourse.

While distinct scenarios can be developed as discrete entities, it is equally possible to imagine them, for example, in combination with an economic collapse leading to a transformed economy, creating a positive social movement in which a fundamental evolution in values can take place. Although political resistance to change is high, the increasing social fragmentation and failure of governance at all levels may painfully open the door to such essential renewal.

Indicators and Other Measures of Risk Governance Performance

One reason why we are threatened by a growing number of global catastrophic risks is because our main accounting systems, indicators and measures of progress ignore the main drivers of those risks. These are not on the agenda of decision-makers, especially those in government and business, and there is little political will to do anything about them. Governments adopt declarations of good intentions, such as the UN 2030 Agenda and its Sustainable Development Goals (United Nations 2015), and the Paris Agreement on Climate Change (UNFCCC 2015). But there is a general failure of implementation. Scientists have been warning for decades about the major global environmental risks, but most political leaders—especially those with autocratic tendencies and the executives of large multinational corporations—have other priorities and continue their damaging activities, outweighing all efforts to address the problems. Governments hide behind their national sovereignty, and powerful business lobbies, often involved in corruption, prevent any global attempt at governance or regulation of business.

One cause is our reliance on financial accounting and measures of progress, such as gross domestic product (GDP), which measures the flow of money in the system and encourages endless growth. We are trapped in an economic paradigm that calculates everything in terms of monetary profit and loss, capital and interest, return on investment, and the theoretical efficiency of the market. Yet these have no inherent relationship to human or planetary well-being. Many corporations consider only profit and return on investment while ignoring the decline in environmental and social capital and related costs, treating them as externalities to be borne by the whole of society. Modern neoliberal economic thinking is founded on the assumption that people are fundamentally selfish, competitive and aggressive; thus, we accept as normal that markets and politics are powered by ego, greed, apathy, and violence, and that our society values wealth, power and fame for a few.

All that cannot be monetised or bought and sold is ignored. A stable climate has no inherent economic value. Climate change only enters into financial accounts when it causes damage. Since releasing carbon into the atmosphere drives global heating, we

consider carbon taxes. But the only value that is placed on the other half of the carbon cycle, where nature has sequestered carbon from the atmosphere for millions of years, is when this can be sold as carbon credits to offset releases. Similarly, preserving biodiversity has no economic value unless it provides measurable ecosystem services for the economy or attracts tourists.

Alternative Accounts

One solution is to develop an alternative set of accounts for valuations more organically related in a systems perspective to the functioning of the biosphere, the desirable direction of human society and the right of every human being to a life of dignity and fulfilment while mapping across major types of catastrophic risk: environmental, human and social. Such accounts could use alternative measures that are scientifically, socially and ethically relevant, defining progress directly in terms of both human and environmental well-being. These could measure the climate system, sustainable energy supplies, biosphere integrity, pollution reduction, a regenerative food system, the integration of nature and culture, and the comprehensive use of human capacities in healthy communities. Making these realities and their human and natural consequences more visible should touch both minds and hearts, stimulate meaningful conversations and inspire a spirit of solidarity in action. One effect will be to privilege those positive actions that will reduce risks and head off global catastrophes.

A new accounting system should be based on the underlying values and principles that define our human purpose, presently identified by our global society as human rights and obligations. In summary, the foundational principle of justice includes the right of everyone to human dignity and to equitable treatment, leaving no one behind, with special attention to women, children, the disabled, and those otherwise marginalised. As a social species, humans cannot fulfil these rights individually but only through relationships with others, requiring each of us to feel solidarity with everyone else, maintenance of our common property and protection of the common good. This expresses the fundamental truth that we are one human family and citizens of this planet in all our diversity, above any other more limited identity.

A systems perspective helps us to understand the enabling conditions for a more realistic view of progress and well-being, avoiding environmental risks and providing conditions and resources for us and all life to exist. The planet has three energy systems: solar thermal energy maintaining the climate at temperatures suitable for life; the biospheric energy system capturing solar energy in chemical forms through photosynthesis and feeding everything, including human beings; and nuclear decay providing geothermal and nuclear energy. Energy accounts should measure this flow. The biosphere, with its ecosystems and living species, provides many renewable ecosystem services, sustainable natural resources and all our food. Non-renewable resource use must ultimately be circular to avoid running out. Many substances we have extracted or invented are polluting our environment. For these three dimensions, we are now overshooting planetary boundaries and threatening our future in ways that are becoming catastrophic risks. This requires moderating our material civilisation, restoring past damage and enhancing the regenerative capacities of nature.

For human well-being, we have our own enabling conditions: basic physical needs for shelter, energy, water, and security; food and a sustainable food production system; and good health to enable us to reproduce safely and contribute to society. These should not be conditioned by any artificial limitation such as nationality, ethnicity, religion, or place of birth. Their loss can lead to catastrophe.

We have collective social needs for dignity through work and service; for knowledge, science, culture, and education; and for values, individually through ethics and spirituality to improve our character, collectively with principles and system rules to organise our communities and institutionally to provide rules for system organisation. Human civilisation emerges through cooperation and reciprocity, building institutions that allow ever-higher scales of organisation in space and time, perpetuating an ever-advancing society. While these dimensions do not directly contribute to catastrophic risks, they are important in determining our risk vulnerability and resilience, and can accentuate or diminish their impacts. This systems perspective maps out the framework for a solidarity accounting system that measures what is really important (Dahl 2021, 2022a).

Together, all these forms of natural, human and social capital would become the basis for a new global definition of wealth and progress, expressed in a set of complementary currencies, no longer subject to manipulation in the national interest of states, founded on scientific standards of human and natural well-being, and simple and logical enough to inspire wide public acceptance. By basing the accounts on an ethical perspective of human purpose and well-being for the whole human race in its oneness and diversity, the system can become the tool for global solidarity, driving social progress, including all nations and peoples with justice and equity. This then becomes the standard against which risks of catastrophe can be measured. Oversight would be the responsibility of institutions of global governance, in the same way that national central banks take decisions to ensure national economic well-being under the oversight of national governments. Each country could adapt the accounts to its national situation as a guide to national policy. The approach even lends itself to use in local communities to read the local reality and stimulate meaningful conversations about solidarity and social action.

The accounting system proposed here using non-financial measures can define this new vision of progress and motivate positive action, heading off catastrophes. It can guide us to restore climate stability and productive ecosystems and prevent pollution, with all the risks these otherwise imply. It can define a society able to meet the basic material needs of all with proper nutrition and good health, to provide meaningful work and access to education, to encourage knowledge, science, art and culture, all by fostering the values and spiritual capital that would be the measures of an ever-advancing and risk-free civilisation.

In conclusion, we see a confrontation today between catastrophic risks and political realism. Those risks are accelerating, with severe impacts already visible. They can only be reduced or avoided through acts of consultative will to implement what is proposed here. If not, we can be certain that some catastrophe will finally lay waste the forces of inertia and resistance and clear the way for the survivors to rebuild for a better future. Wisdom would obviously suggest that we chose the former path.

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20 Global Food Systems in Crisis

A Human Rights Approach

Hilal Elver

Introduction

The global governance of food systems is a highly complex, multilevel and multidimensional structure involving numerous sectors, players and policy domains (McKeon 2021: 48–55). Although food security and ending hunger are important global goals, the current structure of global governance is not capable of solving those problems. Hunger and malnutrition have been gradually rising since 2014, and the COVID-19 crisis has pushed those rising rates to even higher levels while also exacerbating all forms of malnutrition, particularly in children (McKeon 2021). The 2022 annual report of the United Nations Food and Agriculture Organization (FAO), entitled *The State of Food and Nutrition Security in the World*, indicated that the number of hungry people had reached 828 million (FAO 2022). Currently, the war in Ukraine is further disrupting global food supply chains and creating the most severe global food crisis since World War II. Given this adverse impact of recent multiple crises to reach target No. 2 of the UN Sustainable Development Goals, ‘Zero Hunger’ does not seem to be viable until 2030.¹

At the same time, the world’s agriculture already produces food to feed more than seven billion people. In other words, while the world population doubled between 1961 and 2003, global food production increased by 2.5 times, increasing the average per capita availability of food (Sage 2022: 11). Nevertheless, over a billion are chronically hungry, and three billion face all forms of malnutrition—namely, undernutrition (wasting and stunting in children), micronutrient deficiencies and obesity (Global Nutrition Report 2022). This stark reality makes it obvious that the availability of food in and of itself does not provide accessibility and does not necessarily reduce hunger or increase nutritional health. To correct such a mismatch, the international community searches for an effective food governance system (McKeon 2015a: 89).

Food insecurity is not mainly a technical problem but presents multiple challenges and requires comprehensive remedies. Many recent reports point out those challenges as increasing pressure on natural resources, economic shocks, conflicts, climate change-induced extreme weather events and natural disasters, as well as population increase, poverty and inequality. Ironically, most people who suffer from hunger, malnutrition and poverty are concentrated in rural areas and work in the food and agriculture sector, producing much of the locally consumed food.

At the same time, a few powerful corporations control globalised food production and trade (Clapp 2023: 2). Industrial agriculture boosts production in the short run, but in the long run, it not only creates serious environmental problems but does not solve

hunger and malnutrition. This approach has also resulted in hurting local food systems and ignoring small-scale farmers and producers. Additionally, these small-scale food producers have not always been welcomed as full participants in the discussions about reforming food systems (Global Governance Institute 2022).

In the processes of globalised food systems, the public sector is gradually losing its regulatory power against global trade rules, and activists are also losing ground in defending the right to food and promoting local food systems (Global Governance Institute 2022). These trends indicate that current global food governance most often excludes large groups of traditional players in favour of a few powerful ones. As a result, food security has become highly politicised both at the national and international levels by the involvement of multiple actors and ideologies. Building a common understanding about achieving food security for all is urgently needed yet hotly contested.

In September 2021, UN Secretary-General Antonio Guterres organised the Food Systems Summit (FSS) to discuss the ‘broken food systems’, a common term used by many in the field. He demanded transformational changes to reach the Zero Hunger goal by 2030. However, instead of arriving at a common understanding and reaching a solution, the Summit exposed significant ideological differences in policy domains. This controversy around the FSS reveals the difficulties of achieving democratic global food governance, given the increased food insecurity of our time and deeply contradictory views about how to transform the food system.

The right to food is an important part of this debate. After seven decades, the international human rights system, especially the *Covenant of Economic, Social and Cultural Rights* (ECHR) has still to be fully implemented. Furthermore, it is much neglected, as compared to the protection accorded to civil and political rights (Courtis 2007: 317–37; Elver 2016: 27). Undermining the human rights system, specifically the right to food and other relevant rights, presents a major obstacle to eliminating hunger and malnutrition and serves to destabilise the pursuit of overall human security as well.

There are two dominant views to respond to how to transform these current multilayers, multi-actors and multi-ideological features of global food governance. One dominant view is a production-oriented, neo-liberal market model that supports globalised food systems. This view is promoted by powerful states, the private sector, industrial-scale producers and global food trade promoters. The second is a human rights-based approach to food security and nutrition that promotes the right to food and nutrition, including women’s rights, food workers and peasants’ rights. This latter approach supports small-scale farmers and producers, prioritises self-sufficiency and local markets, defends agroecology and food sovereignty.

These conflicting views recently surfaced during the 2021 UN Food System Summit and still continue to plague various global food governance platforms. There is an urgent necessity to discuss these two views in a democratic setting and find complementarities and trade-offs to find solutions that are acceptable to all.

This chapter argues that transformation of global food systems will not be achieved unless the substantive and procedural principles of the human rights system are integrated into global food governance. The chapter begins with an overview of the history of global food governance since World War II, highlighting the roles of the Rome-based institutions of the United Nations, such as the FAO, the World Food Programme (WFP), the International Fund for Agricultural Development (IFAD), and the Committee on World Food Security (CFS)—the major players in food policy governance—as well as new actors, such as the private sector, civil society and philanthropic organisations.

Following this initial exploration, the chapter will examine several global food crises which expose their impact on the institutional structure of global governance. Next, the chapter will discuss the legal and political developments of the right to food and their influence on food security over the years. The challenges and opportunities implicit in the human rights-based approach to global food governance will be highlighted, given the role of small-scale farmers and global social movements which have responded to the imperatives of justice and equality. Finally, the chapter concludes with key recommendations for the transformation of food systems to become sustainable, resilient, just, and equitable.

A Short History of Global Food Governance

At present, there is no global governing body that takes into account the entire spectrum of food systems. Food security crosses paths with other areas of governance, such as human rights, health, environment, climate, gender, social protection, development, and trade policies. As a result, 'global food governance is a contested regulatory space composed of competing institutions, actors and bodies that have been layered one on top of the other over time, in order to promote various ideologies and agendas'. (de Haen and MacMillan 2010: 7). There are key institutions and players that shape and play a role following their own points of view in this complex system. For instance, financial organisations (World Bank and the International Monetary Fund) support market-oriented agricultural and rural development projects. The Rome-based institutions (FAO, WFP and IFAD) in general emphasise food security in the Global South, food aid and support smallholder farmers. Human rights institutions, such as the Office of the High Commissioner of Human Rights (OHCHR) and UN Special Rapporteur on the Right to Food focus on human rights prioritising vulnerable groups among the various food system players. In recent years, supranational entities, such as the European Union, the G-7 and G-20 intergovernmental platforms, have included food policies in their agendas, especially during crises.

The Creation of the UN FAO and Multiple Food Crises

The first attempt was made in the aftermath of World War II, with the establishment of a permanent international institution to respond to hunger and famine in Europe, which threatened both national and international security (Philips 1981: 3).

The tasks of the FAO were initially very broad in scope and the agency was given significant power and authority to influence national and regional food production policies, to pioneer technical assistance and scientific research and to coordinate intergovernmental food aid (International Panel of Experts on Sustainable Food Systems 2020). Over the years, however, those responsibilities were gradually removed from the FAO's domain by powerful state actors and given to various other institutions. The United States was unwilling to allow such an effective institution to dominate global food policy and trade singlehandedly (*ibid.*).

The decade of the 1970s was characterised by the debate between the developed and developing countries concerning various global issues, and the United Nations opened its doors to public participation and more democratic discussion.

The early 1970s also witnessed a multi-year global food crisis caused by widespread drought, massive Russian grain purchases, rising oil prices, low harvest yields, low grain

stocks, high food and fertiliser prices, and food export restrictions. There were repeated food riots in Bangladesh and India. In response to the crisis, the UN *World Food Conference* was convened in 1974 to boost production and agricultural inputs in developing countries, support food trade, and protect the poor through food aid (Horton 2009: 31). The conference also established new institutions: Finance and investment work was removed from the FAO and given to the IFAD agency; responsibility for humanitarian aid and assistance went to the WFP. As a result, the FAO's role as a dominant institution for food security and agriculture was dramatically diminished, and these initiatives led to the fragmentation of multilateral food and agricultural systems with overlapping bureaucracies (IPES Food 2020).

There was a sharp disagreement about the reasons behind the food security between developed and developing countries. The former framed the crises as a technical problem, with the solution being food aid, while the latter insisted that the problem was overconsumption on the part of the Global North, colonial underdevelopment and a new international economic order, supposedly based on more equitable relations of trade (Canfield 2022: 163).

In the 1980s and 1990s, the neo-liberal economic order gained in strength, and export-oriented agricultural policies dominated global food markets. In addition, structural adjustment programmes and market-oriented reform policies—eliminating price controls, deregulating capital markets, lowering trade barriers, privatisation, and austerity measures—were favoured by the international financial organisations.

In the process, the corporate world gradually gained influence over global food systems, while hunger and malnutrition continued to increase. These developments led to increased global and civil society activism in reaction to the institutionalisation of economic globalisation. This environment of conflict led to the convening of the World Food Summit (WFS) in 1996. This was one of the several global UN conferences which followed the end of the Cold War in which social policies, including human rights, gained prominence. At the Summit, a powerful international agrarian movement, *La Vía Campesina*² prominently represented rural communities against powerful global players and demanded food sovereignty.³ The Summit ended with a declaration favouring the right to food.⁴ In the 2000s, two developments occurred simultaneously: on the one hand, the civil society was working to institutionalise the right to food by developing inclusive, universal voluntary regulations; on the other, states were starting to favour market-based neo-liberal policies for production-oriented food security policies.

In 2007–08, a second food crisis occurred, and as a result, problems similar to those of 1974. The only significant difference between the two was the increased production of biofuel in response to commitments made to reduce greenhouse gas emissions in developed countries. The second crisis showed that the market-based approach did not eliminate hunger and did not bring about food security, especially in the net food-importing countries. It was the first alarming sign that financialisation and global trade-based food systems were a real danger in developing countries. Many governments became net food importers, and when global food prices began to spike alarmingly, disaster ensued. From Africa to Asia to the Middle East, the crisis spawned major political uprisings in many developing countries (McMichael 2009: 2). For many, including World Bank, this crisis was not only a learning experience but demonstrated that agriculture was of critical importance for development and not a 'backward' sector to be abandoned. Moreover, food security was the major driving force for peace and national security.

2009 Reform of the CFS

As had occurred an earlier crisis, the international community suggested a governance model rather than adequately address the structural issues (McKeon 2015a: 105). In 2009, the CFS was reformed and renewed as a progressive, but this time as an inclusive, multi-stakeholder global policy platform (UN Committee on World Food Security 2009). The reformed CFS went beyond the usual protocol of UN institutions featuring government representatives to include both civil society and the private sector in the decision-making process. Featuring the two principles of evidence-based decision-making and inclusivity, the new CFS was the first—and still is the only—intergovernmental body in the UN structure (Canfield 2022: 158). However, power imbalances between transnational civil society and private sector mechanisms continue to create controversy (Clapp and Cohen 2009: 3).

Producing and adopting various voluntary guidelines and guiding principles on food security and nutrition, the CFS made an important contribution to global food governance.⁵ Those guidelines enhanced the democratic and participatory structure of the CFS and gave it greater legitimacy. Nevertheless, it is still the responsibility of governments to implement such principles, as all the guidelines are voluntary, and there is no global governing body to monitor implementation and enforcement. However, the CFS suffers from important limitation, namely the lack of capacity to legislate at the global level to promote food security (McKeon 2015b: 329). Given the multiple crises and strong ideological differences among the various players in the food system, the CFS must be equipped with the power, authority and resources to act effectively on critical issues in order to solve hunger and malnutrition crises.

UN Food Systems Summit (UNFSS) 2021

Over the years, the United Nations has played an important role in shaping global food governance. The Summits of 1974, 1996, 2002, and 2009 each had their own momentum but shared one feature: ‘intense clashes over power’ (Canfield, Duncan and Claeys 2021: 155). The structures and outcomes of each Summit were shaped by the dominant themes of the historical period, such as globalisation, deregulation, market liberalisation, and competing interests among countries, as well as those between transnational corporations and civil society actors. Throughout the past four decades, corporate power became more concentrated, increasingly dominated global food markets, supported neo-liberal trade regimes and boosted production, while civil society movements managed to establish a solid global network focusing on the structural causes of hunger and malnutrition and supported human rights and food sovereignty as a solution. This controversy was very evident at the onset of the 2021 UN Food Security Summit.

Unlike the earlier ones, UNFSS was organised by the UN Secretariat and the World Economic Forum (WEF). This had been seen as a sign of the close relationship between the United Nations and transnational corporations and designed to promote market-oriented forms of governance, and technology-driven approaches to food systems, as exemplified such powerful philanthropic organisations as the Bill & Melinda Gates Foundation and the Rockefeller Foundation. It was also interpreted as a sign of competition between the UN headquarters in New York and Rome-based institutions concerning global food governance (Fakhri, Elver and de Schutter 2021).

The FSS prioritised innovations and technological solutions, instead of including diverse knowledge sources, and gave little space to the right to food, which had been a dominant principle of the previous UN Summits since the FAO's endorsement of the Voluntary Guidelines on the Right to Food in 2004 and one of the primary principles in the CFS reform document in 2009.⁶

Transforming the Global Food Governance Through the Human Rights Approach

Eliminating hunger and malnutrition is the fundamental aim of global food governance. However, hunger and malnutrition have no single, monolithic cause. A complex range of factors influence a society's ability to have food security. A right-based approach is one of the tools that emphasises a state's legal obligations under international law to eliminate hunger while protecting future generations and the health of the planet. The following section highlights the development of the 'right to food' in the UN system and the steps that must be taken to advance global food governance through a right-based approach.

Development of the Right to Food in the UN System

The right to food was first recognised in the 1948 Universal Declaration of Human Rights (UDHR) Art.25, which referred to 'an adequate standard of living'.⁷ Without being legally binding, and purely aspirational, the Declaration achieved the status of customary international law. Then, the UN Commission on Human Rights was tasked with developing a new legally binding agreement that would elaborate on the rights enumerated in the Declaration.

Adopted in 1966 and entered into force in 1976, the International Covenant on Economic, Social and Cultural Rights (ICESCR) was signed and ratified by 170 states that agreed to take steps to maximise available resources in order to progressively achieve the full realisation of the right to adequate food, both nationally and internationally.⁸ Article 11 of the ICESCR obligated states to ensure that everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and guaranteeing the right to be free from hunger (Elver 2016: 12). The right to food was also recognised in the major human rights conventions and a number of national constitutions, a clear recognition that states are duty bound to regard all persons as rights holders, and not as passive recipients of charity.⁹ There is a fundamental difference between a legal entitlement and a generalised affirmation of a charitable or moral responsibility. Accordingly, states must ensure that adequate institutions and avenues exist so that rights holders can hold them accountable for rights violations and secure remedial relief for themselves.

Nevertheless, the right to food is frequently subject to criticism because of its indefinable, undeliverable and non-justiciable nature. However, there is no doubt that the right to food is undeniably a fundamental human right. Starting from two years after the ICESCR entered into force, in the 1980s, efforts surrounding the right to food slowed down, leaving the issue dormant for much of the decade. States were reluctant to implement the right to food at the domestic level, even in conditions of an imminent threat of hunger and food insecurity, as well as the 1984–85 drought and famine in Ethiopia.¹⁰

This inaction changed in the November 1996 WFS. As mentioned earlier, this was a watershed moment for the right to food. The Rome Declaration of the WFS, which

formally adopted the concept of the ‘right to adequate food’, recognised the ethical and human rights dimensions of food security and reflected the emerging ‘right to food’ approach in social and political agendas (FAO 2002). Unlike the 1974 First Food Conference, which was focused only on production and consumption, the 1996 WFS tackled the multidimensional nature of food security by addressing the accessibility, availability, stability, and utilisation of food (FAO 1996).

One of the critical outcomes of the WFS was the invitation of the newly established UN High Commissioner for Human Rights to ‘propose ways to implement and realise these rights’. In 1999, the UN Committee on Economic, Social and Cultural Rights formulated the normative content of the right to food in *General Comment No. 12*. It defined three sets of state obligations:

- Respect: No interference with the enjoyment of the right to food for those who are able to feed themselves or have access to food by some means or another.
- Protect: Governments should control private actors to prevent their actions from violating the right to food.
- Fulfil: States must proactively engage in activities to strengthen peoples’ access to and utilisation of resources.¹¹

This was considered a response to the complaints of member states on how to interpret and apply Article 11’s seemingly abstract principles to real-life situations.

The year 2000 was another turning point for the right to food, as it marked the establishment by the UN Commission of Human Rights of the position of UN Special Rapporteur on the Right to Food and also the creation of a Right to Food Unit at FAO. These two efforts for institutionalising the right to food at the global level not only motivated actions by like-minded countries and UN institutions but strengthened the basis for an alliance between the right to food and food sovereignty movements.

As mentioned earlier, a third positive step was taken in 2004 with the adoption by an Intergovernmental Working Group under the auspices of the FAO Council of the Voluntary Guidelines to Progressive Realization of the Right to Adequate Food in the Context of National Food Security.¹²

Although neither document is legally binding, both carry authoritative commentary and guidelines endorsed by member states with consensus linking food security and nutrition with the right to food. They constitute the most comprehensive human rights documents that bring clarity to normative and procedural human rights standards for the elaboration and implementation of a rights-based approach to food security policies and programmes. These are participation, accountability, non-discrimination, transparency, human dignity, empowerment and equality, and the rule of law (Golay and Buschi 2012: 15).

After these developments, over 30 countries *explicitly* and some 54 countries *implicitly* recognised the right to food in their constitution.¹³ However, there is a significant gap between law and implementation and states continue to neglect economic, social and cultural rights, particularly the right to food.¹⁴

While a human rights-based approach is a vital policy tool for eliminating hunger and malnutrition, institutions which are ineffective, inefficient or corrupt cannot deliver this result. It is widely agreed that the quality of institutions has a significant impact on a state’s economy and the level of food security enjoyed by its population (Ramanujam, Caivano and Abebe 2015: 13–14). Moreover, institutions cannot be effective without

corresponding mechanisms for monitoring and accountability at both the domestic and international levels. Therefore, the UN human rights system provides several mechanisms for monitoring state compliance, as does the Special Procedures of the Human Rights Council (HRC), including universal periodic reviews, Special Rapporteurs and individual complaint procedures. Special Rapporteurs as human rights experts serve a unique role as monitors of compliance and accountability. Appointed by the HRC, Special Rapporteurs are independent of any institutional affiliation or government and work pro bono. But their reports carry the same legal weight as those of other UN reports. The first Special Rapporteur on the Right to Food was appointed in 2000. Since then, four others have been appointed by the HRC, and each has had a six-year term and published multiple reports covering a wide range of specific themes, including country mission reports. As of October 2022, there are 45 thematic and 14 specific country human rights experts.¹⁵

Although all human rights are universal, equally protected, interdependent, and interconnected, there is still a wide gap between civil and political rights and economic, social and cultural rights regarding justiciability and complaint mechanisms. In 2013, the long-awaited Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) entered into force, bringing complaints to the international level from those who experience violations of their economic, social and cultural rights (UN General Assembly 2008). Unfortunately, state parties have been reluctant to implement the complaint mechanism, and thus, the protocol remains mostly dormant.

Challenges of Implementing a Human Rights Approach

As mentioned earlier, there is a big gap between two sets of rights in favour of civil and political rights concerning justiciability and implementation. During the Cold War, the two sets of human rights were the main disagreement between the East and the West. The legacy of the Cold War, unfortunately, is still alive and continues to this day. This is partly due to the fact that the United States insists on making a distinction between civil and political rights on the one hand and economic, social and cultural rights on the other. For instance, the United States did not ratify the ICESCR and formally recognises only negative rights. In every international platform, when the right to food came to the agenda, the United States representatives made reservations about why the United States voted ‘no’ for the Resolution on the Right to Food in the HRC. The rejection of the United States’ Right to Food Resolutions of the HRC is indicative of why the human rights-based approach is not easily applicable to solving many food security issues.¹⁶

Over the years, this argument became even more powerful as economic, social and cultural rights placed additional financial and practical burdens on developing countries. However, the ICESCR recognises ‘progressive realization of economic, social and cultural rights’, meaning that states are only responsible if they have available resources to achieve the right to food.¹⁷

Ethics philosopher Henry Shue rejects making an oppositional dichotomy of negative and positive rights, arguing that *basic rights*, such as the right to food, are ‘an essential and necessary condition to the enjoyment of all other rights’ (Payne 2008: 2). Similarly, Amartya Sen argues that ‘there is strong evidence that economic and political freedoms help to reinforce one another, rather than being hostile to one another’ (Sen: 5). Using international human rights law in the case of the right to food still remains contentious

in countries such as Canada, the European Union and the United States, which claim that the right to food is not justiciable and that international mechanisms for expressing individual grievances are limited. Some states also are reluctant to bring interdependency of all human rights. For instance, during the CFS discussions in Rome, representatives of the Russian Federation were consistently against bringing women's rights to food security, insisting that women's rights have no place in food security institutions. Such state behaviour indicates that despite the spirit of the Sustainable Development Goals 2030, which emphasise breaking the silos among various issues, fragmentation of global governance in UN institutions still exists. Institutional fragmentation and silos within and between the Rome-Based Institutions and Geneva-based human rights organisations and their mechanisms have further weakened efforts to mainstream human rights into the food policy agenda.

In recent years, human rights have been under attack due to emerging nationalism, populism and predatory global capitalism. Unfortunately, world powers are retreating in their historical commitment to human rights. Consequently, United Nations institutions are experiencing extreme financial shortfalls, especially the HRC and regional human rights mechanisms, such as the Inter-American Human Rights System.¹⁸

Ultimately, powerful states, together with a few transnational corporations, control food and agriculture trade under free market rules, blocking the right-to-food approach in every global platform. Moreover, regardless of the existence of a right to food in international law, even mainstream human rights organisations such as Amnesty International and Human Rights Watch do not perceive hunger as a human rights violation, in part because of justiciability discussions in international human rights law, and also because these organisations are reluctant to challenge directly the existing economic system (Monsalve 2021:13–18). In other words, the 'right to food' is accepted as a moral and rhetorical principle, but it should not go beyond that and implicate legal entitlement for states (Jurkovich 2020: 169).

Another shortcoming of traditional anthropocentric principles of human rights is undermining the right of nature. Right to food cannot be sustainably realised without paying due regard to the protection of natural resources and nature itself. The indigenous peoples are among the first to have challenged the limited conceptual framework of human rights. Peasants, family farmers, fisherfolk, pastoralists, and other rural people joined the indigenous peoples in support of the idea of including in the human rights-based approach the right to food, land, water, and seeds (Monsalve 2021: 14). Finally, as a result of an effective campaign from civil society the UN Declarations on the Rights of Indigenous Peoples (2007) and the Declaration on the Rights of Peasants (2018) were recognised by the United Nations General Assembly.

Whether developing or developed, some states, for different reasons, are reluctant to implement human rights-based approaches to food security policies because it constrains them, as a mandatory obligation, to be 'duty bearers'. Corporations are also reluctant to be held accountable for their human rights violations, except 'voluntary corporate social responsibility'. Such a weak regulation simply reinforces the philosophy of the food production industry that enables corporations to profit from the do-good motto 'feeding the world' while simultaneously undermining any unintended—or even in some cases intended—consequences of the violations of human rights and right of nature. This limited approach leaves no room for normative considerations. It exacerbates inequality and poverty and undermines self-sufficiency, sustainability and agroecology, as well as many other policies that are part and parcel of a human rights-based approach.

Current Multiple Crises and Suggestions to Improve Global Food Governance

Besides increasing food insecurity, the world is currently facing complex and interdependent challenges, such as health crises, protracted conflicts, migration flows, high inflation, economic recession, deep inequalities, energy shortages, depletion of natural resources, environmental pollution, and climate change. Since the war in Ukraine, the international community has paid greater attention to avoiding catastrophic consequences of food insecurity in several countries. UN organisations, including IMF (Georgieva 2022), World Bank,¹⁹ as well as the WEF are issuing warnings to the international community of the prospect of rising food, fuel, and fertiliser prices to historic highs and extreme weather events and heat waves hindering efforts to develop alternative modes of production and search for new markets. The FAO is reminding the international community of the 2007–08 food crisis and advises countries to maintain open trade, support vulnerable households, ensure sufficient agricultural supply, and diversify the production (Torero 2022). Similarly, international financial institutions and global leaders convened an action plan to address financing pressures.²⁰

The FAO urged global leaders to halt stockpiling and export restrictions on food and to provide financial assistance to countries and people struggling with food insecurity. Some countries tried to create regional food hubs and prioritised local markets rather than relying on global food systems. Especially long-term dependency on Russia for grain and fertilisers made the business community think about alternative methods to avoid future problems.

The UN Secretary-General and other high-level UN officials constantly remind world leaders to act decisively and effectively to stop such a spiral of crises. Antonio Guterres has warned the world about a coming ‘hunger hurricane’ (Clapp and Elver 2022). The potential collapse of already fragile states and human suffering would require immediate attention from global leaders. In March 2022, the UN Secretary-General launched the Global Crises Response Group on Food, Energy, and Finance mandated to provide analysis and policy recommendations from the UN system (UN Global Crisis Response Group 2022). The group is periodically publishing briefs. At the same time, the UN General Assembly adopted resolution 76/264, ‘The State of Global Food Insecurity’, without a vote but urged the international community to jointly support countries affected by the food security crisis (UN General Assembly 2022). Then, on July 18, 2022, a high-level event held at the UN General Assembly in New York urged coordinated action to tackle the global food crisis, and all the factors, including the COVID-19 pandemic, climate change and ongoing conflicts, which have resulted in nearly a billion people going hungry (Shahid and de Lomo-Osario 2022). The President of the United Nations General Assembly highlighted the need to prioritise food security in the world’s least developed countries, in landlocked developing countries and in small island developing states, whose citizens ‘are typically forced to spend a larger share of their income on basic necessities, including food, and are thus disproportionately affected by rising food prices’ (ibid.).

Although such crises are more strongly felt in developing countries than developed ones, it is also a concern for the developed countries that are not immune from their consequences. Nevertheless, many of the crises disproportionately affect low-income countries, making life very difficult for their citizens.

There is growing recognition that present institutions are unable to effectively handle the challenges of the 21st century, with potentially dire consequences for human development and security, including planetary disasters (Smeds 2014: 1). There are structural limitations

plaguing the current global governance systems which prevent adequate and appropriate responses to such multiple, interconnected challenges. There is a significant power imbalance among countries, as well as various participants in their ability to access and control the global governing of food systems, especially to gain access to the mechanisms of decision-making. Those who are excluded from the process are reluctant to recognise and implement those rules, preferring to ignore the winds of globalisation, to focus on their own domestic interests and to concentrate on recovering self-sufficiency, especially in times of crises.

Moreover, the global system is limited in its capacity to control and regulate the emerging power of corporations, while corporations are successfully lobbying to ensure that the global regulatory system protects their interests. At the same time fragmentation, bureaucracy, budgetary problems and competition for power and influence among institutions at every level make the governing system slower, less effective and dysfunctional.

Despite all existing institutions, seemingly cooperative actions and efforts to call for solidarity among the world's leaders, hunger and malnutrition, recurrent food crises and food insecurity have largely persisted. Existing platforms on food security, especially the CFS with its broadened mandates and inclusive structure through participation of the non-governmental organisations, actual outcomes and practice remain ineffective at the national level in the absence of strong accountability frameworks.

Even though 'the food systems are inherently interconnected' (Hawkes 2022), the significant power imbalances among the various food systems players do not allow them to work together to consider the ideas of others and be willing to work out compromises. Greater solidarity and cooperation at every level is necessary. However, solidarity starts when there is equitable distribution, just access to and distribution of resources, and meaningful participation in governing and decision-making processes.

This brings us to the issue of how to connect a human rights-based approach with effective global food governance. One of the major procedural rules of the human rights-based approach is to include all concerned parties in an effective and meaningful decision-making process. As explained earlier, in the area of food governance, effective decision-making is painfully difficult. The players in the food systems are too numerous, from small- and large-scale farmers, farm workers, indigenous people, and women; from local to national governments and international organisations; from huge commercial supermarkets to local village markets; and down to the individual consumers themselves. And each of them may play multiple roles in the process. Different roles and expectations make food governance challenging, to say nothing of the challenge of transforming the food system itself to one that is sustainable, resilient, just, and equitable. Food governance suffers from constant conflict and requires constant dialogue.

In this complex system, whatever decision is taken will affect others, often in not very positive ways. Corinna Hawkes proposes a formula for rebalancing decision-making in food systems rather than the current battlefield. To do that, decisions should 'optimise not maximise' trade-offs, craft co-benefits and find a shared agenda among the various interests; manage conflict among all parties; and always listen to the voices of those most affected (Hawkes 2022).

Implementing the human rights-based approach would be the effective and appropriate policy tool for building democratic, just and equitable global food governance. This implies the following important policy changes:

- Strong political commitment and allocation of public resources.
- Democratic institutional structure to reach meaningful participation, strong partnership and dialogue.

- Emphasis on the most vulnerable populations, communities, groups, and individuals, including women, youth and indigenous peoples, who can help solve immediate crises.
- Dedicated attention to raising awareness, access to information and education.
- Understanding of evidence-based analysis, information and monitoring to increase accountability.

(FAO 2019: 26)

To revitalise legal, institutional and technical transformation in food systems for achieving democratic, global food governance, the following concrete elements are essential:

- Reliable financial support for national and international food security institutions, as well as human rights institutions.
- An enforceable global food security agreement founded on human rights principles instead of voluntary guidelines or soft law principles (i.e., without binding force).
- An effective monitoring system to avoid inadequate implementation of regulations at every level.
- Accountability and monitoring mechanisms to prevent unrestrained corporate actors who cannot be controlled with soft law principles and ensure that businesses go beyond mere claims of implementing ‘corporate social responsibility’.
- An enforceable international agreement to ensure the extra-territorial responsibility of corporations and prevent ongoing impunity against grave human rights violations by transnational corporations.
- Ensuring that small-scale farmers, women and youth, indigenous peoples, and local communities are a key part of global governance debate and decision-making at every level.
- Affirmative action policies and market incentives to support small-scale food producers and farmers, especially women and youth.
- Adoption and implementation of International Labour Organization conventions to guarantee decent working conditions for food systems workers.
- Regulation and monitoring of the hybrid mechanisms (such as public-private partnerships) which reinforce power asymmetries, exacerbate conflicts between public and private interests and unduly influence decision-making and policies in the global food system.
- The transformation of food production from the dominant industrial model to alternative methods in harmony with nature, such as agro-ecology.
- Coordination of local and regional food systems with global food governance, to ensure resilience against food crises and natural disasters.
- Encouragement of wide-ranging social protection systems to support fragile groups against food crises and keep them in the food production system.
- The regulation of investors to prevent large-scale land and water resources domination to prevent human rights violations and environmental destruction.
- Review and reform of trade rules to ensure the stability and transparency of the food commodity market.
- Eliminating the large-scale agriculture subsidies in developed countries to prevent adverse impacts on the livelihood of local farmers and markets, as well as the health of consumers and the environment.

Eliminating hunger and malnutrition and realising the right to food is a substantial undertaking. It is a particularly difficult goal to achieve given the legal, political, economic, and environmental conditions of the current world order. However, with political will, solidarity and compassion at every level and the transformation of aspirations into action, it is not unachievable. States must implement those human rights instruments which ensure that all players, not only the powerful ones, are included in the decision-making process. Those who disproportionately suffer from hunger must be represented and afforded the opportunity to advocate for their rights.

It is important to bear in mind that the human right to food is not unattainable; rather, it is as yet *unrealised*. Solving hunger and malnutrition is not only a commitment to realise fundamental human rights but also the elimination of the current crisis of inequality, bringing justice and political stability to every part of both the human and natural world. Failure to address inefficiencies, inequities and injustices in global food governance, especially at a time of accelerating climate change, increasing social unrest and political instability, is unconscionable. Radical transformation of food governance is essential if we want to enhance the resilience of our food systems at a time when other global catastrophic risks could interact in toxic ways with food insecurity.

Notes

- 1 To follow the most recent figures on the Sustainable Development Goals indicators, see SDG Tracker (n.d).
- 2 La Via Campesina (2023), Spanish for ‘the peasants’ way’, is an international farmers organisation founded in 1993, formed by 182 organisations in 81 countries and describing itself as an international movement coordinating peasant organisations of small- and middle-scale producers, agricultural workers, rural women, and indigenous communities in Asia, Africa, America, and Europe.
- 3 Food sovereignty is the peoples’ or countries right to define their own agriculture and food policy without any interference from outside. It prioritises local production; defends land rights of farmers, peasants and workers; and protects their food system against imported low-priced food from outside. For more information, see La Via Campesina (2023).
- 4 ‘The right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger’.
- 5 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012, revised version 2022); Principles for Responsible Investment in Agriculture and Food Systems (2014); Framework for Action for Food Security and Nutrition in Protracted Crises (2015); Voluntary Guidelines on Food Systems and Nutrition (2021). See Committee on World Food Security (2022).
- 6 Over 500 civil society organisations organised an alternative summit and issued their own declaration. See Civil Society and Indigenous Peoples’ Mechanism for relations with the UN Committee on World Food Security (2021): Opening Declaration of the People’s counter-mobilisation to transform corporate food systems, <https://www.csm4cfs.org/thousands-mobilize-to-call-for-food-systems-that-empower-people-not-companies/>.
- 7 Article 25(1) of the UDHR states that ‘[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control’.
- 8 See United Nations Treaty Collection, International Covenant on Economic, Social and Cultural Rights.
- 9 For the most recent list of states about national constitutional and legal recognition of the right to food, see FAO (2019).
- 10 For the development of the right to food since 1948, see Elver (forthcoming).
- 11 ‘The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement’; see UN Committee of Economic, Social and Cultural Rights (1999).

- 12 The ‘Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security’ were adopted by the 127th Session of the FAO Council in November 2004.
- 13 Recently Brazil, Egypt, Cuba, Nepal, Zimbabwe, Mexico, Fiji, Maldives, Equator, Bolivia, Dominican Republic, Kenya, Panama, Democratic Republic of Congo, and Niger were included right to food their constitutions in various modes. A comprehensive list in national level is available at FAO (2019).
- 14 To promote the implementation of the right to food at the national level, the FAO Right to Food Office produced a series of handbooks and newsletters to assist regulatory developments and legal actions. See FAO (2023b).
- 15 For the entire list see, <https://www.ohchr.org/en/special-procedures-human-rights-council>.
- 16 For instance, hunger in the United States skyrocketed during the COVID-19 pandemic, and the government’s Supplemental Nutrition Assistance Program (SNAP) and school feeding programmes were basically run on a charity basis—that is, they were time bound and could be stopped at any time. Thus, they were not seen as an entitlement, as is the right to food (see Jurkovich 2021).
- 17 For more comprehensive information about progressive development of the economic, social and cultural rights, see Elver (2016).
- 18 For critical perspective on food systems, food crises and the future of the right to food, see UN General Assembly (2020).
- 19 The UN President of the UNGA Abdulla Shahid (Shahid and de Lomo-Osario 2022) said, ‘The World Bank has warned that the conflict in Ukraine will plunge an additional 95 million people into extreme poverty, and 50 million into severe hunger in 2022’.
- 20 According to a joint action plan (US Department of the Treasury 2022), there are six priority goals: (1) Support vulnerable people. (2) Promote open trade. (3) Mitigate fertiliser shortages. (4) Support food production now. (5) Invest in climate resilient agriculture for the future. (6) Coordinate for maximum impact.

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21 Transformative Shifts for a New Global Environmental Governance

María Fernanda Espinosa

We are living in a time like no other in recent history. Climate change, water stress, biodiversity loss, and pollution continue to worsen rapidly, and our multilateral system urgently needs to transform and be better equipped to provide an integrated, equitable, sustainable, and systemic response.

Solid scientific evidence shows that the growing global ecological crisis undermines sustainable development efforts, profoundly affecting human security. Addressing this multi-pronged crisis, which touches practically every ecosystem and biome, demands a transformative shift from words to collective and concerted action backed by a robust, well-oiled multilateral system.

For the past 50 years, we have witnessed an incremental growth of international environmental agreements, norms and standards, coupled with more and better knowledge about the functioning of ecosystems. Nature-friendly technologies have flourished, and we have seen greater public awareness about the nexus between environmental integrity and human well-being. However, we are rapidly approaching a major ecological catastrophe requiring systemic transformations. Pollution, climate change, extinction, and water scarcity threaten the very existence of the human species. Young activists are in the streets and international negotiating spaces, calling for accelerated climate action to stop a preventable catastrophe. And yet the environmental crisis continues, becoming more acute and increasingly irreversible. So why is it that we are not exercising our instinct for individual self-preservation? What policies, regulatory frameworks, governance arrangements, and systemic transformations are needed to change course to guarantee that we will continue to exist as a species? And for that to happen, we must ensure that our life-supporting scaffolds and ecosystems are healthy and well-functioning.

Some of the many multilateral environmental agreements (MEAs) have succeeded in moving the needle on the ecological agenda. However, our findings are raising critical questions about how to translate international standards and commitments into policy and action. Issues of implementation, accountability and liability are also crucial. And there are, of course, answers to these and more questions that this chapter will respond to.

Against this backdrop, the chapter will address these critical questions. It begins with a succinct historical overview of the conceptual and political evolution of the international environmental agenda, briefly presents an outlook of the current ecological crisis, and uses some case studies on the achievements and challenges of some of the key MEAs. Finally, the chapter features some recent and promising developments in a new generation of environmental law and litigation and closes with recommendations for a structural and profound shift based on the requirements of a global environmental governance for epistemic and normative transformation.

The Starting Point: Brief History of the International Environmental Agenda

Understanding the contemporary achievements of global environmental governance, its limits and enduring challenges requires historical context. The imperative of the ecological crisis and its devastating effects on human security did not exist when the United Nations was founded in 1945. Global concern for the health and state of ecosystems and natural resources only emerged in recent decades. It was not until the early 1960s that public opinion became aware of the threats against our environment and the need to establish instruments of legal protection. One of the beacons of this initial movement was the book *Silent Spring* by Rachel Carson (1962).

The international community has recognised the environmental limits of economic growth and the impact of human activity on the conservation of nature since the 1970s. In the final declaration of the historic 1972 UN Conference on the Human Environment celebrated in Stockholm, the international community proclaimed: ‘A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences’.

This landmark Conference on the Human Environment adopted the Stockholm Declaration in 1972, establishing 26 principles to guarantee the right to a healthy environment, which included the ground-breaking Principle 21, calling on states to refrain from activities under their jurisdiction that may cause damage to the environment of other states. This was the first time that conservation of the natural environment was considered to be an international, transboundary issue. Later, in 1987, *Our Common Future: Report of the World Commission on Environment and Development* succeeded that landmark declaration. It was produced by the UN Commission on Environment and Development, which, for the first time, coined the concept of sustainable development, defined in the report as ‘meeting the needs of the present generation without compromising the ability of future generations to meet their own needs’.

In 1992, 20 years after Stockholm, the Earth Summit in Rio de Janeiro established the scaffold for international environmental law with the Rio Conventions on Climate Change, Biodiversity, and Desertification. It also agreed on a political declaration containing the avant-garde Rio Principles, including the Precautionary Principle, the backbone of environmental law, based on the concepts of prevention and ‘no harm’. The Earth Summit also adopted the visionary Agenda 21, which brought together the need to protect ecosystems and natural resources to ensure sustainable development and combat poverty.

The subsequent environmental summit, Rio+10, held in Johannesburg, South Africa, in 2002, adopted the Declaration on Sustainable Development, with its strong focus on the connection between environmental protection and poverty eradication. This summit was followed by the 2012 Rio +20 Conference adopting the Future We Want, centred around the idea of a green economy and laying the foundations for the Sustainable Development Goals (SDGs), establishing an intergovernmental negotiation process, culminating three years later in the adoption of Agenda 2030 in 2015.

Only last year, in June 2022, we commemorated the fiftieth anniversary of the first UN Conference on the Human Environment under the banner of Stockholm + 50 with a report, *Unlocking a Better Future*, produced to serve as a reference for the Conference. The report presents a bleak picture of the condition of the world’s environment and the need to change course. The report calls for systemic change based on the need to redefine the relationship between humans and nature and ensure that lifestyles, production, and consumption patterns can bring about well-being for all without trespassing on the

carrying capacity of our ecosystems. This is a clarion call to align policies, investment and innovation for a sustainable future.

The 2022 Conference did not produce a negotiated document and was instead an opportunity to take stock of progress made after 1972. Many pre-Conference consultations and leadership dialogues took place. However, aside from recognising the value of dialogue, mutual learning and stock-taking, there is an urgent need to take a serious look at how to ensure that governments and all sectors come together to bolster international environmental law and shape new governance arrangements based on compliance and accountability.

Today, a reinforced global environmental organisation is needed to address the existential challenges of climate change and threats to global biodiversity, freshwater stress, and pollution. Instead, we have witnessed a half-century of the development of hundreds of multilateral agreements on the environment, regional and global, on almost every resource and species, from wetlands to deserts, climate to oceans, to pollution and chemicals.

The obvious question is, Why has the development of a plethora of environmental agreements been unable to stop environmental degradation and reverse the gradual depletion of critical ecosystem services? The body of international law on the environment is fragmented and siloed, and does not favour a world-embracing, whole-society response to the need for policy coherence and normative frameworks that are mutually reinforcing and not contradictory.

This explains the crucial need for coherence, accountability and liability mechanisms regarding international environmental agreements. The flaws and inconsistencies in current global environmental governance become tangible when we see how they are reflected in the ecological crisis.

The Current Environmental Crisis: Symptom of a Dysfunctional Relationship between Humans and Nature

Almost 50 years after the first UN Conference on the Environment, and despite more than 1,400 MEAs (Mitchell 2020), including dozens of significant conventions on ozone, climate change, biological diversity, desertification, chemicals, and pollution, the world is on the verge of environmental collapse. All existing data point in that direction:

- Around one million animal and plant species are threatened with extinction, many within decades, more than ever in human history.
- Deforestation and forest degradation continue to occur at alarming rates. Since 1990, it is estimated that 420 million hectares of forest have been lost through conversion to other land uses.
- Three-quarters of the land-based environment and about 66 per cent of the marine environment have been significantly altered by human action.
- More than 8.3 billion tons of plastic have been produced since the 1950s. However, only 9 per cent of this plastic has been recycled; 12 per cent has been incinerated and 79 per cent has been disposed of in landfills and in the environment.
- Every year, eight million metric tons of plastic debris end up in the oceans, and if current trends continue, our oceans could contain more plastic than fish by 2050.
- The world is heading for a temperature rise above 3°C this century. Unless there are immediate, rapid and large-scale reductions in greenhouse gas (GHG) emissions, limiting warming to 1.5°C will be beyond reach.
- Disasters resulting from extreme weather events are causing 60,000 deaths annually and pushing 26 million people into poverty annually. If these trends continue, by 2050, climate change will displace close to one billion people.

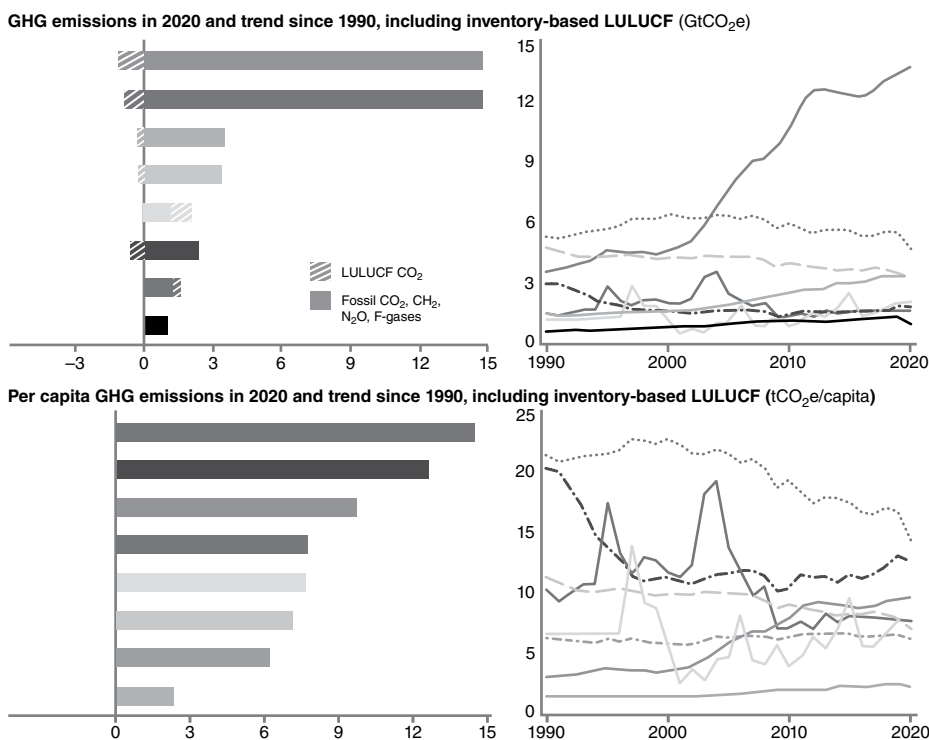


Figure 21.1 Total and per capita GHG emissions (including land use, land use change and forestry (LULUCF)) of major emitters in 2020 and since 1990.

Source: UNEP Emissions Gap Report (2022a).

The most recent UN Environment Programme (UNEP) Emissions Gap Report from 2022 clearly states that policies currently in place are projected to lead to a 2.8°C temperature rise by the end of the 21st century (UN Environment Programme 2022a). Specifically, the newly submitted and revised nationally determined contributions (NDCs) from various countries since the climate Conference of the Parties (COP) 26 reduce projected global GHG emissions in 2030 by only 0.5 gigatons of CO₂ equivalent (GtCO₂e). Moreover, GHG emissions are highly uneven across regions, countries and households. As a result, as emissions continue to increase, we are getting further and further away from the goals agreed to in Paris and the Net Zero target for 2050.

Hundreds of MEAs have not prevented environmental damage and worsening climate change, biodiversity loss and water scarcity, leading to severe, compounded food, water, health, and livelihood crises. For example, the Red List of species about to go extinct has increased significantly. In addition, the acceleration of human development is pushing our planet dangerously close to its boundaries (Galaz 2022). The dichotomy of ‘humans’ and ‘nature’ is no longer defensible (Biermann 2021).¹

Climate-induced displacement risks will dwarf the current flow of migrants. Food and water supplies will be affected globally. Fossil fuels must be replaced rapidly as our primary energy source. The integrity of the biosphere is also in danger, requiring international, concerted efforts beyond the capacity of many countries. Existing global regulation of dangerous chemicals needs to be strengthened, and transboundary air pollution brought under control. A global approach is also required for equitable and sustainable

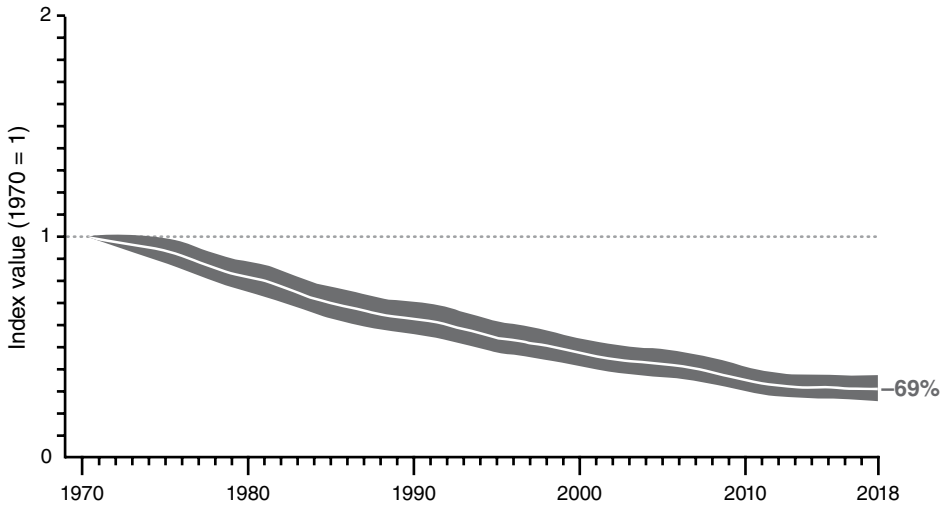


Figure 21.2 The global Living Planet Index 1970 to 2018.

Note: The Living Planet Index allows us to see how species are faring by measuring trends in monitored populations of vertebrate species. It reports the average change in the size of these populations around the world. Source: WWF, Living Planet Report (2022).

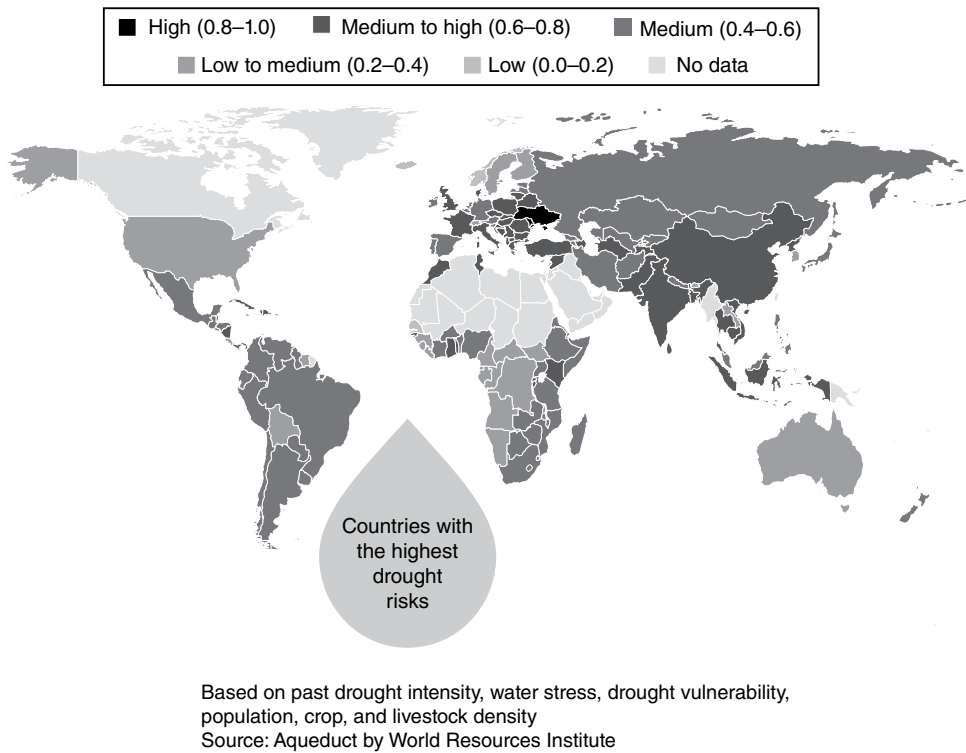


Figure 21.3 The world map of drought risk.

Source: Statista, Aqueduct by World Resource Institute.

% increase or decrease of deaths since 2016

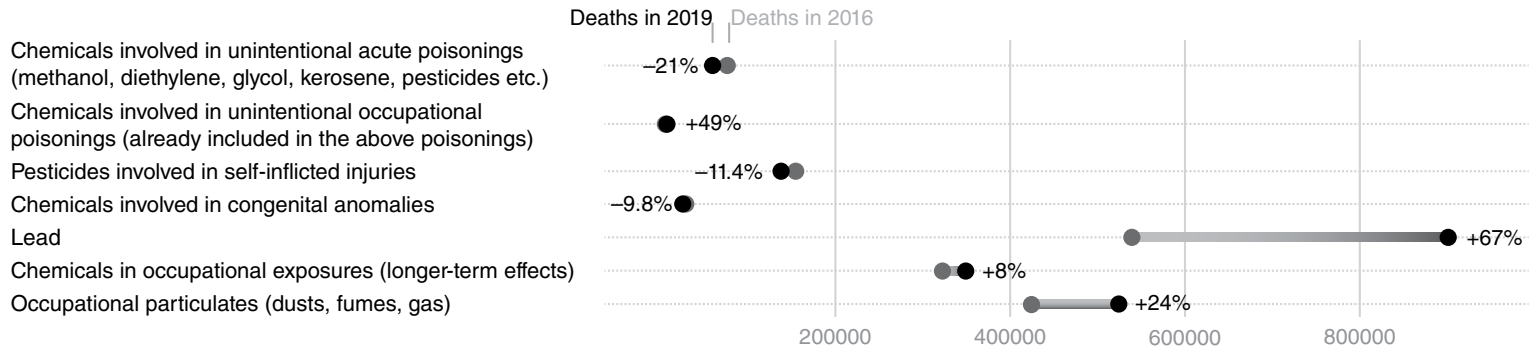


Figure 21.4 Percentage increase or decrease of deaths since 2016.

Source: The Toxic Truth, UNICEF (2019).

management and use of our ecosystem services. An integrated approach is necessary, as the environmental crisis requires an integrated, holistic approach leading to collective action. A multilateral system is where this transformation must happen, in addition to regional, national and local action. The risks of a catastrophic ecological collapse are increasing, and we are reaching a point of no return if we do not act now.

The explanation is that the environmental crisis, the climate emergency is not *the* problem but rather the symptom of a more profound systemic, civilisational crisis that requires a radical transformation of the relationship between society, the economy, politics, and nature.

Therefore, the critical question is, How can we govern our global commons so as to ensure that the human species can continue to exist and ecosystems are kept healthy? The complexity and urgency of this issue are even greater, given that ecosystems and the earth system do not recognise national boundaries. When we speak about the high seas, outer space and the atmosphere, it is clear that we need to rethink the current institutional governance designs and build alternative normative and legal frameworks based on our responsibility to keep a safe and well-functioning earth system as a common good.

In sum, after 50 years of existence, international environmental law has not been able to protect, let alone restore, depleted resources and ecosystems. This brings us to the question: what is failing in our international environmental regime? What must we do to turn this situation around, repair the environmental damage we have caused and ensure a sustainable development that respects planetary boundaries? The concept of 'planetary boundaries' is especially pertinent since it has dramatically changed how we view policy and governance responses to the ecological crisis. It will be addressed later in this chapter.

Fifty Years of International Environmental Law: Some Examples

For the past 50 years, we have witnessed the exponential growth of environmental agreements and the increasing sophistication of norms and standards, constituting a solid repository of international law. Some success stories demonstrate that concerted action and multilateralism can significantly reduce environmental threats.

Climate COPS: History, Outcomes and Results

The climate COP has a history of almost 30 years. The core principle of the COP on common but differentiated responsibilities has been not only the engine for reaching agreements but also the source of dissent. Tensions between high CO₂ emitters and the countries bearing the burden of climate-related impacts have created a whole diplomatic culture with crucial milestones such as establishing the Green Climate Fund or adopting the Paris Agreement in 2015 and the recent creation of the Loss and Damage Fund. But we have also witnessed severe disagreement over critical issues, such as low-carbon technology transfer to developing countries and unresolved discussions related to intellectual property rights, compliance with financial commitments under the Green Climate Fund, or greater clarity of timelines for the phasing out of fossil fuels and the sizeable subsidies that accompany them.

In 1992, the Intergovernmental Negotiating Committee (INC) adopted the United Nations Framework Convention on Climate Change (UNFCCC). In 1994, the UNFCCC entered into force, and in 1995, the first COP took place in Berlin. The UNFCCC has a near-universal membership today, with 195 countries having ratified the Convention. In

1997, the Kyoto Protocol to the Convention was adopted, calling industrialised countries to adopt measures to limit and reduce GHG emissions, adopt mitigation measures and report periodically to the COP. It also established flexible market mechanisms based on the trade of emission permits. The Protocol entered into force in 2005 and was ratified by 192 parties.

It is well known, however, that the Kyoto Protocol failed. One of the essential elements of the Protocol was the establishment of flexible market mechanisms based on the trade of emission permits. However, implementation was increasingly faulty, and there was an ever-lengthening list of dissenters among many of the signatories. Even if the Protocol was a key landmark in international climate history and has never formally ended, it was technically superseded by the Paris Agreement.

In 2015, the Paris Agreement was adopted as a decision under the UN Convention on Climate Change during COP 21. The goal of the Paris Agreement is to limit global warming to well below 2°C, preferably to 1.5°C, compared to pre-industrial levels. In addition, the Paris Agreement requires each Party to prepare, communicate and maintain successive NDCs that it intends to achieve.

However, the Paris Agreement calls for developed countries to take the lead in providing financial assistance to less endowed and more vulnerable countries. Despite intense lobbying by the Alliance of Small Island States (AOSIS) members, the Paris Agreement failed to acknowledge loss and damage. Though the issue of loss and damage was addressed in the inclusion of Article 8, it came with a clause insisting that there was no ‘basis for any liability or compensation’. At the Paris Climate Summit in 2015, large emitters shifted the legal conversation away from ‘compensation’ for climate-related loss and damage in heavily affected states towards ‘voluntary aid’ (Busby 2019).

Subsequent efforts by states parties to fill the emissions and finance gap have been weak and have yet to be implemented. In 2018, COP 24 in Katowice, Poland, had difficulty reaching an agreement between parties. As a result, there are many difficult questions, such as ways to scale up existing commitments on cutting emissions, ways to provide financial support for developing countries, means to avoid double counting, and whether countries need to scale up their commitments to reduce emissions, etc. These vital decisions were postponed. The results from COP 25 were less than fruitful, as the decisions about the carbon market and emissions cuts were delayed. In 2021, the Glasgow Climate Pact in COP 27 failed to include a formal and binding mechanism to deliver loss and damage financing and witnessed saw some heavy emitters successfully water down a pledge to ‘phase out’ fossil fuels, replacing that wording with the more ambiguous ‘phase down’. In 2022, COP 28 in Sharm El Sheikh only gave an empty box of ‘loss and damage’ funds to developing countries, dodged commitments, and did not touch on ‘phase[ing] out fossil fuels’, which remains a critical issue on the urgent need to curb emissions.

Despite the ups and downs of almost 30 years of climate COP, there is a need to recognise the importance of having an intergovernmental platform to commit, negotiate, agree, and disagree. Climate COPs have increasingly gone beyond the mere government-to-government negotiation to become the venue for multiple voices and actors with a voice in climate decisions. Indigenous Peoples, women, youth, scientists, civil society organisations, multilateral banks, the financial and insurance companies, the philanthropic sector, and the private sector gather in climate COPs, which has become ‘the place to be’ if you are involved not only in climate but also in world politics.

The downside is that despite all the fanfare and having climate occupy a privileged space in world headlines, the pace of transformative action and core responsibility is far

behind in the task of stabilising our climate. Emissions continue to rise steadily, and the human and economic costs of inaction profoundly impact the living conditions and security of hundreds of millions of people and countries, especially in Small Island Developing States and other vulnerable countries in the Global South that are disproportionately affected.

Looking at the prolific yet convoluted climate COP history, we can conclude that the Climate Convention COPs have helped raise the political profile of, and the world's attention to, the climate crisis; they have put under scrutiny the decisions and commitments of world leaders and decision-makers, and it has awakened the voices of activists and climate justice defenders from around the globe. However, the arithmetic of emissions reduction, the delivery of sufficient climate adaptation and resilience-building funds for vulnerable countries, and the transfer of low-carbon technologies and capacity to the countries in need have not happened at the scale and speed needed.

The Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol

The Vienna Convention for the Protection of the Ozone Layer, signed in 1985, is one of the most compelling instances of global environmental action (Downie 2019). The Convention is among the very few successful MEAs. The Convention provides a framework that lays out general principles, later translated into more specific action in the Montreal Protocol, signed in 1989, requiring countries to undertake concrete regulatory steps to phase down the consumption and production of ozone-depleting substances (ODS) to protect the ozone layer. The Vienna Convention and the Montreal Protocol are, to this date, some of the rare treaties that have achieved universal ratification, which showed the gravity of ozone depletion at the time it was conceived and the willingness of countries around the world to work together to address this crisis. All parties have specific responsibilities related to phasing out the different groups of ODS, control of ODS trade, annual reporting of data, national licensing systems to control ODS imports and exports, and other matters.

Moreover, developing and developed countries have equal but differentiated responsibilities. Nevertheless, both groups of countries have binding, time-targeted and measurable commitments. The Vienna Convention and the Montreal Protocol succeeded because of political will, aligned with a shared objective, clear targets and timelines and available and affordable replacement technologies.

The United Nations released a report in early 2023 on the progress of the Montreal Protocol, which has been in place for 35 years. The report shows that nearly 99 per cent of ODS have been phased out globally. The expert panel in the report predicts that if current policies continue, the ozone layer will return to 1980 levels by 2040. The Montreal Protocol has also helped reduce global warming by an estimated 0.5°C.

Furthermore, if countries comply with the Kigali Amendment (to the Montreal Protocol), which entered into force on January 1, 2019, and calls for a more significant reduction in the production and use of certain hydrofluorocarbons (HFCs), it could prevent an additional 0.3°C to 0.5°C of warming by 2100 (UN News 2023).

The positive impact of the Montreal Protocol on the global struggle against climate change is evident through current facts and future projections. Notably, the agreements made under the Protocol are unique in that they address a long-term problem, where the cause of the damage is taking place today, but the effects will not be seen for decades

(Weiss 2009). This means that the international community made decisions based on science and evidence at the time of the negotiations. Still, even though the impact was not widely felt and experienced, as with the effects of climate change, yet action and resolution did occur. What is clear is that no single country could have solved the problem of the depletion of the ozone layer, demonstrating that international cooperation and effective multilateral action are possible when there is strong political will.

The CITES Convention on Protecting Endangered Species

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is a multilateral treaty signed in 1973 to protect endangered plants and animals from the threats of international trade. There are 184 member parties, and trade is regulated for more than 38,000 species. The Convention works by listing species on one of three appendices, depending on the level of protection required. The listing system is regularly updated to adapt to the changing situation of each species. CITES has succeeded as one of the cornerstones of international conservation, considering that no species listed under CITES has gone extinct in the last 30 years. CITES also brings together law enforcement officers from wildlife authorities, national parks, customs, and police agencies to collaborate in the efforts to combat wildlife crime targeted at animals such as elephants and rhinos. This cooperation has helped to reduce the illegal trade in many species and to protect their populations. However, it is worth noting that scholars have suggested reforms to CITES to improve the monitoring of illicit trade and the demand and prices for wildlife (Challender, Harrop and MacMillan 2015).

Concrete and often-cited success stories of CITES include the preservation of the South American vicuña and the crocodile from the Nile. In addition, there have been some plausible initiatives, such as the BioTrade, initiated by UNCTAD, which allows sustainable supply chains to develop market access for rural communities. In addition, the Fair-Wild standard from IUCN/TRAFFIC certifies wildlife products from rural communities based on CITES's needed role in certification schemes.

Issues concerning the use of biodiversity-related traditional knowledge and benefit-sharing mechanisms remain critical, emphasising the need to reconcile existing environmental legal frameworks. The connection and needed coherence and coordination between the CITES Convention with the UN Convention on Biological Diversity and its Nagoya Protocol becomes evident. Still, it does not happen systematically and predictably. The Nagoya Protocol is an international instrument under the Convention of Biological Diversity aiming to establish mechanisms to ensure benefit-sharing arising from using genetic resources fairly and equitably (UN Environment Programme 2022c).

Ramsar Convention: Five Decades of Wetlands Conservation

The Ramsar Convention on Wetlands of International Importance, especially as Waterfowl Habitat, also known as the Convention on Wetlands, is an international treaty for the conservation and sustainable use of Ramsar sites. It is named after the city of Ramsar in Iran, where the Convention was signed in 1971. It is among the first modern agreements between nations to conserve natural resources. It has been considered a precursor of international environmental law and a diplomatic success story since the Convention was signed during the Cold War, with its continuing political tensions and economic competition following World War II.

The Ramsar Convention's broad objectives are to halt the worldwide loss of wetlands and conserve those that remain through more sensible use and management. In addition, the Ramsar Convention has been considered a valuable tool to raise awareness about the importance of wetland conservation. However, there is still a long way to go, as wetland destruction persists in many parts of the world. A key contribution of the Convention is the adoption of the 'Wise Use Principle', which recognises the physical limits of ecosystems and the role of wetlands as regulators of the water cycle, besides their contribution to improving the quality of life and fostering the culture, knowledge and livelihoods of Indigenous peoples and local communities.

After Ramsar's five decades of operation, 174 contracting parties have prioritised the conservation and wise use of wetlands by listing wetlands assessed as internationally essential and committing to maintaining their ecological character (Davidson *et al.* 2019). The designation of Ramsar sites has helped protect and conserve important wetland habitats and species. However, ecological character, the combination of ecosystem components, processes and benefits, is increasingly deteriorating in Ramsar sites (*ibid.*: 127–38). Key ecological indicators measured these deteriorations, including threats that cause degradation (Davis and Brock 2008).

Overall, the Ramsar Convention's framework for cooperation among countries has facilitated the exchange of information and best practices for wetland conservation and management. It can also be considered a partial success in international environmental law, even if the challenges to wetland ecosystems remain. Since 1970, we have lost 35 per cent of global wetlands and 25 per cent of freshwater species face extinction (Ramsar Convention on Wetlands 2021).

Outlook for the Future of Global Environmental Governance

The existing conventions are part of the history of international environmental law. They have served as platforms for negotiation, as benchmarks for national law and policy and have produced, benefited from and contributed to increasing ecological knowledge and science.

Despite increasing geopolitical tensions and a rarefied international diplomatic environment, progress continues. There is room for optimism concerning future conventions to come in response to the triple planetary crisis on climate change, loss of biodiversity and pollution and waste which we are now experiencing. For example, the concerted effort to phase out single-use plastics offers hope for improvement!

There are new treaties under negotiation. In early March 2022, at the UN Environment Assembly (UNEA-5) in Nairobi, member states passed a resolution to combat plastic pollution and create an international legally binding agreement by 2024. This new Convention aims to address the entire lifecycle of plastics, promote the design of reusable and recyclable products and increase international collaboration to provide access to technology, capacity building and scientific and technical cooperation. However, the UN resolution is not calling for a two-year pause in global efforts to beat plastic pollution. To this effect, the UNEP pledged to work with any willing governments and businesses across the plastic value chain to move away from single-use plastics, to mobilise private finance and remove barriers to research and investment in a new circular economy until the new agreement is ready (UN Environment Programme 2022b).

In December 2022, a significant step was taken to stop and reverse biodiversity loss by 2030. At the COP 15 Biodiversity Conference in Montreal, member states agreed to

protect at least 30 per cent of land, freshwater and ocean globally. This goal will be achieved while respecting the rights of Indigenous peoples and local communities and recognising the role of Indigenous and traditional territories to attain this new target. The new Biodiversity Framework is considered a breakthrough in biodiversity conservation, as significant as the climate 1.5°C goal (WWF 2022).

Another reason for optimism is the historic adoption of a new High Seas Treaty in March 2023, following decades of negotiations. The agreement aims to protect 30 per cent of the seas by 2030 and safeguard and recover marine ecosystems (United Nations 2023).

Despite recent developments, we also know that there are many deficiencies related to implementation, accountability and liability mechanisms and the need for coherence and complementarity among existing instruments. We have created a complex web of a siloed, issue-based, fragmented body of international instruments related to the environment, and this, in turn, makes implementation and compliance increasingly difficult. How to factor these commitments into national legislation, policy, and planning, and furthermore, how to create or strengthen the national capacities and the resources, both financial and human, to deliver?

There is a crying need for greater coherence, a more holistic approach to environmental regulation, and for addressing the financial and capacity gap seriously. Notably, such holistic regulation should integrate diverse perspectives, including those of women and underrepresented groups, to ensure fair and comprehensive solutions. This requires greater cooperation, shared responsibilities and concerted environmental action. In short, there is a need for a more robust multilateral scaffold and better governance arrangements. The proposal for a new Global Pact for the Environment was an initiative in the right direction.

The Rise and Fall of the Global Pact for the Environment

The United Nations General Assembly requested the Secretary-General to prepare a report by 2018 on gaps in international environmental law and environment-related instruments towards a Global Pact for the Environment (GPE) (UN General Assembly 2018). The Secretary-General's report clearly states that the 'structure of international environmental governance is characterised by institutional fragmentation and a heterogeneous set of actors, revealing important coherence and coordination challenges. Moreover, international courts and tribunals often stress the lack of international consensus concerning environmental principles'. Following the report, the General Assembly established an intergovernmental negotiation working group. Four negotiations were conducted in Nairobi to reach an outcome containing recommendations. Unfortunately, the negotiation and outcome failed, owing to the lack of political support. Some countries' open and frank opposition presented concerns over the legal implications on compliance and liability. Others discussed the need to avoid duplication and overlap with existing MEAs.

Despite the divergent positions on the outcome of the negotiations, in August 2019, the General Assembly adopted a procedural resolution endorsing the working group's recommendations, but with no mention of the GPE. The original draft proposed negotiating modalities for the 50th commemoration of the Stockholm Conference in 2022, including recommendations concerning the right to a healthy and sustainable environment, changes to our economic system, accelerating the implementation of existing commitments, rebuilding trust, and strengthening multilateralism (UN Environment Programme 2022d).

The GPE project stems from an international civil society initiative. Aiming to be the first international treaty to address the environment from an integral, holistic perspective, the GPE is intended to be a declaration of principles to redefine, rethink and transform the relationship between society, the economy, politics and nature. It is not designed to overlap or duplicate but rather to be an umbrella, an overarching scaffold to address the current fragmentation in international environmental law and provide a coherent, consistent and accountable framework for the already existing MEAs. The main objective of the pact is to bolster the environmental law system at all levels and achieve the SDGs, the 2030 Agenda.

The original text for negotiation starts by establishing that every person has the human right to live in an ecologically sound environment that promotes their health and well-being. Then, it highlights critical concepts such as the Precautionary Principle, the principle of no regression and intergenerational equity, among others. The provision on liability and redress is one of the critical issues since it provides a window of opportunity to establish follow-up and oversight mechanisms. However, this possibility is a matter of concern for some member states.

Countries can be and are sometimes parties to literally hundreds of environmental agreements. However, there is no mechanism for addressing international environmental law from an interconnected and holistic perspective to enhance enforcement and accountability. Moreover, there is no monitoring mechanism for implementing MEAs and ensuring coherence and interconnectedness. This dilemma is contradictory since nature and the environment are systemic, indivisible and interdependent.

Much has already been said about the earth system as our common heritage. Suppose we were to compare the GPE to our current human rights architecture, for example. In that case, we have the Universal Declaration of Human Rights, two overarching Covenants on civil and political rights, and a second one on economic, social and cultural rights. These overarching frameworks are complemented by seven fundamental conventions, including those on genocide, refugees, discrimination in employment, discrimination against women, etc. In addition, there are eight Treaty Bodies of experts. Using the same logic of the need for an overarching structure, the GPE may be a supporting framework of principles to shelter the specific treaties or conventions.

There are several important reasons to back the call for a GPE. First, the pact could be a valuable tool to help states and societies enhance integrated sustainable development policy and planning; second, the pact could help establish coherence and complementarity to avoid fragmentation and duplication in the implementation efforts of existing MEAs. Third, the pact could set norms and standards to enhance and develop national legislation. Fourth, the pact could provide a platform to protect the rights of particular groups or persons affected by environmental degradation or specific types of pollution and provide guidance on issues of liability and redress. Finally, a global pact could also serve as a multilateral platform to strengthen international cooperation, boost investment and establish mechanisms to protect common environmental goods such as the atmosphere, oceans, genetic resources, and the water cycle.

Finally, the pact may be closely connected to the 2030 Agenda. SDGs straddle key, interconnected areas such as environmental sustainability, job creation and governance, food security and water and sanitation, women's rights and empowerment, poverty, biodiversity, migration, partnerships, and education. A GPE could serve as a catalyst for better and more effective policies, planning and investment in sustainable development models.

Since environmental problem-solving concerns the overall relationship between humans and natural systems, the GPE will allow the emergence of a global legal framework that better protects our planet while filling the gaps and overcoming unnecessary duplication and contradictions in international environmental law.

Recent Developments in Environmental Law

Cases of Environmental Litigation at the National Level

In recent years, the role of climate change litigation has become increasingly prominent. Since 2015, the number of climate change cases brought to the courts worldwide has more than doubled. Several vital trends in environmental litigation at the national level include lawsuits alleging state inaction violating fundamental human rights, cases challenging domestic enforcement of climate-related laws and policies, cases targeting large private firms, claims alleging failures to adapt to climate change, and cases concerning the accuracy and transparency of climate risks.

For example, in February 2020, a group of German youth filed a legal challenge to Germany's Federal Climate Protection Act ('Bundes-klimaschutzgesetz' or 'KSG') in the Federal Constitutional Court, arguing that the KSG's target of reducing GHGs by 55 per cent by 2030 from 1990 levels was too low. The complainants alleged that the KSG violated their human rights as protected by the Basic Law, Germany's constitution since KSG's 2030 target did not consider Germany's and the EU's obligation under the Paris Agreement to limit global temperature rise to 'well below 2 degrees Celsius'. The young litigants argued that Germany would need to reduce GHGs by 70 per cent from 1990 to 2030 to 'do its part' to achieve the targets.

On April 29, 2021, Germany's High Court published a decision striking down parts of the KSG as incompatible with fundamental rights for failing to set sufficient provisions for emission cuts beyond 2030. The Court found that the Basic Law obliges the legislature to protect the climate and aim towards achieving climate neutrality but 'also concerns how environmental burdens are spread out between different generations'. Furthermore, the Court stated for the first time that 'the fundamental rights—as inter-temporal guarantees of freedom—afford protection against the GHG reduction burdens imposed by Art. 20a of the Basic Law being unilaterally offloaded onto the future' (Columbia University 2023). It further stated that the KSG's emission provisions constituted an 'advance interference-like effect', potentially violating the complainants' fundamental rights and thus rendering the complaints admissible.

The Court found that legislature had not proportionally distributed the budget between current and future generations, writing,

One generation must not be allowed to consume large portions of the CO₂ budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom.

The Court also highlighted that the fact that 'no state can resolve the problems of climate change on its own ... does not invalidate the national obligation to take climate action' (Columbia University 2023). The Court ordered the legislature to set clear rules for emission reduction targets from 2031 onward by the end of 2022. In response to the decision,

the federal lawmakers passed a bill approving an adapted KSG that requires a minimum reduction of 65 per cent in GHGs from 1990 levels by 2030. It has been in effect since August 31, 2021.

However, the law only outlines how emissions will be reduced over the next decade. Decisions on how and by how much to reduce carbon emissions between 2031 and 2050 have yet to be decided and will be made in 2025.

Another example, in New Zealand, in March 2022, saw a Māori landowner and tribal climate spokesperson argue that successive New Zealand governments had failed to adequately address the effects of climate change on New Zealand and its citizens, especially the Māori. Specifically, the plaintiff argued that the government had been unable to incorporate international obligations into domestic law and to reduce the carbon emissions produced by government activities. Furthermore, the complainant argued that the overall emissions cap was set too high and contained unjustifiable exemptions.

In March 2023, New Zealand recently passed legislation recognising Mountain Taranaki Maunga subject of rights, restoring the original Māori name, which replaced the Egmont colonial name. The mountain is part of a National Park that also becomes a legal person named Te Kahui Yupua and will have an entity to act as its voice made up of Indigenous and government representatives (Roy 2017).

This concept is also included in Article 71 of the Ecuadorian Constitution (2008) (Republic of Ecuador 2011), which was the first to grant nature constitutional rights. In September 2008, the people of Ecuador voted overwhelmingly for a new constitution that gives nature—its mountains, rivers, forests, air, and islands—legally enforceable rights to ‘exist, flourish and evolve’. Article 71 of the Constitution states, ‘Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and the maintenance and regeneration of its life cycles, structure, functions, and evolutionary processes’. This provides grounds for legal action from citizens against the state for activities or interventions that may cause grave environmental damage. A case in point is the ruling from the Constitutional Court of Ecuador in November 2021 calling for the immediate suspension of mining activities in ‘Los Cedros’ Protected Forest, in which the rights of nature, the right to a healthy environment, the right to water and environmental consultation were alleged to have been violated. The Constitutional Court, therefore, developed a binding jurisprudence on this issue (Corte Constitucional del Ecuador 2021).

The New Portuguese Climate Law

In November 2021, the Portuguese Parliament approved a new Climate Law that calls for recognising a stable climate as a common heritage of humanity. This law came to fruition after a Recommendation was presented by the National Commission for the Environment and Sustainable Development, along with a petition assembled by more than 260 Portuguese academics, including the Common Home of Humanity, and a public request with thousands of signatures.

The law defines the United Nations’ recognition of a stable climate as a common heritage of humankind as a diplomatic objective and priority. The law defines climate stabilisation as a shared responsibility. It represents a significant conceptual step forward, recognising a stable climate as a common good under international law. It also acknowledges and values the economic and social benefits of living in an ecological safe space.

The backbone of this proposal was the concept of *planetary boundaries* science (Rockström *et al.* 2009) that enables a clear definition of a safe operating space for humankind and the bounty of a well-functioning earth system that depends on having a stable climate and healthy ecosystems. The attractive edge of this proposal is that it counters the alleged call by some countries on sovereignty and national interest since climate stability becomes a common good and, therefore, a shared responsibility. Still, it refers to non-territorial, intangible commons that determine the future and well-being of humankind. This law is, undoubtedly, an avant-garde piece that deserves attention and may be used as a reference for future multilateral discussions on how to govern our environmental commons.

The Human Right to a Clean, Healthy and Sustainable Environment

A clean, healthy and sustainable environment is essential for survival. On July 28, 2022, the UN General Assembly declared that for people to have access to a clean, healthy and sustainable environment is a universal human right. As a landmark development, the resolution demonstrates that member states can come together in a collective response against the planetary climate change crisis, biodiversity loss, pollution, conflict, pandemics, unsustainable debt, significant inflationary pressures, and environmental degradation.

Initially proposed by Costa Rica, the Maldives, Morocco, Slovenia, and Switzerland and later co-sponsored by more than 100 countries, the UN General Assembly decision reflects the resolution adopted by the UN Human Rights Council (UNHRC) in October 2021, which represented the first formal recognition at the global level of the right to a healthy, sustainable environment.

Five decades after the 1972 Stockholm Declaration, member states recognised the right to ‘an environment of a quality that permits a life of dignity and well-being’ (UN News 2022). This right has been integrated into constitutions, national laws and regional agreements, and is now integral to the international legal framework. This resolution notes that the right to a clean and sustainable environment is ‘related to other rights existing international law’. It affirms that its promotion ‘requires the full implementation’ of the MEAs ‘under the principles of international environmental law’.

While the UN General Assembly resolution is not legally binding, it can still catalyse action. Governments now must promote, protect and fulfil this right. A clean, healthy and sustainable environment is a matter of justice, and such a resolution promotes an optimistic outlook and will likely result in a cascade of positive changes.

The Advisory Opinion to the International Court of Justice on Climate Change

Aside from environmental litigation efforts at the national level, there has also been growing interest in the role of international courts and tribunals in addressing climate change, including the International Court of Justice (ICJ), regional and human rights bodies, and the International Tribunal for the Law of the Sea. The current design of global environmental governance has proven that enforcement and compliance mechanisms are one of the Achilles’ heels in contemporary global environmental governance.

Inspired by civil society activists and lawyers from around the world, the Vanuatu Government took up the leadership of a campaign to request an advisory opinion from the ICJ regarding the obligation of states concerning climate change. After many months of negotiations, Vanuatu and a core group of more than 133 countries tabled a resolution

at the UN General Assembly on March 29, 2023. The resolution asks the ICJ to clarify the obligations of states in protecting the rights of current and future generations from the adverse effects of climate change. The resolution was adopted by consensus by the General Assembly.

Although the ICJ's advisory opinion is non-binding, it helps to bring clarity to how existing international laws and instruments, including under the UN Convention on Climate Change and the Paris Agreement, can be enforced and strengthened to boost climate action and protect people's lives and livelihoods. The resolution also addresses intergenerational climate justice by explicitly calling for the rights of current and future generations to live in a safe environment.

The advisory opinion can also help shed light on thorny and unresolved climate discussions, such as liability and compensation for loss and damages associated with global warming. The recently established Loss and Damage Fund is a step in the right direction, but its operation and effectiveness remain to be seen. Responsibility and accountability have long been a sticking point in climate diplomacy and a centrepiece of the agenda of civil society advocacy. Despite well-established principles such as 'polluter pays', there exists not only a dense web of rules that assign liability for foreseeable harm and demands that it be remediated but also a network of courts and tribunals to uphold these laws. The advisory opinion—expected to be delivered in 2024 by the ICJ may contribute to improving climate liability and redress mechanisms.

Four Shifts to Transform the Global Environmental Architecture

However, global environmental governance goes beyond mere multilateral environmental treaties. It depends on converging elements, including institutions, laws, regulations and an informed and active citizenship. Additionally, it mandates inclusive representation, such as ensuring the active participation of women in decision-making roles to drive balanced and effective outcomes. It encompasses a shared narrative and a conceptual scaffold that supports decisions on regulation, policy and practice. It involves a multiplicity of actors making decisions that affect the integrity or contribute to preserving or restoring our environmental commons, including governments, civil society, Indigenous peoples and local communities, science, and the private sector. It includes citizens making decisions as consumers and voters.

This means that redesigning environmental governance on a global scale is not a simple, technocratic undertaking. It entails a series of transformations with different rhythms and requires the alignment of political will and agreement of vision and priorities. It involves a combination of short-term incremental changes and more profound structural transformations. More immediately actionable changes may require optimising the enforceability of existing MEAs, mapping existing obligations to avoid duplication and inconsistencies, and identifying regulatory gaps. Adopting the GPE can be an opportunity to advance efforts towards greater coherence and consistency in international environmental law.

However, as the world faces escalating environmental challenges, global environmental governance requires addressing more structural shifts to reconcile human societies with nature itself. And that entails more than simply improving our existing instruments or agreeing on new ones. Instead, it requires a profound transformation in how we govern the environment as a common good, the foundation for our survival as a species. And for that to happen, we need at least four fundamental shifts.

The Epistemic Shift

First, it is vital to fix the conceptual framework. We need to go from considering nature as a repository of unlimited resources and its use and depletion as externalities of economic activity. This chrematistic view of nature, merely measuring in monetary terms, is replaced by a conception of nature as a rights holder, as a complex system, supporting the web of life, seeing it as the earth system that humanity must protect so it can continue to exist and regenerate. This means considering the earth as our most essential commons. Only in this way can the atmosphere, a stable climate, the water cycle, and biodiversity be appreciated as common goods that require concerted global action and the legal and policy instruments to protect and govern—not particular biomes, ecosystems or species but the entire complex earth system.

For the earth system to maintain its balance, nine processes are required to regulate its stability and resilience. These nine processes are translated into nine quantitative planetary boundaries that humanity must respect to ensure the system continues to function and sustain human life (Stockholm Resilience Centre 2022). Trespassing these boundaries increases the risk of large-scale abrupt or irreversible environmental changes. Scientists have warned that humanity has *already* crossed five of these boundaries: climate change, loss of biodiversity, loss of the integrity of the biosphere, land-system change, and altered bio-geochemical cycles (phosphorus and nitrogen); moreover, recent findings have added a sixth: the freshwater cycle (Rockström *et al.* 2009).

This means that we are evolving from our earlier ‘resource’ approach to one of thinking in terms of systems, from managing a particular species or biome to maintaining cycles and processes. This conceptual shift will have profound implications for policy, economics, regulation, and international law. The idea of considering the earth system and its processes and cycles as a common good also implies that there is a need to have the right institutions and legal frameworks to ensure cooperation and responsibility to govern our environmental commons. Concerns over sovereignty and national interest regarding using natural resources are often raised in the discussion about the commons. However, the concept of the earth system as part of our commons refers to a non-territorial category, an intangible heritage that must be preserved by and for humanity. Paulo Magalhães explains this in his work on a stable climate as a common heritage of humanity (Magalhães 2020).

The concept of an interconnected and interdependent earth system is an excellent foundation for strengthening the implementation of existing MEAs by integrating and mainstreaming environmental obligations in overarching policy and law.

The Implementation and Enforcement Shift

We have argued that there is already a plethora of global and regional environmental treaties, protocols, laws, and standards, but a wide implementation gap caused by the complex, fragmented and often inconsistent understanding of our obligations. There is an urgent need to streamline existing commitments in order to identify overlaps, inconsistencies and gaps and design accelerators for implementation, including financial and human resources and enhanced institutional capacity. It is understood that this is not only a technocratic exercise but requires the active engagement of scientists, lawyers, practitioners, and, above all, the political will to carry it out.

If we are to overcome the implementation deficit of MEAs, robust and actionable enforcement mechanisms with clear targets and social oversight need to be put in place. For this to happen, the political will of governments and an enabling political environment are critical. The responsibility and active engagement of the private sector, civil society and the corporate sector are equally important. Whether we are thinking about pollution, GHG emissions, water use, or deforestation, they are all critical for any accountability and compliance system. Needless to say, well-informed and active citizenship for oversight and public awareness-raising are also crucially important factors for implementation and accountability.

In addition to accelerating the implementation of existing MEAs and establishing clear enforcement and accountability systems, there is a need to strengthen environmental litigation instruments and establish solid jurisprudence using the success stories of Germany, Ecuador and New Zealand (Ramos *et al.* 2023). The Advisory Opinion of the ICJ on climate may also indicate some avenues for advancing environmental litigation.

In summary, accelerating implementation, designing well-oiled enforcement systems and strengthening liability instruments will be vital in ensuring that MEAs keep humanity within planetary boundaries.

The Shift to a New Economics for the Earth System

The epistemic shift from a siloed and resource-based approach to the environment to one of an interconnected and interdependent earth system necessarily leads to a new economics that goes far beyond the conventional linear economies conceived in terms of accumulation, growth and wealth. For well-functioning ecosystems are a common good. Such a new conception will translate into concrete policy shifts from ‘polluter pays’ and offsetting carbon emissions and pollution, to one of valuation and compensation for preserving environmental services such as forests, rivers and biodiversity for the well-being of the whole of humanity. There is an abundance of literature on new economics for the earth system, including works on the circular economy (Geissdoerfer *et al.* 2017)—based on principles of reuse and recycling—and on regenerative economy, which examines further austerity in lifestyles and reducing consumption (Climate-KIC 2023).

In this sense, linear, conventional economics based on growth and profit is evolving towards a new earth system economics and metrics. Conventional economics measures the performance of an economy through growth and GDP. Earth system economics requires three major transformations: first, expanding current categories to measure the ‘Wealth of Nations’ as described by Adam Smith in the 18th century to encompass the social and ecological dimensions of wealth. There has been significant progress in conceptual thinking and new forms of nature valuation, including the works of Stiglitz and Fitoussi (Stiglitz, Fitoussi and Durand 2018), who call for new social and environmental parameters and indicators in National Accounts and Statistics to better inform public policies. Ongoing efforts to go beyond GDP aim at measuring human well-being by including ecological footprints and planetary boundaries, examining the carrying capacity of our ecosystems. An example is natural capital accounting through the System of Environmental-Economic Accounting (SEEA), adopted in 2012 as an international statistical standard for natural capital accounting. Currently, 90 countries worldwide are using this system, which has proven to be extremely useful when making national economic and policy decisions.

Second, we must internalise nature's value as central to the welfare of human societies. Global supply chains should include carbon and nature footprints in the commodity cycle. Interesting developments and new thinking call for 'Global Responsibility Chains', which consider a set of socio-environmental relations and variables that link commodity producers to consumers, from the source of finance and primary production to extraction and manufacturing, exporting and importing, all the way to final consumption. These variables would allow us to trace and account for the ecological footprint of all goods and services traded, bought and sold, including carbon, water, biodiversity, and other ecosystem goods and services.

Third, the new economics must inform ongoing discussions and negotiations on the reform of the international financial and trade architecture. Two recent forward-looking initiatives deserve attention: Debt Relief and Green and Inclusive Recovery (DRGR) and Bridgetown, both described in the following sections.

The DRGR Initiative

Spearheaded by the Heinrich Boell Foundation, Boston University and the University of London, the DRGR initiative calls for comprehensive debt relief to enable developing countries, especially those under debt distress, to invest in sustainable development, climate adaptation and resilience-building.

There is broad acknowledgement that climate-related shocks are hitting developing countries the hardest, despite their low contribution to climate change. Notwithstanding the urgency to invest in green development, debt overhangs and limited fiscal space jeopardise their efforts. Emerging markets and developing economies (excluding China) need at least \$1 trillion annually in external flows to achieve development and climate goals (Songwe, Stern and Bhattacharya 2022). But about two-thirds of low-income countries have a high risk of, or are already in, debt distress (IMF 2023), and rising debt risks are not restricted to the poorest nations (Ramos *et al.* 2023).

Clearly, solving the climate crisis will involve addressing the debt crisis in the Global South. But the current framework for solving it, the G20 Common Framework for Debt Treatments, is unfit for at least three reasons: it excludes middle-income countries; the process is exceedingly slow, as countries that applied have yet to see a debt reduction, and there are no incentives to compel private creditor participation.

Bearing these challenges in mind, the DRGR project proposes an ambitious, concrete and comprehensive debt relief initiative, to be adopted on a global scale, that frees resources to support sustainable recoveries, boosts economic resilience and fosters just transitions to low-carbon economies (Ramos *et al.* 2023; Volz *et al.* 2021).

The DRGR is composed of three pillars: (a) including comprehensive debt relief for eligible heavily indebted countries by public creditors, analogous to but improving upon the Heavily Indebted Poor Countries (HIPC) Initiative of the 1990s; (b) commercial and private-sector creditors would exchange old debt holdings for new Green and Inclusive Recovery Bonds, creating a type of sustainability-linked debt; and (c) allowing debt-for-climate or debt-for-sustainability swaps for countries that are not heavily indebted but have reduced fiscal space. With a clean balance sheet, countries can unlock new investments to achieve the SDGs and the Paris Agreement on climate change.

This initiative calls for a profound retooling of the G20 Common Framework. In doing so, it also highlights the need to rethink the overall international financial architecture and the practical and political impossibility for international financial actors to continue doing business as usual.

The Bridgetown Initiative

Like the Bridgetown Initiative (Barbados Ministry of Foreign Affairs 2022), the DRGR project functions according to the same principle by assisting climate-vulnerable countries facing debt and fiscal distress and in need of greater fiscal space and liquidity to meet their development and climate goals. It calls for a shift in the lending clauses and frameworks of multilateral banks and the inclusion of a climate or disaster vulnerability clause leading to a temporary suspension of interest-rate payments on the debt by the country hit by a climate-related disaster. Bridgetown also asks for a re-channelling of at least US\$100 billion of unused Special Drawing Rights to countries in need and expands concessional lending to US\$1 trillion for especially climate-vulnerable countries. Finally, the initiative requests new low-interest, low-term instruments of at least \$500 billion to accelerate private investments in the low-carbon transition and mitigation efforts.

This proposal addresses the immediate liquidity needs of climate-vulnerable countries but also lays a path for transforming the international financial system so as to channel the needed resources for climate adaptation, resilience-building and energy transition. The resources also allow for the scaling-up of investment to achieve the SDGs, including in health and education.

In addition to the aforementioned initiatives, several other proposals are on the table, including the compliance of commitments on Overseas Development Assistance (ODA) by industrialised countries to climate-vulnerable countries and other measures, such as a Green Global Tax Pact.

These illustrate the fact that we are not short of proposals and ideas for crafting the new economics for the earth system, using the right measuring tools, valuation instruments, justice and equality indicators, and institutions and governance arrangements.

The Institutional Shift

The three aforementioned critical shifts to reform global environmental governance: conceptual, legal and normative, coupled with a valuation and economics transformation require a retooled institutional scaffold. We need upgraded global institutions, policy and normative frameworks and justice systems in order to be equipped to govern the environmental commons. Several voices are calling for an upgrade to the UNEP to be transformed into a fully specialised agency in the system. The UN Secretary-General Report, ‘Our Common Agenda’, includes a proposal to repurpose the UN Trusteeship Council, one of the principal organs of the organisation, so it can address responsibilities for global public goods and intergenerational justice (United Nations 2021).

To fully address these necessary transformations, we must also acknowledge the vital role that women, including Indigenous and rural women, play in environmental governance. Ensuring equal representation in climate and environmental negotiations is essential; their unique perspectives and insights can facilitate nuanced understanding and more robust solutions. Gender-sensitive environmental investment and policy design can result in policies that better address the needs of all populations. By bolstering the participation of women in environmental diplomacy, we enrich the diversity of voices and perspectives, enabling a more comprehensive approach to tackling our global environmental challenges. This should serve as an essential aspect of the reimagined multilateral architecture that we strive for.

Changing and rejuvenating institutions is a major endeavour and yet possible. We are experiencing a vibrant global conversation about reforming environmental institutions and rethinking and reimagining the overall multilateral architecture, including international financial and trade regimes. There are calls for a Review Conference of the UN founding Charter, and preparations for a UN Summit of the Future in 2024 are underway. A ‘Pact for the Future’ will emerge from the Summit, which will serve as a compass and roadmap to reimagine multilateralism so as to better address the great grievances of our time, including the ecological crisis. Surely, we are living in a time of great distress, but also one of great opportunity where hope and responsible transformative action should be the path and the engine.

Note

- 1 The Living Planet Index allows us to see how species are faring by measuring trends in monitored populations of vertebrate species. It reports the average change in the size of these populations around the world.

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22 The International Criminal Court

Origins, Challenges and Desirable Reforms to Strengthen It

Richard J. Goldstone

The Origins of the International Criminal Court

Before the end of World War II, there were only desultory attempts at establishing international criminal courts. In 1870, at the conclusion of the Franco-Prussian War, Gustave Moynier, a Swiss jurist and one of the co-founders of the International Committee of the Red Cross (ICRC), made a public proposal for the creation of an international court to investigate breaches of the Geneva Convention of 1864. He also called for appropriate international laws making it possible to punish those who committed such violations (Durand n.d.). No such tribunal was established, and no such laws were enacted. The Geneva Convention continued to bind the nations that ratified it, but there were no criminal sanctions for transgressions of its provisions.

During World War I, there were mutual allegations by Germany and Britain that the other was guilty of international crimes. The British Prime Minister, David Lloyd George, vowed to bring the German Kaiser to trial for ‘waging an aggressive war’ (‘Lloyd George Plan to Punish Ex-Kaiser’ 1918). Articles 227 to 230 of the Treaty of Versailles provided for a special international tribunal, as well as national and multinational military tribunals. However, the Dutch Government, which was holding Kaiser Wilhelm II, refused to surrender him for trial and in the absence of political will, the special international tribunal did not become operational. Domestic war crimes trials in Germany were perfunctory and ultimately failed. The efforts of the Allied Powers to have Turkish troops charged with crimes relating to the Armenian genocide also failed (Goldstone and Smith 2015: 40–46).

Towards the end of World War II, the governments of the Allied Nations, Britain, France, the Soviet Union, and the United States, decided that the German and Japanese war leaders should be prosecuted before respective multinational courts. The jurisdiction of such courts would be achieved by pooling the domestic jurisdictions of each of those states. That decision gave birth to the Nuremberg and Tokyo Trials. Both trials represented victors’ justice—the victorious nations were not held accountable for the war crimes committed, and the judges and prosecutors came from the four victorious nations. However, by the standards of the middle of the 20th century, the defendants were given fair trials. The Nuremberg and Tokyo courts were given jurisdiction over the crimes of aggression (‘crimes against peace’), crimes against humanity and war crimes.

In the aftermath of World War II and especially given the high incidence of war crimes that were committed, the Geneva Convention was updated at a meeting called in 1949 by the ICRC. Four updated Geneva Conventions were agreed at that meeting. For the first time, the most serious violations of their provisions were designated as war crimes. They were called ‘the grave breaches of the Geneva Conventions’. They were applicable

only to international armed conflicts. Too many governments were not prepared to agree to the criminalisation of civil conflicts which fell within the sovereign rights of governments to fight by any means they considered necessary. The outcome was the so-called Common Article 3 of the Geneva Conventions (which appeared in each of the four conventions of 1949) and which obliges parties to non-international armed conflicts to treat humanely all persons in enemy hands; to care for the wounded, sick and shipwrecked; and to allow the ICRC to offer its services to the parties to the conflict.

The Nuremberg and Tokyo Trials were sufficiently successful to encourage politicians and jurists to call for the establishment of a permanent international criminal court based on the consent of sovereign states: in other words, a treaty-based court. This is reflected in Article 6 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. It is there provided that

[p]ersons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

However, the Cold War intervened, and the establishment of an international criminal court was placed on the back burner. That notwithstanding, in the early 1950s, the International Law Commission of the United Nations (ILC) began to draft a treaty for a permanent international criminal court. And the development of international criminal law did not cease. There were conventions that outlawed the hijacking of aircraft (United Nations and the Rule of Law 1970), hostage-taking (United Nations 1979), torture (United Nations Human Rights 1984), attacks on diplomats (United Nations 1973), and the security of ships on the high seas (International Maritime Organization 1974).

The end of the Cold War in 1989 created the political space for renewed efforts to establish an international criminal court. In that same year, Trinidad and Tobago, in the General Assembly of the United Nations, requested that the ILC should continue to work on a treaty to establish the International Criminal Court (ICC) and should make provisions for the prosecution of drug trafficking. The General Assembly requested the ILC to do so. Ironically, no provision relating to drug-related crimes was included in the draft treaty.

The end of the Cold War also enabled the Security Council, in 1993, to establish the United Nations International Criminal Tribunal for the former Yugoslavia (ICTY). The ethnic cleansing perpetrated in the former Yugoslavia led Western European nations, together with the United States, to conclude that establishing an international war crimes court was less expensive, in political and financial terms, than armed intervention. In the face of the genocide committed there, in the middle of 1994, Rwanda requested a similar international criminal tribunal. Having established one for the former Yugoslavia, the Security Council was hardly in a position to deny the request from an African member state. The two tribunals are commonly referred to as the *ad hoc* tribunals.

The *ad hoc* tribunals were established by the Security Council exercising its peremptory powers under Chapter VII of the Charter of the United Nations. This meant that the provisions of their statutes establishing the tribunals were legally binding on all members of the United Nations. The tribunals were given jurisdiction over what are generally referred to as ‘atrocious crimes’—namely, genocide, crimes against humanity and war crimes. The ICTY, which was initially concerned with an international armed conflict, was also given jurisdiction over the grave breaches of the Geneva Conventions. As the crimes committed

in Rwanda related to a non-international armed conflict, the ICTR was given jurisdiction pursuant to the provisions of Common Article 3 of the Geneva Conventions.

Unlike the multinational Nuremberg and Tokyo courts, the ICTY and ICTR were truly international. Their judges were elected by the United Nations (both the Security Council and the General Assembly playing a role). The judges and prosecutors did not come from the countries where the alleged crimes were committed.

After the establishment of the ad hoc tribunals, the Security Council became 'tribunal fatigued'. When Sierra Leone requested another ad hoc tribunal, the Security Council authorised the Secretary-General to enter into an agreement with the Government of Sierra Leone to set up an international tribunal without reliance on the preemptory powers conferred by Chapter VII of the United Nations Charter. And, unlike the ad hoc tribunals, the Special Court for Sierra Leone (SCSL) was not to be at the cost of the United Nations. It was funded by the Government of Sierra Leone and from voluntary contributions from other states. Other similar hybrid tribunals were established for Cambodia, Kosovo and Lebanon. As of this writing and as discussed in this chapter, there is support for this kind of hybrid tribunal to be established with authority to investigate charges of aggression against the leaders of the Russian Federation arising out of the war in Ukraine that began in 2014. That crime cannot be investigated or prosecuted by the ICC against a state that is not a party to the Rome Statute.

The successes of the ad hoc tribunals and the SCSL were sufficient to encourage many members of the United Nations to support efforts to create a permanent international criminal court. In 1998, then Secretary-General of the United Nations, Kofi Annan, acting pursuant to a resolution of the General Assembly, called a diplomatic conference in Rome to consider the draft statute for the ICC that had been prepared by the ILC. The attendees at the Rome conference included 161 states, 33 inter-governmental organisations and 236 non-governmental organisations (NGOs). On July 17, 1998, by a vote of 120 in favour and seven against, with 21 countries abstaining, the Rome Statute was adopted. Those who voted against the adoption of the Statute included China and the United States. The other three permanent members of the Security Council, France, Russia and the United Kingdom, supported it.¹

The Rome Statute required 60 states to ratify it before it would come into operation. This was an unusually high number of ratifications, and optimistic supporters of the Court anticipated that it would take many years for that to happen. Surprisingly, it took less than four years, and the treaty became operative on July 1, 2002, three months after its 60th ratification.

The Rome Statute reflects the structure and many of the features of the ICTY and ICTR. The administrative body is the Assembly of States Parties (ASP) which is made up of representatives of each of the states parties. It meets once a year, usually alternating between The Hague and New York. The ASP elects the judges and the Prosecutor and the Deputy Prosecutor/s. They each have terms of nine years. The expenses of the Court are paid by the members of the ASP in accordance with assessments made by the ASP (United Nations 1988: art. 115). The amounts are assessed in accordance with an agreed scale of assessment based on that adopted by the United Nations for its regular budget (*ibid.*: art. 117).

The ICC was given jurisdiction over four types of crimes: genocide, crimes against humanity, war crimes, and aggression. The first three are defined in the Rome Statute (United Nations 1988: arts. 5–8). The Rome conference was unable to reach agreement on the definition of aggression, and it was left for decision at the first review conference to be held ten years after the Statute became operative. In 2010, a review conference held

in Kampala agreed on the definition of aggression, and that is to be found in art. 8bis of the Rome Statute. The Prosecutor's own powers with regard to the crime of aggression are constrained, and member states are given a right to opt out of the provisions. They do not have application to aggression committed in the territory of a non-member state. As mentioned earlier, it is these constraints that preclude the ICC from investigating the crime of aggression allegedly perpetrated by Russia in Ukraine.

The First Two Decades of the ICC

It was widely assumed that the first situations to be investigated by the ICC would come about in consequence of the Prosecutor exercising the *proprio motu* powers conferred by art. 15.1 of the Rome Statute. It was considered highly unlikely that the Security Council would refer situations under the powers contained in art. 13.b of the Rome Statute. It is there provided that the Security Council, using its Chapter VII powers, may refer a situation to the Prosecutor in which one or more crimes defined in the Statute appears to have been committed. China, Russia and the United States were likely to veto any such referral. States Parties themselves were unlikely to self-refer their own situations to the Court. Those assumptions all turned out to be incorrect.

During its first ten years, nine situations came before the ICC. Of those, four were self-referrals from governments: the Democratic Republic of the Congo, Uganda, Central African Republic, and Mali; two were referred by the Security Council: Sudan and Libya; and three were initiated by the Prosecutor: Kenya, Côte d'Ivoire and Georgia. Since 2016, the Prosecutor has initiated a further five situations: Georgia, Burundi, Bangladesh/Myanmar, Afghanistan, and Philippines. One further situation was a self-referral: Palestine, and two were referred by states parties: Venezuela and Ukraine.

The foregoing analysis of the situations before the ICC refutes the allegations that were made during the first decade of the existence of the ICC by the African Union and many African states that it was a 'colonial' institution established by Western states to bring African states before the Court. The Court could hardly be blamed for the selection of situations if the majority of them were not the result of the exercise of the *proprio motu* powers of the Prosecutor.

The political attack came to a head with a resolution in 2017 by the African Union, which called upon its members to withdraw from the Rome Statute. Initially, three states, Burundi, Gambia and South Africa, signalled their intention to follow the non-binding resolution of the African Union. In the end, the latter two did not do so, and it was only Burundi that withdrew from the ICC. Its withdrawal was designed to protect its own leaders who feared war crimes prosecutions against themselves. With the ICC having launched investigations into non-African states, the opposition from Africa has defused. Other political challenges facing the ICC are referred to in the following section.

Political Challenges to International Criminal Justice

The most serious challenge faced by all international courts, whether criminal or civil, is that in order for them to be effective, the cooperation of relevant governments is indispensable. This challenge lies at the heart of the politics of international law. In the case of international criminal courts, the cooperation of governments is crucial with regard to the collection of evidence, contact with witnesses and, in the case of the issue of a warrant of arrest, the apprehension of the defendant.

Even though the ad hoc tribunals were established by the Security Council in the exercise of its peremptory Chapter VII powers, it did not follow that all members of the United Nations adhered to their Charter obligations and cooperated with them. Serbia refused to recognise the legitimacy of the ICTY and refused my request, as its first Chief Prosecutor, to open a liaison office in Budapest. The government of Croatia paid lip service to its responsibilities towards the ICTY but did not substantially comply with requests from the Court and did not facilitate the work of our investigators. In its earliest years, the Government of Kenya refused to allow ICTR investigators into the country. Unfortunately, the Security Council remained silent in the face of these and other blatant violations of its own peremptory resolutions. On the other hand, many members of the United Nations did regard themselves as bound by the Security Council Statutes. In particular, the United States furnished the ad hoc tribunals, subject to strict confidentiality agreements, with classified intelligence information. Permission was granted by the United States for some of that information to be used in court. In that way, for example, intercepted telephone conversations between President Milosevic of Serbia and Radovan Karadzic, the self-appointed President of Republika Srpska, played an important role in the successful prosecution of both Karadzic and his army chief, Ratko Mladic.

The ICC, as a treaty-created institution, does not have the benefit of a binding Security Council Statute to support its work. The only governments that are obliged to assist the Court are those of states that have ratified the Rome Statute. And even then, some of those governments do not live up to their treaty obligations. President Omar Al-Bashir of Sudan, who was subject to an arrest warrant issued by the ICC, was not arrested by some member states when he visited their countries. This included South Africa, where state officials hurried him out of the country from a military airport after the High Court ruled that state officials were acting unlawfully by not arresting him (The Supreme Court of Appeal of South Africa 2016).

The unpleasant reality is that some states ratify international human rights statutes with no intention of complying with their terms (Hathaway 2007). According to Professor Oona Hathaway of Yale Law School,

[S]tates with less democratic institutions will be no less likely to commit to human rights treaties if they have poor human rights records; there is little prospect that the treaties will be enforced. Conversely, states with more democratic institutions will be less likely to commit to human rights treaties if they have poor human rights records—precisely because the treaties are more likely to lead to changes in behaviour. The same reality applies to a number of the states that are parties to the Rome Statute.

The policies of the United States with regard to the ICC have been ambivalent and inconsistent. At the very end of the Clinton administration, the United States signed the Rome Statute but did not submit it to the Senate for ratification. Since then, the United States has taken active steps against the ICC, some apparently designed to bring its operations to an end. One of the first acts of the administration of President George W. Bush was to ‘withdraw’ the signature by the United States of the Rome Statute. It did so in anticipation of taking steps to thwart the work of the Court. The American Service-Members Protection Act of 2002 was intended to intimidate countries that ratify the Rome Statute. Provision is made for the withdrawal of U.S. military assistance from countries ratifying the Rome Statute. It also restricts U.S. participation in United Nations peacekeeping

operations unless the United States obtains immunity for its nationals from prosecution by the ICC. It authorises the use of military force to ‘liberate’ any American or citizen of a U.S.-allied country being held by the Court. This provision became known as ‘The Hague invasion clause’. The President was given authority to waive those provisions on the grounds of ‘national interest’.

The second administration of President George W. Bush changed tack and decided to assist the Office of the Prosecutor in cases that were consistent with the foreign policy of the United States. That cooperation continued during the presidency of President Barack Obama. The policy of the United States took another 180-degree turn under the Trump administration. In June 2020, the Office of Prosecutor announced that its investigations into war crimes committed in Afghanistan would include allegations against U.S. nationals. In response, it was announced by Secretary of State Mike Pompeo that the United States would sanction ICC officials involved in investigations against the United States or its allies. It imposed visa restrictions and economic sanctions against the Prosecutor and a senior member of her office. According to the Attorney-General, William Barr, the measures were the beginning of a sustained campaign to ‘hold the ICC accountable for exceeding its mandate and violating the sovereignty of the United States’. This statement was based on the incorrect theory that crimes committed by U.S. nationals abroad were beyond the jurisdiction of the ICC because the United States was not a party to the Rome Statute. In any event, the measures taken by the Trump administration were repealed by President Joe Biden in 2021.

Political challenges complicate the work of the Court and its officials and cannot but hinder the work it attempts to accomplish in an independent and robust manner.

The Independent Expert Review of the ICC

In 2018 and 2019, there was considerable criticism by supporters of the ICC of its efficiency and procedures. This reached a climax with an article highly critical of the ICC that was published by the Atlantic Council on April 24, 2019 (al Hussein *et al.* 2019). Its authors were four previous presidents of the ASP, who wrote, ‘We are disappointed by the quality of some of its judicial proceedings, frustrated by some of the results, and exasperated by the management deficiencies that prevent the Court from living up to its full potential’. They called for an independent review of the ICC.

In response, the ASP established the Independent Expert Review of the ICC and the Rome Statute system (International Criminal Court 2019). The nine experts who comprised the IER Committee² heard and received evidence from some hundreds of witnesses. It received the full cooperation from all the organs of the ICC. Its final report was published at the end of September 2020 (Independent Expert Review Group of the ICC 2020, hereinafter referred to as ‘Report’). It contained 384 recommendations. The experts acknowledged that full implementation of the recommendations would require time, as well as joint effort and determination from the Court, the ASP and States Parties (*ibid.*: para. 23). Following receipt of the Report, the ASP set up a Review Mechanism to consider the implementation of the recommendations made by the IER. During 2021 and 2022, the Review Mechanism held public consultations with members of the ASP and representatives of civil society organisations. A number of the members of the IER participated in these consultations.

Given the length of the Report and the number of recommendations made, it is not possible to consider more than a fraction of the findings and recommendations made by

the IER. What follows is a discussion of those considered by the author to be among the most important facing the ICC. They are considered under the following headings: political challenges, financial challenges, human resource challenges, the judges, and the Office of the Prosecutor.

Political Challenges Facing the ICC

With regard to political attacks on the ICC, the IER recommended,

The ASP and States Parties should develop a strategy for responding to attacks on the Court by non-States Parties, and should be prepared to speak up in the Court's defence, given that its dignity and political impartiality seriously inhibits its ability to defend itself against unsubstantiated and biased attacks. The ASP and States Parties could further conduct public information campaigns in their countries, with support from the Court's PIOS (Public Information and Outreach Section) in developing communication materials.

(Report: Recommendation 169: p. 129)

The Court fully endorsed the foregoing recommendation and added,

An active and enhanced role of States Parties in this regard is necessary, urgently needed and a crucial element in supporting the Court, not only during political attacks but also more broadly to defend and promote the Rome Statute system, the integrity of its proceedings, safeguard judicial and prosecutorial independence, as well as ensure the safety and security of ICC personnel. The Court is of the view that States Parties should prioritise the consideration and implementation of this recommendation and engage with the Court for this purpose.

(International Criminal Court 2021b—hereinafter referred to as 'Court's Response'—: para. 332)

Financial Challenges Facing the ICC

All international criminal courts are, of necessity, dependent for their financial resources on the political processes and procedures of those countries that are responsible for their funding. The ad hoc tribunals were dependent for their funding on the United Nations General Assembly and its cumbersome budgeting procedures. The ICC, in turn, is dependent on the ASP, i.e., the states that have ratified the Rome Statute.³ As the IER pointed out, there is a trust gap between the ICC and the ASP. It stated,

On the one hand, some States Parties believe that the Court could and should be able to deliver more with the resources it has available. On the other hand, there seems to be a perception within some quarters of the Court that States Parties are using the budget process to interfere with the Court's cases.

(Report: para. 330)

This is a problem that is inherent in the system. As was pointed out in the Report, any international court or tribunal has the dual role of being a judicial entity and an international organisation.

As a judicial entity, the Court must benefit from judicial independence. As an international organisation, States Parties reasonably expect to be able to guide and shape the institution. Contradictions can arise between these two attributes of the ICC, and in practice such differences have led to tension between the ICC and the ASP. Whereas the dual nature of the ICC cannot be changed, employing this distinction can improve the clarity of reporting lines and improve cooperation.

(Report: para. 26)

There is clearly a need to confront this dual structure with transparency and cooperation between the organs of the Court, between themselves and with the ASP.

As a cost saving device, the IER suggested, ‘States Parties should consider joint approaches with other international courts and tribunals housed in The Hague, such as organising joint trainings, pooling administrative services and exploring possibilities for joint procurement to obtain more advantageous rates’ (Report: Recommendation 143).

There is an inherent budget problem that has been experienced by all international criminal courts—namely, the inability to anticipate the situations and cases that will require funding in a future budget period. There are inevitably unanticipated events, such as the unexpected arrest of an accused person or the opportunity to access new evidence that becomes available. Such events—and there are many others—require funding that has not been included in the budget. To meet this type of eventuality, the IER recommended that the financial regulations of the Court should be amended to enable the Registrar to make transfers across major programmes and to make adaptations based on the workload (Report.: Recommendation 134).

Human Resource Challenges Facing the ICC

The IER made serious findings concerning the working culture at the ICC. It labelled it as ‘distrust (interorganisational, as well as between staff and senior/higher management) and a culture of fear’ (Report: para. 62). The Report states further that ‘[i]t appears from the Experts’ consultations that the Court is widely perceived from within as too bureaucratic, too inflexible, and lacking in leadership and accountability’ (ibid.: para. 63). The IER also commented on an insufficient commitment to achieving gender equality with regard to all persons affiliated with the Court (ibid.: para. 64). The IER recommended, ‘Decisive action needs to follow the ASP’s and the Court’s commitment to achieving gender equality and ensuring the dignity, well-being, safety and inclusion of all individuals affiliated with the Court, regardless of gender or sexual orientation’ (ibid.: Recommendation 15).

The IER was not the first investigation into the ICC to find widespread discontent among many members of staff. Most of the current complaints came from the Chambers and the Office of the Prosecutor (OTP):

The IER heard many accounts of bullying behaviour amounting to harassment in all Organs of the Court, and particularly in the Office of the Prosecutor (OTP). They also heard frequent complaints that the culture of the Court’s workplace was adversarial and implicitly discriminatory against women. There were a number of accounts of sexual harassment, notably uninvited and unwanted sexual advances from more senior male staff to their female subordinates.

(Report)

The IER also suggested that this type of conduct ‘frequently has more to do with power relationships than with mutual attraction’ (Report: para 209). It suggested that the situation could only be improved if the leadership of the Court made it clear that there was zero tolerance for such behaviour and that efficient mechanisms were in place for victims to safely and transparently make complaints (ibid.: para. 211).

In the Court’s response to the IER Report, it stated, ‘The Court agrees with the Experts that these are fundamentally important issues and the Court’s leadership has prioritised efforts towards reinforcing the Court’s work environment and institutional culture of leadership and accountability at all levels’ (Court’s Response: para. 197). The Court went on to state,

Concretely, a comprehensive strategy should: reflect the high-level commitment of the Court’s leadership to the issue of gender equality and organisational culture, identify gaps and propel the review, as appropriate, of disciplinary policies and processes, assess ways to strengthen the roles and responsibility of managers in addressing these challenges, provide clear information on processes and support staff who want to file a complaint, strengthen informal/early on conflict resolution mechanisms, aim at increasing transparency on sanctions and incidents/reporting without compromising due process rights or confidentiality obligations, and identify ways to make formal disciplinary processes more efficient.

(ibid.: para. 199)

Active steps have been taken at the Court in consequence of the recommendations made by the IER. In its report, the Court states,

In developing such a comprehensive strategy, the Court will consider how the different elements of the system can present a cohesive and coordinated solution to address the challenges identified by the Experts. Such elements include the adoption of a revised and updated policy on harassment and sexual harassment (work on the revised policy is well advanced at the time of writing), a policy on investigation and disciplinary measures, a policy on sexual exploitation and abuse, as well as the recent appointment of a Focal Point for Gender Equality and considerations into the establishment of an Ombudsperson, in addition to any training initiatives and communication campaigns that may be developed to this end.

(Court’s Response: para. 200)

It cannot be doubted that these steps will lead to a better working environment and culture at the ICC.

The IER referred to the long tenure of a number of senior members of staff of the ICC. It suggested that this is not healthy and blunts the benefits of fresh thinking and changes in management style. It also prevents a diffusion of power in the different organs. In this context, the IER recommended,

In order to encourage fresh thinking and bring more dynamism to the Court, a system of tenure should be adopted by the Court, applicable to all positions of P-5 and above. ... For reasons of procedural fairness, the limitations should not be applied to those occupying these positions currently and would only apply to those newly appointed to the positions. Nonetheless, long serving officers of P-5 or Director level might be encouraged to retire early to allow the new system to be established as quickly as possible.

(Report: Recommendation 105)

The IER acknowledged that a certain amount of disruption would accompany the introduction of such a system but considered that that would be outweighed by the advantages.

Notwithstanding some opposition to the introduction of a tenure system from some quarters in the ICC, and especially the OTP, after consideration by the Review Mechanism, the recommendation was adopted in principle. The Registrar has been requested to prepare a draft proposal for the introduction of tenure at the level of P-5 and above.

The experts found that the then-current framework of the Court with regard to ethics was fragmented and had no common principles and minimum standards applicable to the officers and staff of the Court, whether elected officials, staff, whether internal or external. This leads to inconsistent implementation of standards of conduct across the Court. It also resulted in unacceptable behaviour being left unaddressed when coming from certain individuals affiliated with the Court. An example is the Registrar of the Court, who is not covered by any specific code of conduct (Report: para. 261). Support staff of external defence and victims' counsel⁴ 'though working daily from headquarters for a significant number of years, are not covered by any code of conduct, and are also often excluded from the protection granted by Court policies' (Report: para. 263).

The IER recommended that the Court should develop a single Court-wide Ethics Charter, laying down the minimum professional standards expected of all individuals working with the Court (staff, elected officials, interns and visiting professionals, external counsel and their support staff, consultants) (Report: Recommendation 106). In its response, the Court expressed appreciation for this recommendation and undertook to 'engage in inter-Organ consultations, as well as in consultations with the diverse group of stakeholders representing individuals affiliated with the Court, to advance the consideration of these matters' (Court's Response: Recommendation 134: para. 246).

The IER recommended that procedures should be adopted to enable investigations into alleged misconduct by former elected officials and staff. In this regard, there is a lacuna in the powers conferred on the Independent Oversight Mechanism (IOM). The OTP has previously suggested that the ASP should consider expanding the powers of the IOM, enabling it to investigate the conduct of former elected officials and staff, both in and after they were in office. In 2020, the ASP did indeed address this gap by extending the mandate of the IOM (Court's Response: Recommendation 134: para. 248).

The IER found that notwithstanding the official languages of the ICC being English and French, the working language had become English. This applies particularly in the OTP. The IER stated in its Report, 'This is unfortunate since it encourages the recruitment of predominantly English speakers, which is a disadvantage when a significant number of situation countries are francophone and Court officials need to interact with national officials in French' (Report: para. 234). The IER recommended that sustained effort should be directed at remedying this problem 'through targeted recruitment, French language classes and incentives for staff to improve their French'. This was especially important when recruiting for staff working in a situation country that requires relevant language skills (*ibid.*: Recommendation 100). The Court accepted that the implementation of this recommendation was an important objective (Court's Response: para. 221).

The Judges

There were a number of issues relating to the judges of the ICC that raised the concerns of the IER. Two of them are now considered: (a) nomination and election of judges and (b) the Code of Judicial Ethics.

Nomination and Election of the Judges

The Rome Statute requires that a candidate for election as a judge shall (a) have competence in criminal law and procedure and relevant experience, whether as a judge, prosecutor, advocate, or similar capacity, in criminal proceedings, or (b) have competence in relevant areas of international law such as international humanitarian law and the law of human rights (United Nations 1988: art. 36.3(b)). The latter qualification has become a topic of much debate. Many international criminal lawyers are of the view that academic experience is not as important as a qualification for a judge of a court that is primarily concerned with trials and appeals from them.

The suitability of some of the judges elected by the ASP has been questioned over many years. Initially, the ASP did not vet the nominations made by states parties for the election of judges. In 2011, the ASP established the Advisory Committee on Nominations, which examines and reports to the ASP on the qualification of nominees of states parties for election as judges.

In their Report, the IER suggested that ‘the ability and experience of some of the judges who have been elected has not marked them out as judges or jurists of the highest calibre sought by the Court’ (Report: para. 961). The experts referred to the allegation that some of the judges were appointed in consequences of political horse-trading rather than their competence. That was consistent with the personal experience of some of the experts of the campaigning and voting practices surrounding the UN elections in which they had been involved (*ibid.*: para. 961). The IER stated,

It is disturbing to discover that the practice of trading votes out of political self-interest, unrelated to the calibre of the candidate for election to a leading, international judicial post, is so well-entrenched that some States Parties still to this day find it politically expedient and acceptable to adhere to it. The remainder appear to tolerate it at a time of widespread, grave concern that the Court is proving to be less effective and efficient in the global fight against impunity than was hoped by its many supporters.
(*ibid.*: para 963)

The IER emphasised the importance of the interviews of candidates carried out by the Advisory Committee on Nominations of Judges (ACN). Yet, the nomination procedure prescribed by the ASP does not insist on personal attendance by candidates at such interviews. States parties are required only to ‘endeavour’ to ensure such attendance. The IER has recommended that such attendance, save in exceptional circumstances, should be obligatory and that a candidate who does not attend such an interview should be disqualified (*ibid.*: Recommendation 371). Other detailed recommendations were aimed at making the nomination process more thorough and effective (*ibid.*). The response from the Court is that these issues are matters for consideration by the ASP (Court’s Response: para. 690).

The Code of Judicial Ethics

The IER pointed out that the Code of Judicial Ethics was outdated and in need of review. One of the issues raised was that former judges are not bound by the code after leaving the ICC (Report: para. 458). The chambers agreed with this recommendation, and important amendments came into force on January 27, 2021. It is now provided that the

terms of the Code ‘apply to the judges at all times and continue to apply to former judges, where relevant, for instance in respecting the secrecy of deliberations or maintaining confidentiality’ (Court’s Response: para. 249).

The OTP

Many recommendations made by the IER relate to the OTP. A number have already been implemented. Important issues include the following:

Civil Society Organisations

The Report emphasises that ‘NGOs in the development, human rights, humanitarian, legal and other fields, are a force multiplier for the Court in promoting and carrying out its work’ (Report: para 380). Indeed, without the role played by NGOs from many countries, it is unlikely that the Rome meeting in 1998 would have been called and proceeded so successfully. NGOs also played a pivotal role in ensuring that gender issues and, especially gender-related crimes, were so holistically dealt with in the Rome Statute. It was also pointed out by the IER that NGOs ‘are also a very useful ally in blunting local press and propaganda campaigns, often conducted by authoritarian leaders that misrepresent the purpose and activities of the Court’ (ibid.: para. 380).

A number of NGOs reported to the IER that they felt neglected by the OTP and that it was more concerned with politicians and civil society representatives, especially in situation countries (Report: para. 380). The relationship between the OTP and NGOs can often be complex, especially with regard to approaches made to victims and witnesses. Best practices have to be clearly defined and made operational. In this regard, the IER stated that ‘it would be helpful if the Court and CSOs could establish channels of communicating and sharing their best practices and expertise’ (ibid.: para. 383).

The IER recommended that there was need for improvement in communications with NGOs both from the OTP itself and in the field. With regard to the latter, it recommended that there is a need for coordination between the Registry’s Outreach staff and the OTP. The IER recommended that the OTP should appoint a field staff member to be responsible for this coordination (ibid.: Recommendation 34). In general, the Court, including the OTP, shared the views and concerns expressed by the IER and seeks to improve its relationships and cooperation with NGOs (Court’s Response: paras. 311–19).

Preparatory Examinations (PEs)

The IER devoted much attention to the conduct of PEs.⁵ They have been of some concern to stakeholders for many years. As indicated in the Report, the length of PEs has varied between 2 months (Libya) to 144 months (Colombia).⁶ There is also a disparity between the OTP resources and the high number of PEs. The IER recommended that to address this disparity, the Prosecutor should consider adopting a higher threshold for the gravity of crimes alleged to have been perpetrated.⁷ This recommendation was left for consideration by the new Prosecutor (Court’s Response: para. 413).

The IER further recommended that the OTP should consider adopting an overall strategy plan for each PE, with benchmarks and provisional timelines for all its phases and activities, including its closure and, if relevant, re-opening. Upon authorisation of an investigation, the strategy plan should provide the foundation on which to build the

OTP's targets and strategies for the investigation (Report Recommendations: 255/6, 258). It further recommended that PEs should last no longer than two years, save in exceptional and justified circumstances (*ibid.*: Recommendation 257). This recommendation was also referred for attention by the new Prosecutor (Court's Response: para. 479).

Evidence Reviews

The IER found that the OTP had consistently failed in the implementation of

its internal mechanisms aimed at ensuring adequate quality control as the cases are prepared for warrants of arrest, pre-trial, and trial proceedings. These mechanisms include peer evidence reviews, reviews of critical submissions, testing of critical oral submissions, the development of internal guidelines standardising the work of each Division, and a lessons learnt policy.

(Report: para. 791)

It was also found that its 'lessons learnt' programme was poorly implemented and was inadequate (Report: para. 792).

The IER made the following recommendations:

The OTP should consider increased monitoring of the evidence reviews, which should be obligatory for every investigation and trial preparation, and appropriately regulated. Practices employed by OTP teams to monitor trials should be reviewed, and a comprehensive and consistent approach to preparations for witness examinations, presentations of complex evidence, and oral arguments should be ensured. Further, the OTP should review the guidelines relating to lessons learnt, and consider making adherence to the process mandatory and/or part of the performance appraisal of managers.

(Report: Recommendations 305, 311 and 313)

It advised the OTP to 'appoint a senior staff member of the OTP management to be responsible for monitoring compliance with lessons learnt' (Report: Recommendation 314).

For the most part, the Court accepted the foregoing recommendations, indicating that they had either been implemented already or were under consideration (Court's Response: paras. 596, 606/7, 615/6).

The Future of the ICC

The ICC is the only permanent international criminal court in existence.⁸ At present, it has the support of the 123 states that have ratified the Rome Statute. There have been very few accessions to the Statute in the past decade. If the ICC is to retain the support of the States Parties to the Rome Statute, it is essential that it provides justice to the victims of atrocity crimes in a more efficient and timely manner. Many of the recommendations made in the IER Report were designed to achieve those goals. It is gratifying that the Report has been received positively by the ASP and the Court. Many of the recommendations made by the IER have been implemented, and others are currently being considered by organs of the Court and the ASP Review Mechanism.

At the same time, the politics of international criminal justice cautions against optimism with regard to achieving substantial additional support for the ICC. There is little prospect, in the foreseeable future, of China, Russia or the United States (all permanent members of the Security Council) or of India or Pakistan acceding to the Rome Statute. This absence of universality detracts from the fairness of the Rome Statute system. It is not morally or politically justifiable that weaker nations are held accountable for serious war crimes while the powerful are given effective impunity. The answer is not that the Rome Statute system should be abandoned but that more nations, and especially powerful nations, should become members and supporters of it.

Calls for international justice continue to be made in the face of new atrocity crimes. There is wide support for a special court to be established to prosecute Russian leaders for the crimes of aggression committed in Ukraine since 2014. Since the invasion by Russia of Ukraine in February 2022, the ICC has been investigating crimes against humanity and war crimes allegedly committed by the Russian military since the invasion began. Within weeks of becoming seized with the situation in the Ukraine, the Prosecutor sent over 40 investigators to investigate those alleged crimes. In that endeavour, the Court has received the explicit support of a substantial majority of the members of the United Nations. On March 17, 2023, the ICC issued arrest warrants for President Vladimir Putin, the President of Russia, and Maria Lvova-Belova, Russian Commissioner for Children's Rights, alleging their personal responsibility for the unlawful deportation and transfer of children from Ukraine to Russia during the Russian invasion of Ukraine.

It must be recognised that the majority of African states have distanced themselves from condemning Russian aggression against Ukraine. They are concerned that far more attention is being given by Western states to a war in Europe than to even worse war situations on the African continent. The obvious illustration is the war that has taken the lives of hundreds of thousands of civilian lives in Somalia. And, at the time of this writing, there are serious war crimes being committed in Sudan that are receiving comparatively little attention from Western nations in comparison to the situation in Ukraine.

The inability of the ICC to investigate and prosecute Russia for the crime of aggression has given rise to many calls for a partnership between Ukraine and the United Nations General Assembly to establish a Special Court for Aggression in Ukraine. It is assumed that most of the 141 states that supported the resolution condemning the attack by Russia (United Nations General Assembly 2022) would support such a special court. An alternative route, strongly supported by former British Prime Minister Gordon Brown, is for a court to be established by a group of nations that recognise aggression as an offence in their domestic law. That was the way in which the Nuremberg Tribunal was established in 1945. There is also a call from a few states, including the United States, for an internationalised Ukraine domestic court with the authority to prosecute the crime of aggression. One of a number of problems with this last-mentioned approach is that Putin and his senior officials would enjoy head-of-state immunity in a domestic court that would not apply in an international tribunal (International Court of Justice 2002). The United Nations route would also be far more efficient and expeditious. Thus far, Ukraine has not called upon the General Assembly to join it in establishing such a court. Whatever the outcome may be, it is clear that the wide calls for a special court for Ukraine demonstrate the necessity of enabling the ICC to investigate and prosecute atrocity crimes as well as aggression wherever committed and subject to the principle of complementarity.

The ICC has understandably been criticised by victims in other situations for their comparative neglect in the face of the Court's vigorous action to investigate war crimes in Ukraine. In particular, those complaints come from Palestine and Myanmar. In the case of Palestine, a formal investigation was opened in March 2021, since when there has been silence from The Hague. In February 2021, the democratically elected government of Myanmar, the National Unity Government of Myanmar (NUG), was unlawfully ousted by a military coup. In December 2021, the General Assembly of the United Nations refused to recognise the military regime, and the NUG remains the lawfully elected government. In August 2021, the NUG made a declaration, under Article 12(3) of the Rome Statute, accepting the jurisdiction of the ICC with respect to all international crimes in Myanmar since 2002. For over a year, the Court has not responded in any way to that declaration. Again, it is the politics of international criminal justice that is attracting criticism.

No doubt it would be a safer world if the ICC were to achieve universal support and thereby make the system of complementarity a reality. Potential criminal leaders would be put on notice that if they commit or actively support the perpetration of international crimes, they will not be able to hide and would not be able to travel beyond the borders of their own states. In the modern world, that would make it almost impossible to act effectively as a head of state or government. The deterrent effect would become a reality. At this time, such an extensive reach of the Court appears to be a distant prospect.

The future existence of the ICC as an institution is assured. That it will continue to be criticised both by its friends and detractors is also inevitable. The depth of support for it will depend on its efficiency, the credibility of its investigations and prosecutions and, above all, transparency in the proceedings of all of its organs. That credibility will determine the funding it receives from the States Parties to the Rome Statute. The ICC remains a work in progress and, at the same time, an essential institution within the global architecture of international cooperation. The war in Ukraine has focused attention on the fact that the end of the Cold War did not usher in a new phase of peace and security in the world. The world today is, instead, characterised by rising superpower tensions. The threat of armed conflicts remains one among many global catastrophic risks confronting humanity; this suggests that the commission of atrocity crimes that the Court was created to address is likely, for the foreseeable future, to remain a feature of the international political landscape. Over time, this is likely to increase the importance of the Court and the support for it among many people who are becoming increasingly impatient with a culture of conflict and violence which is so destructive of human welfare.

Notes

- 1 Russia has not ratified the Rome Statute (United Nations 1988).
- 2 The author was the chair of the IER.
- 3 The annual budget approved by the ASP for 2022 amounted to Euros €151,269,900. The five largest contributors are Japan, Germany, France, United Kingdom, and Brazil. They account for almost half of the total contributions received by the Court. The latest assessments (as at December 31, 2020) can be found at International Criminal Court 2021a, pp. 45–46. The 2022 total budget approved by the ASP can be found at International Criminal Court 2021c: 4.
- 4 In order to ensure their independence, Defence and Victims' counsel are independent legal practitioners not employed by the Court.
- 5 The Office of the Prosecutor must determine whether a situation meets the legal criteria established by the Rome Statute. For that purpose, a preliminary examination is conducted by the Prosecutor based on information available to the Office of the Prosecutor.

- 6 See the table in Report: para. 709.
- 7 Report: Recommendation 227. The alternative would be for the ASP to vote additional funds for the conduct of preparatory examinations. For the foreseeable future, this is highly unlikely.
- 8 The UN International Residual Mechanism for Criminal Tribunals (MICT) was established by the United Nations to complete any residual proceedings of the ICTY and ICTR.

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23 State Interests and the Global Response to Forced Displacement

How Can We Move Forward?

Brian Gorlick

This chapter is a reflection on the state of the world, with a focus on how the global political economy, conflict, violations of human rights, and climate change continue to challenge the international community in how we respond to people forced to flee. This chapter cannot address all the factors that have gotten us to where we currently are, but it is a modest attempt to identify some key elements that may help us move towards a more equitable, just and predictable system for those who are forcibly displaced.

An obvious starting point and difficulty is the world of international relations, which today are as complicated as ever. Power politics dominated by the United States and the Western alliance, China, Russia and India, are intensely competing for their own spheres of influence. Trust, an important element in diplomatic relations, is low. While many state interests are shared among the most powerful, deep ideological and political differences persist, as the war and conflict in Ukraine and Myanmar, among others, starkly remind us.

We live in a time of troubled global hypocrisy. On the one hand, states point fingers at other states with poor human rights records while happily trading and selling goods and resources, including non-renewable energy, military equipment, extracted materials, technology, even water, and whatever else we need or desire. The global political economy is held together by international trade supported by diplomatic, inter-governmental and private-sector relations. In that context, the Global North has traditionally and continues to dominate the Global South. Apart from ideological posturing and threats of the use of force from powerful global actors such as China and Russia, the United States and the Western alliance, including notably the North Atlantic Treaty Organisation (NATO),¹ there is little indication that the current global political economy and security architecture will radically change.

Over the past few years, we have seen how the COVID-19 pandemic grossly exacerbated global inequality. *Oxfam International* reports that the wealth of the ten richest men has doubled, while the incomes of 99 per cent of humanity are even lower because of the pandemic. Other shocking comparisons are that 252 men have more wealth than 1 billion women and girls in Africa, Latin America and the Caribbean *combined*. Twenty of the richest billionaires are estimated to be emitting some 8,000 times more carbon than the billion poorest people. Extreme inequality between and within nations affects us all. Overconsumption and rich countries fail to address the effects of pollution and emissions fuel today's climate crisis, which, in turn, spirals inequality, leading to conflict, more poverty, violence and crime, and human displacement (IMF 2022; Oxfam International 2022).

Political-Economic Realities of the United Nations and Challenges of Independence

As a global body with a universal mandate, the United Nations was established to ‘maintain international peace and security’, ‘develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples’ and ‘achieve international cooperation in *solving international problems* of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights’. To understand the United Nations and its component parts, we need to look beyond the positivist approach of norm-setting and standards and institutional architecture, and focus on the political context that created, supports and drives the organisation. This is important to appreciate when considering the limited role and influence the organisation now has in shaping global politics and finding solutions, especially in circumstances of conflict and crisis.

Although the founding UN Charter was adopted 75 years ago, the United Nations’s political underpinnings have not significantly changed as concerns those key states that finance, guide and influence the Secretariat and the agencies that fund and design programmes. While the United Nations was created by states and has survived several challenges, since the beginning, it has been driven by a handful of the most powerful nations politically and militarily, nations which provide both financial support and assert enormous influence on how it functions. Indeed, the inclusion of the right of a veto in the UN Security Council and permanent membership for the victors of World War II suggest that the United Nations was designed to be subservient with respect to the most powerful states of that time. Of the current 193 UN member states, only five permanent members (the P5) of the Security Council play an especially important and outsize role.²

A traditionalist view of the United Nations is a Secretariat (led by the Secretary-General) and subordinate to its political masters, meaning the P5 and other member states, most crucially its principal donors. Given the hierarchical nature of the UN system, the funds and programmes and related entities³ similarly follow the same ethos. The current Secretary-General, António Guterres, previously served for a decade as head of the United Nations High Commissioner for Refugees (UNHCR) and is now in his second and final five-year term. As chief administrative officer, the Secretary-General has substantial authority and decision-making power. At the same time, he—hopefully one day ‘she’—must tread cautiously with member states, especially those with influence and power. UN leadership that challenges powerful states by pushing for greater autonomy, accountability or system reform may find themselves being warned to back off or worse. The case of Boutros Boutros-Ghali, a former Egyptian Foreign Minister and law professor is illustrative. He was not granted a second term after the United States, under the Clinton administration, objected to his continuing. Under the current set-up, one P5 member state can make maximum use of its leverage and authority.

Decades earlier, another former Secretary-General, Dag Hammarskjöld of Sweden, spoke of ‘the principle of the independence of the Secretariat from national pressures’ (Hammarskjöld 1961). This is a reasonable view, but the fact remains that government pressure on the United Nations and senior leadership is constantly at play. Even seemingly trite decisions such as permitting non-governmental organisation representatives to attend UN-sponsored meetings on indigenous issues have been blocked by the current Secretary-General after one P5 member, China, objected. Contrary to the aspirational words of Hammarskjöld, who made it a habit to cite the UN *Charter*, political

considerations regularly prevail over ethics and principles. To that end, the independence and judgement of UN officials can be compromised in favour of the interests of those states who appoint them and to whom loyalty is expected.

Donations and State Pressure

Beyond approving the appointment of senior staff, state-centric control is apparent in budgetary considerations, as the United Nations continues to be largely funded by a limited number of governments, led by the United States and the European Union. Agencies like the Office of UNHCR are almost wholly reliant on voluntary contributions from a small number of large donors. Although, as concerns the current crisis in Ukraine, the High Commissioner for Refugees, Filippo Grandi, has advised that contributions from the private sector have been more significant than from governments.⁴

In other humanitarian crises, individual private donations are also significant and an ever-growing focus of fundraising. While there is keen interest and increased support from the private sector, the fact remains that the bulk of UN funding is provided by Western states (UNHCR 2022d: 284–304). A state-centric approach with undue influence from key donors is, therefore, neither surprising nor a simple matter to change or reform.

Within the current structure, state interests often drive what operations and programmes are prioritised or deprioritised, or, in some instances, intentionally underfunded or ignored. As concerns UNHCR, Gil Loescher highlighted,

The fact that donors largely contribute to UNHCR on the basis of their own perceived interests makes the concentration of donors all the more problematic. In 2019, the top ten donors were major industrialised countries, with all other countries accounting for less than a quarter of contributions to UNHCR. As a result, the interests of a relatively small number of Northern States have been highly influential in determining UNHCR's activities and policies [...] Reconciling the need to have an autonomous influence on states and supervising the refugee regime with being responsive to donor interests is a difficult balancing act for UNHCR.

(Loescher 2021: 65–67)

While operations in Ukraine are comparatively well-funded, in another part of the globe humanitarian funding and support is failing, with UNHCR reporting a shortfall of 81 per cent for its programmes in the Democratic Republic of the Congo (UNHCR 2022a). This is not uncommon, as a major refugee situation can be forgotten or deprioritised and added to a long list of protracted humanitarian crises. This is now happening with the Rohingya in Bangladesh, where one million refugees have been displaced for five years without solution, and this is only one of several major refugee crises found in the Global South (OCHA 2022).

Pleas by governments, regional institutions, international organisations (IOs), NGOs, and refugee communities to increase funding and support for refugees must continue. Meanwhile, humanitarian agencies will do what they can to mitigate harm and lessen deprivation while making refugees' lives as dignified and purposeful as possible. It is a sad reality that adequate funding and government cooperation to assist in refugee operations is never guaranteed, and often not forthcoming—on the contrary, as evidenced by UNHCR's perennial funding shortfall of some 48 per cent for its global operations (UNHCR 2021b, 2022a).

Apart from funding challenges, UNHCR regularly experiences political difficulties, with some governments restricting access to persons of concern, a basic requirement for the Office to fulfil its mandate. Apart from denouncing uncooperative state behaviour and trying to negotiate access, there is often little the UN system can do to challenge state behaviour which violates the stated principles of the organisation itself. This is especially the case on refugee and migration issues where, despite the provision in international law that ‘calls upon governments to cooperate’ with the United Nations, states regularly claim national sovereignty over all aspects of immigration, including who may enter or must leave a country (UNHCR 1950). If the UN protests in favour of its positions and principles forcefully, individual officers or entire operations risk being shut out, shut down or asked to leave the country. At the same time, there are several examples of states receiving millions of dollars of international support rather than assuming responsibility and ending what can only be described as a situation of multilateral dependency (UNHCR 2022f).

UN colleagues who make courageous representations take personal risks. Over the years, several highly regarded colleagues have been made *persona non grata* or sidelined by a surprising number of countries, including those that are otherwise strong supporters of the global refugee regime. When that occurs, it cannot be expected that the organisation will support a staff member, as continuing relations with governments are given precedence. Speaking out and risking the diplomatic wrath of state actors is not the only hazard of doing humanitarian and human rights work. Over the years, hundreds of humanitarian staff and human rights defenders, often locally based, have been threatened, physically and psychologically harmed and even killed for performing their duties (Stoddard *et al.* 2022).

Skewed Budget Priorities, Colonial Constraints and Diminishing Democracy

Against this troubling background, a global view on public spending priorities presents an equally alarming picture. As reported by the OECD and UNHCR, overseas development assistance (ODA) requirements and proposed expenditure for refugee situations are estimated at US\$22.3 billion per year (OECD 2022; UNHCR 2022c). This is less than a quarter of the funds Germany proposed it would spend on arms in response to the war in Ukraine (Deutsche Welle 2022). Global military spending now exceeds two trillion dollars, that is, 2,000 times the ODA refugee-related figure (SIPRI 2022b).

The top ten donors to refugee-based ODA are led by the United States at \$3.6 billion, Germany \$2.4 billion, and the European Union \$2.1 billion. The United States, UNHCR’s largest donor, contributes 40 per cent of the Office’s budget and the European Union another 35 per cent (UNHCR 2022a). While no one state or region group should have oversized influence, this occurs *de facto*. Important donors, even the few that provide unearmarked funds like the Nordic countries, are not shy about pressuring UNHCR to scale up, scale down, not raise certain issues publicly, or otherwise ‘interfere’ in domestic politics.

But it is not only important donor countries that wield influence. All states do. How far IOs are willing, or able, to push back is a constant political minefield. Some of these constraints in the UN system are by design, as states do not want to cede authority to multilateral entities they cannot fully control. There is also reluctance to accept historic responsibility and articulate the systemic causes of forced displacement. This is highlighted by the international law scholar B. S. Chimni who, 25 years ago, wrote,

From the beginning of the twentieth century—‘the century of the refugee’— has been caused by the geographical spread of capitalism and the politics of imperialism. This is true of both the displacement caused by the two world wars and the anti-colonial struggles of the 1960s. ... Moreover, many of the conflicts leading to mass refugee flows in recent years can themselves be traced either to the legacy of imperialist politics or to its pursuit in the contemporary era.

(Chimni 1998: 359)

Heaven Crawley similarly highlights that ‘any critique of the contemporary refugee regime is incomplete if it does not address the ways in which the legacies of empire shape inequalities in access to protection. These legacies are both direct and indirect’:

The [1951 Refugee] Convention was drafted at a time when membership of the UN was heavily skewed towards the Global North, when much of the Global South remained under European colonial rule, and when European countries were preoccupied with assisting those displaced during the Second World War [...] The exclusion of refugees living in the Global South from the Refugee Convention was not accidental. International law, including International Refugee Law, was critical to imperial expansion by creating a hierarchy of international norms and institutions that subordinated the interests of those living in the colonies.

(Crawley 2022: 361)

Pitted against these ongoing challenges posed by colonial history and imperialist ambitions are a frightening number of countries experiencing poor governance. For the fifth year in a row, the International Institute for Democracy and Electoral Assistance (IDEA) and the Economist Intelligence Unit report that the number of countries heading towards authoritarianism is approximately three times as high as the number moving towards democracy. IDEA identified 98 countries as democratic, 20 hybrid (i.e., slipping towards dictatorship) and 47 clearly authoritarian. The latter two categories constitute half the world’s population (International IDEA 2021). According to *The Economist*, another 41 per cent of the world’s population live in flawed democracies (The Economist Intelligence Unit 2020).

Growing armed conflict is another concern that has a direct impact on forced migration. The Stockholm International Peace Research Institute (SIPRI) reports that active armed conflicts occurred in at least 46 states around the globe in 2021. While most of these conflicts took place within a single country, three were major armed conflicts with more than 10,000 conflict-related deaths the same year in Afghanistan, Myanmar and Yemen, and we can now add Ukraine (UN News 2022). While conflict-related fatalities have reportedly decreased in recent years, other negative impacts, including growing global food insecurity, population displacement, humanitarian needs, and violations of international humanitarian law are increasing. Sadly, most ongoing peace processes are either stalled or have experienced serious setbacks (SIPRI 2022a).

Increasing military conflict and militarisation comes at the expense of peace and peacebuilding. The military industrial complex continues to shape much of our global economy. Like overconsumption of fossil fuels, overproduction and dissemination of military weaponry increases environmental and global fragility rather than enhancing peace and security (Mlambo-Ngucka and Nakamitsu 2021). As former UN Secretary-General Ban Ki-Moon deplored, ‘The world is over-armed and peace is underfunded’ (UN Office for Disarmament Affairs 2012).

Military expenditure and conflict have an enormous impact by damaging international relations and creating mega-humanitarian crises. The proliferation of arms and weapons in and of itself is also the cause of conflict that results in the majority of the world's forcibly displaced. A critical example is the situation in Yemen:

Despite the deaths of over 100,000 Yemeni citizens caused by intensive bombardment of civilians by Saudi Arabia and its allies ... the U.S., UK, Australia, and other governments and arms manufacturers continue to sell and provide jets, bombs and munitions to Saudi Arabia and other Gulf States [...] If the international community is serious about resolving refugee crises such as Yemen, states need to take international action to reduce the availability of arms and make future aid and investment in countries under siege contingent on the reduction of arms and defense expenditures.

(Loescher 2021: 102–3)

Controlling Numbers

Many states shape their policies with a view to controlling numbers of migrants and forcibly displaced persons in the name of security. While there are positive examples of nations hosting large numbers of asylum seekers and refugees (e.g., Bangladesh, Lebanon, Turkey), and some European states and NGOs working to save the lives of migrants arriving by sea, there is a depressing number of aggressive and ill-advised examples of externalisation, meaning extraterritorial and overseas control measures including pushbacks and other acts of deterrence tactics.

Arrivals of large numbers of migrants and refugees often face a hostile environment. Think Greece and pushbacks to Turkey, inhumane encampments in France or asylum seekers stuck at the border between Poland and Belarus. Other state practices and their global ripple effect, such as not permitting boats of asylum seekers to disembark, erecting border barriers, the risk of prolonged detention, non-access to legal assistance, and frequent policy changes, are all geared towards curbing and deterring unwanted migration. To be clear, these measures are considered 'solutions' to controlling the numbers of unwanted and unwanted migrants by some states.

There is a race to the bottom on introducing restrictive immigration control and deterrence measures in some countries. As the United States has done with Haitian and Cuban asylum seekers, and Australia with spontaneous arrivals, and as several Central and Eastern European countries have practiced for decades, extraterritorial measures, including designation of 'no man's land' and offshore refugee processing of the kind being proposed by the United Kingdom and Denmark, are all too common. Collectively, these restrictive approaches deny access to territory and due process rights and stretch the imagination of what jurisdiction means in a domestic context. In addition to the astronomical expense and human cost of various security measures, one can expect extensive litigation to sort out messy legal issues (Refugee Law Initiative 2022). The 'humanitarian exception' of being granted asylum and protection in whatever form, under whatever body of international or domestic law—or no law at all—is just that: it is an exception under constant threat.

Another concern is that states' asylum policies are influenced by racism or 'fear of the other'. While the 1948 *Universal Declaration of Human Rights* opens with 'recognition

of the inherent dignity and of the equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world', prejudice continues. The situation in Ukraine has raised the spectacle of white Ukrainians being admitted *en masse* to asylum countries under special protection and visa regimes, including on the other side of the globe, while asylum seekers and refugees from Africa, the Middle East and Central America continue to be denied entry.

A related challenge is a 'culture of disbelief' that pervades refugee status decision-making, especially in cases which present 'exotic' facts of extreme persecution, and this failure of state protection runs contrary to what the Western public, state actors and decision-makers can accept as believable. A refugee woman or sexual minority having to explain intimate details of the harm and persecution they faced before fleeing their country, often not knowing why they were victimised, or why the authorities failed to protect them, is a common scenario played out in status determination processes around the globe.

Appellate decisions such as the 1993 U.S. Supreme Court (1993) judgement of *Sale v Haitian Centers Council, Inc.* (509 US 155) also set a tone. In this well-known judgement, the Court ruled as lawful the U.S. president's executive order that all foreigners intercepted on the high seas could be repatriated without due process rights or access to and protection of domestic and international law. What this decision represents is not only for U.S. consumption, as it telegraphs to other states that there is no need to permit asylum seekers to be heard or permitted safe passage. While *Sale* remains guiding jurisprudence in the United States, thankfully, what it stands for has not been universally accepted. Progressive legislative developments, including judicial decisions and advisory opinions from international tribunals in Europe, Latin America and Africa shine a hopeful light on broader human rights protection for migrants, asylum seekers and refugees under international law (Ulusoy 2022).

Another reality that helps to shape the global response to refugees is the limited number of states that host them. UNHCR reports that 83 per cent of the world's refugees reside in low and middle-income countries, with least-developed countries hosting 27 per cent of the total. 72 per cent of refugees displaced abroad are hosted in countries neighbouring their countries of origin (UNHCR 2022e). In terms of global burden-sharing, the ten countries that received the most refugees in relation to their population (*viz.* per capita) during 2011 to 2021 were Lebanon (19.8 per cent, hosting 1.5 million Syrians), Jordan (10.4 per cent, 675,000 Syrians and 2.3 million Palestinians), Nauru (6.8 per cent), Turkey (5 per cent, hosting 4.3 million mostly Syrians), Uganda (3.7 per cent), Sudan (2.7 per cent), Sweden (2.6 per cent), Malta (2.5 per cent), Mauritania (2.4 per cent), and Greece (2.2 per cent) (Norwegian Refugee Council (NRC 2022)).

A principal aspiration of the Global Compact on Refugees (GCR) is to promote greater responsibility-sharing, but these figures and trends belie that hope, especially when one considers that the majority of the world's refugees remain in the Global South (UNHCR 2018). Apart from state, IOs and NGO engagement, it should be recognised that most protection needs of forcibly displaced persons are met by refugees themselves, often with support from their own or host communities with little or no external assistance. Local actors, refugee-led initiatives and civil society groups often play key roles in providing protection and direct services to refugees and other forcibly displaced. These groups are also important voices in advocating for formal accountability and action by governments and IOs (Hilhorst *et al.* 2021).

The Role of UNHCR: The Need to Return to Protection Orthodoxy

In today's complicated world, UNHCR's voice appears muted. Significant resources are spent on promoting its image and branding, falling into a common pattern of institutional competition for donor and public support. UNHCR is content to propose broad policy prescriptions, as we see around the GCR discussions, but it is wary about raising concerns about substandard behaviour by individual states. Engagement in major operations of dubious merit is also part of the UN Refugee Office's history.

However, there are, of course, exceptions to this critique, and one can cite highly commendable practices of UNHCR challenging legal decisions, in addition to protesting government policies and practices that fail to comply with international standards. UNHCR, along with other humanitarian actors, also leads major humanitarian operations that save countless lives. But one can point to several examples in which the Office chose to remain silent or became engaged in an operational response with questionable objectives solely because donors demanded it. The ill-fated operation of assisting the United States with processing Haitian refugees in the Caribbean and Guantanamo Bay, the return of Rwandese and Rohingya refugees to Rwanda and Myanmar, respectively, in the 1990s, and more recently ongoing operations in Libya are some egregious examples.

Although dealt with by a separate entity, the UN Relief and Works Agency for Palestinian Refugees, or UNRWA, the ongoing saga of several million Palestinian refugees, more than 1.5 million who live in 58 recognised Palestinian camps in Jordan, Lebanon, Syria, the Gaza Strip, and the West Bank has continued for decades without a durable solution. This is a clear failure of the UN system and the international community.

If a controversial protection issue concerning refugee populations arises, then UN colleagues in the field are expected to seek guidance from regional offices or headquarters. Given the nature of large hierarchical bureaucracies, feedback and instructions are often slow in coming or may not come at all, with the result that staff sometimes choose—or are told—not to speak out. If an important donor is involved, the likelihood of speaking up diminishes further, the concern being that denouncing unacceptable state practices can result in rebukes, denials, withholding of funding and support, and political threats from governments. Another common scenario is that UNHCR's (or UNRWA's) advice and demarches are ignored.

UNHCR's GCR indicator report provides a grim picture (UNHCR 2021a). In 2020, 16 million refugees were in protracted refugee situations, which means encampment for five or more years. The average duration of a refugee situation is now a staggering 20 years. Two-thirds of the world's refugees live in poverty. Only 1 in 100 refugees globally found a solution. While mitigating loss and maximising humanitarian assistance are reasonable policy and operational objectives, the international community can and should do better.

The non-binding GCR and the plethora of meetings and events it generates, including the Global Refugee Forum involving literally thousands of hours of United Nations and civil society staff time, is a major undertaking. While there is enthusiasm over the pledges and partnerships ranging from multilateral development bank, state and civil society engagement, arguably, these commitments would have come without the Global Compact. Precious public funds would be better spent on activities linked to concrete action and advocacy with normative, institution building and programmatic value. Rather than moving international refugee protection forward, the GCR may even cause confusion

because of competing multilateral pledging and reporting exercises. We like to feel good about perceived progress as we meet in Geneva and New York, but this is window dressing compared to the need for structural change, adequate operational support and ensuring commitment to upholding principles of international law.

UNHCR's approach as a mega-humanitarian relief agency really took off during Sadako Ogata's time as High Commissioner. In the first years of Ogata's tenure beginning in 1990, while faced with major crises in Iraq and Yugoslavia, UNHCR experienced remarkable growth, doubling its budget and staffing. Since then, UNHCR's financial needs have never stopped growing. The 'bigger is better' approach and funding humanitarian relief programmes have become UNHCR's top priority. Donors encourage this, as it is easy to control a begging UNHCR while muting or ignoring its protection voice. Courageous leadership would certainly help, but a way out of this situation is for UNHCR to regain its orthodoxy and mandate of 'protection' and 'solutions'. This may result in a lower budget, but it would permit the Office to recover institutional independence and professional integrity by upholding principles of international law. Rather than trying to deliver on everything, UNHCR should let other actors like the World Food Programme (WFP) run cash assistance operations and humanitarian logistics. Or leave capable international and local NGOs to fund and build schools, hospitals and water systems on their own, without UNHCR being overpriced sub-contractors or would-be coordinators. Cash assistance to refugees could be equally well-managed by NGOs, government actors or banks directly.

Related to this is how the international community will address the expected vast displacement of people due to climate change and its effects. Extreme weather events, including floods and droughts, earthquakes and massive forest fires, are growing phenomena. A 2018 World Bank study has predicted that in the absence of urgent global and national climate action, Sub-Saharan Africa, South Asia and Latin America could see more than 140 million people move within their countries' borders by 2050 (World Bank 2018). Today, in some regions of Central America and Sub-Saharan Africa, the existential threat of having no access to land, water, food, or gainful employment is often too much to bear. So, people have to move to survive. How can we move forward?

Proposed Pathways

Expanding the Application of Human Rights Standards for the Forcibly Displaced

In July 2022, the UN Special Rapporteur on the human rights of migrants presented a report to the UN Human Rights Council that highlighted the need for a flexible approach to protection and grant of stay (including asylum) based on international human rights law. While not detracting from the *lex specialis* of international refugee law, the Special Rapporteur makes a persuasive argument for states to

enhance the flexibility and accessibility of pathways of admission and stay by ensuring that the criteria used are clear, transparent and rights-based and that they respond to the specific needs of migrants, the situations of vulnerability they face and their socio-demographic and economic reality. This includes expanding opportunities for admission and staying based on human rights according to international standards and best practices.

(UN General Assembly 2022)

What this means in practice is the application of human rights law not unlike the expanded refugee definition in operation in much of Latin America and Africa. Clear human rights criteria should guide decision-making in lieu of what we commonly see as the sole discretion of state authorities based on the overly complex and strenuous application of refugee law. A human rights-oriented approach would help depoliticise the assessment of protection needs and definitions and would be especially important and compelling in the context of climate-based displacement, whether internally or across international borders. Hand in hand with a broader normative approach, states need to support one another to develop disaster risk-management plans to reduce potential harm and address peoples' needs (Bustos and Chase 2022; Sajjad 2018; UN Office for Disaster Risk Reduction 2015).

Ensuring protection and promoting freedom of movement—as we have seen in the European Union's response to Ukrainian refugees—can be adopted for other forcibly displaced persons, including those facing climate disaster. However, unlike migration for reasons related to conflict or sudden onset crisis, climate-induced displacement may be more gradual, and this would allow for planning how we can accommodate influxes of migrants. Contrary to misleading claims about climate-induced mass migration moving towards the Global North, most climate-related movement will take place in the Global South, and mainly within rather than between countries. It is rare for people to move beyond national borders, quite simply so they can still access employment, education, health care, and other opportunities with which they are familiar. Where climate-based migration will likely have an impact is in urban areas, with new arrivals from rural and coastal environments affected by events such as heat waves and droughts. How we manage and plan our cities and processes of urbanisation require a broader understanding of development processes and structural inequalities.

On another level, regional planning for climate-induced migration is precisely what is being introduced by Argentina through a special humanitarian visa programme for nationals and residents in Mexico, Central America and the Caribbean displaced by socio-natural disasters. This initiative is realised through a sponsorship programme led by a civil society organisation (CSO) through which beneficiaries gain access to housing and integration support for a period of one year. This approach by Argentina could be replicated in other regions.

People will naturally move to where they believe they can manage their lives, or where there have options, which often means where they have government, family or community support. It is reasonable that such aspirations are supported, encouraged and managed within a predictable, uniform human-rights framework and appropriate development model (Platform on Disaster Displacement 2023).

UN Security Council Reform

Divesting from military expenditure and ending conflict would certainly make the world safer. How to make that happen remains the challenge. One international institution that can help move this objective forward is the UN Security Council. The Council can and does play a unique role in shaping global politics, promoting global peace and security, and supporting UN operations and norms, including those related to forced displacement. The Council's decisions are binding on states, and its authority to bring attention and focus on crises is an indispensable element of the UN system.

Unfortunately, the Council is no longer fit for purpose. Its structure, particularly the P5 membership, and rules of engagement are a serious concern. Entrenched and uncompromising political positions and the use of the veto by the P5 members is all too common (Lopez-Claros 2022; Thompson, Landgren and Romita 2022; Trahan 2020). While the UN General Assembly and Human Rights Council have shown growing signs of solidarity and leadership, given the inability of Security Council members to agree and lead, the real power in the UN system remains in the Council. Indeed, the concentration of power is problematic, as all P5 members must agree on reforming the UN Charter to change Council membership or its rules of procedure. This, of course, poses a considerable political challenge.

That said, UN member states, civil society and, notably, the Secretary-General should continue to speak up and work on Council reform. Beyond appointing yet another high-level panel, Secretary-General Guterres should concentrate his voice, vision, strategy, and negotiation skills on this issue, as some of his predecessors did. Security Council reform would be a meaningful achievement (Annan 2005; Boutrous-Ghali 1966; Löfven 2022). Courageous leadership both within the UN and from concerned states and civil society is urgently required if much-needed reform is to have a chance of advancing.

Diversifying UN Leadership and Professional Staffing

While UN officials are not supposed to represent their countries, some nationalities and regions are disproportionately represented among the professional staff. Of the 3,377 professional staff (UNHCR has 18,879 staff, professional and general service, across 137 countries), 52 per cent are from the Global South, although that region makes up 85 per cent of the world's population. Several Western countries, including Australia, Canada, France, Germany, Italy, Sweden, the United Kingdom, among others, are excessively represented in the ranks of professional staff. By comparison, populous countries like Bangladesh have only seven professional staff, India 46, Nigeria 14, Egypt 39, Russia 27, Turkey 27, and China 13. Only Turkey and China have more women than men.⁵ This Western bias in professional staffing is similar in other UN entities.

UN professional staff from the Global North and South often come from privileged class backgrounds and have attended top universities. Several senior staff have also been appointed directly from government service, the private sector and academia. There is a need to broaden and diversify UN staff as a desirable goal. As concerns UNHCR, it is unclear how many current or former refugees or other displaced persons are currently working with the High Commissioner's Office. The author is aware of a few former refugees who made it to senior professional positions, and there are surely many more in the general service category. But the Office does not track this information. Just as the call for a woman Secretary-General is meaningful, it will be equally so if one day the head of UNHCR is a woman with 'lived experience' as a refugee herself.

There are also state-driven practices, such as appointing ex-politicians and senior government civil servants to leadership positions, and this can compromise independence, as their loyalties remain with their home governments. This includes appointing a U.S. national as Deputy High Commissioner for Refugees—with one exception, this has always been the case—and head of UNICEF, the WFP and Department of Political and Peacebuilding Affairs; a British national as Under-Secretary-General for humanitarian affairs (OCHA); a French national to head UN peacekeeping; a Chinese national to head the Department of Economic and Social Affairs (DESA); and a Russian to head the

UN Office in Geneva (UNOG) and Office of Counter-Terrorism. Despite the fact that the current UNHCR Deputy High Commissioner, UNICEF Executive Director and UNOG head are women, these ‘old boys’ practices have no place in today’s United Nations.

Another anachronistic practice is the requirement that all P5 members agree on the appointment of the Secretary-General, given the fact that between them, they not only represent a fraction of the world’s population and geographic diversity but, more pointedly, a group of countries tainted by colonialist histories, hegemonic practices and victors’ justice.

Refugee Participation and Representation

In addition to increasing staff diversity and representation, refugee voices should be welcomed and heard. Bringing refugees into positions of power and influence around the decision-making table is not only the right thing to do, but it would provide much-needed perspective in identifying solutions. We should applaud when someone with a refugee, immigrant or minority background is elected, hired and joins the team. They not only bring their own experience but that of the community they represent. This alone can change organisational culture.

Canada and a handful of other states, in addition to several academic institutions and NGOs, are actively promoting refugee engagement in advisory and collaboration capacities. IOs are also slowly moving in that direction and should be encouraged to continue. Whether genuine refugee participation and representation will become the norm of doing business in the humanitarian and human rights fields remains a work in progress. For the moment, there are encouraging signs that this approach is becoming more viable, vibrant and rightfully entrenched (Milner, Alio and Gardi 2022).

Reparations and Accountability

The importance of ensuring accountability, justice and reparations for victims of serious human rights violations, including refugees, has to date received uneven attention. Failure to act on behalf of survivors sends a signal that events which cause refugee flows can happen with impunity. In addition to having a direct impact on victims, accountability measures, whatever the outcome, provide psychological closure for families and communities. Different approaches include establishing truth and reconciliation commissions and even amnesties, which can be effective routes for healing and relief.

Accountability towards refugees can take several forms. One approach is to engage international criminal law. Article 75 of the International Criminal Court (1998) Statute recognises the need to establish principles relating to reparations for victims, including ‘restitution, compensation and rehabilitation’. This statutory provision permits the Court on its own initiative, or upon request, to ‘determine the scope and extent of any damage, loss and injury to, or in respect of, victims’ (ICC 1998). Apart from the International Criminal Court (ICC) Statute, there is a significant body of jurisprudence based on international civil liability and other international law that provides reparations and damages for injury to non-citizens and others because of wrongful acts by states or their agents (Jorgensen 2009; Ratner, Abrams and Bischoff 2009; Shelton 2015). There is also scope to seek compensatory reparations from the International Court of Justice in the case of a state’s violations of international law (see, for example, ICJ 2022).

In the refugee context, there are important historical examples of UNHCR administering indemnification funds to refugees who were victims of the German national socialist regime, as well as British citizens of Asian origin who were expelled from Uganda (Lee 1997). The UN-based compensation commission for Iraqi nationals who lost property and fled as refugees is yet another example of a successful compensation scheme (UN Compensation Commission). Special tribunals and national courts are other options we have seen used, as in the cases of the Special Court for Sierra Leone, War Crimes in Bosnia and Herzegovina, Cambodia, Bangladesh, Guatemala, and Chad. The principle of universal jurisdiction in investigating and prosecuting atrocity crimes, and independent fact-finding, have also been applied *inter alia* in the case of the Rohingya refugees who fled Myanmar (UNHCR 2022d: 340).

More broadly, calls for a standing ‘victim’s reparations fund’ financed by seized or frozen assets or funds obtained from sanctioned individuals or regimes are not misplaced (World Refugee & Migration Council 2020). The best-known human rights reparations fund already in place is the UN International Court Trust Fund for Victims established under Article 79 of the Rome Statute (ICC 1998). The ICC victim’s fund is *inter alia* financed through the fines and forfeitures received from those persons convicted in court. A similar arrangement based on asset recovery for perpetrators of human rights abuses could be established for individuals who are forcibly displaced (Peden 2023: 893–99).

A related positive development coming out of the 2022 climate summit in Egypt is the decision to establish a global loss and damage fund to help poor countries cope with climate disasters. While the true value of such a proposal remains to be seen, it is an encouraging sign of the need for wealthy industrialised countries to take some responsibility for compensating other states for destruction and loss caused by global warming. In that regard, the proposed fund creates an important opportunity and welcome precedent (Bhutto Zardari 2022).

Concluding Remarks

There is no easy road ahead on forced displacement. There needs to be political will by states to promote and implement rights-based protection outcomes and solutions. The inability of major institutions like the United Nations to find political solutions is increasingly apparent. Consequently, mitigating harm and maximising humanitarian response is an approach that several IOs, NGOs and states promote to address a growing number of crises.

However, even political solutions are not impossible. Courageous leadership and prioritising assistance and solutions can move us forward. But this can only happen with political will exercised by states and other actors, including CSOs and individuals working internationally, nationally and collectively.

History shows that commitment to diplomacy and negotiated solutions are always worth the effort. The world cannot afford more endless refugee situations without solutions. That will only lead to resentment, harm and increased global insecurity. Refugees and other forcibly displaced persons are in themselves not a security concern. But failing to find solutions can lead to frustration, anger and security issues at various levels. Although some commentators have proposed developing new institutions to deal with the anticipated increase in global migration due to environmental factors and related conflict due to scarce resources, it is arguable that existing human rights frameworks provide the necessary legal tools we can use to craft inclusive policy decisions and sustainable programmes.

Beyond human rights implementation and fair migration policy, more human rights and humanitarian funding, along with a more equitable system and better economic model, are required to ensure that any harm brought by aggressive Western development practices, especially in the developing world, is avoided. Outlining such a task is beyond the scope of this chapter. But in speaking of the ‘root causes’ of forced displacement, whether from conflict or environmentally induced, the vagaries of free market capitalism coupled with the economic might of transnational corporations are legitimate concerns and causal factors.

While no easy task, we need to redress the imbalance between national interests and protecting humanity with all the ingenuity, political goodwill and resources it takes to find just outcomes and solutions. We already have many good tools, examples and institutions, including civil society and refugee-led initiatives, to guide us and help do the work. More than ever, we need to ramp up our efforts to find the best way forward.

Notes

- 1 Born at the outset of the Cold War in 1949, NATO was established to meet three complementary objectives: to deter (former) Soviet expansionism, prevent the revival of a nationalist militarism through the strong military presence of North American actors in Europe and encourage European political integration. NATO has consistently been expansionist; 14 former communist countries are currently members. Today, the combined number of military personnel among NATO member states exceeds 5.4 million persons; of these, 1.34 million are from the United States. This represents four times as many military troops as the Russian Federation, for example, according to Statista. Currently, NATO has some 40,000 troops under its direct command in Eastern Europe, 30,000 of them organised in eight battlegroups, supported by a vast array of military assets.
- 2 The P5 member states are China, France, Russia, the United Kingdom, and United States of America.
- 3 In addition to the principal organs of the UN (General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice (ICJ) and Secretariat, there are 14 funds and programmes and other entities, including UNDP (UN Development Programme), UNEP (UN Environment Fund), UNFPA (UN Populations Fund), UN-Habitat (UN Human Settlements Programme), UNICEF (UN Children’s Fund), WFP (World Food Programme), ITC (International Trade Centre), OHCHR (Office of the High Commissioner for Human Rights), UNAIDS (Joint United Nations Programme on HIV/AIDS), UNCTAD (UN Conference on Trade and Development), UNHCR (UN High Commissioner for Refugees), UNOPS (UN Office for Project Services), UNRWA (UN Relief and Works Agency for Palestine Refugees), and UN Women (UN Entity for Gender Equality and the Empowerment of Women). The United Nations has five regional commissions based in Africa (ECA), Europe (ECE), ECLAC (Latin America and the Caribbean), Asia-Pacific (ESCAP), and Western Asia (ESCWA), and several coordination bodies, including the Chief Executives Board (CEB), Office for the Coordination of Humanitarian Affairs (OCHA), and the International Civil Service Commission (ICSC). Some 120,000 personnel working for the United Nations around the globe. This number increases if you include non-UN contract holders and consultants. Peacekeepers are not considered UN staff but are engaged on loan from troop-contributing countries. There are currently 97,000 peacekeepers (military, police, civilian personnel) from over 120 countries. Only 73 UN member states have to date accepted the compulsory jurisdiction of the International Court of Justice, the principal judicial organ of the United Nations.
- 4 UNHCR’s financial requirements for the Ukraine situation alone are currently US\$1.1 billion.
- 5 Statistics on file with the author were kindly provided by UNHCR Headquarters.

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24 Carbon, Confusion and Conflict

Global Governance Implications of the Net-Zero Energy Transition

Joshua Lincoln

Introduction

The contours of a fundamental global shift have emerged in less than a decade since the 2015 Paris Climate Agreement (United Nations 2015). That shift has in short order affected every economy, government and community on the planet. It is tempting to think of climate change as ‘yet another’ crisis on a par with food security or financial stability. That the global decarbonisation pivot is a matter of common survival has only recently been accepted by global decision-makers. It is the only path available to limit global warming to 1.5°C, the benchmark now understood as necessary to avert the kind of climate change that would be catastrophic. It is arguably the first instance of a major pivot in human affairs being impelled by an urgent global scientific consensus—as distinct from war, technological advance, disease or economics.

At the same time, because of its unusual genesis, its speed and its diffuse character — the urgent need for combined shifts in the economic, industrial, technological, and social spheres—this transition is poorly understood, especially by traditional policy communities and social science more widely. Though aspects of this shift may be reminiscent of prior global inflection points such as the Industrial Revolution of the 18th century, post-World War II reconstruction or the 1970s oil crisis, it is unprecedented, and its medium-term global governance implications have only superficially been explored.

This shift has picked up remarkable speed. By June 1, 2023, net-zero targets covered 88 per cent of global emissions, 92 per cent of global gross domestic product (GDP), and 89 per cent of the global population, including 148 of 198 countries and self-governing territories, 931 of the largest 2,000 publicly traded companies, 252 of 1,186 cities over 500,000 population and 146 of 709 regions in the top 25 emitting countries (‘Net Zero Tracker’ 2023). Between December 2020 and June 2022 alone, the proportion of net-zero targets enshrined in domestic legislation or policy documents (as opposed to general declarations) grew from 10 per cent to 65 per cent of total global greenhouse gases (GHG) emissions covered (Hans *et al.* 2022: 20).

States have adopted mid-century deadlines between 2030 and 2070. Only a few states have set 2030–35 targets, including Bangladesh, Barbados, the Maldives, Mauritania, Finland, Uruguay, and South Sudan. Most states have chosen 2050. Only ten countries set later targets, but they include some of the world’s largest emitters (China, 2060; India, 2070), accounting for 55 per cent of all emissions by countries with net-zero targets (Hans *et al.* 2022: 19).

Beyond the work of planetary scientists, it is arguably global business that understood the repercussions of the problem first—viz., the fierce protectionist behaviour of big oil

since the 1970s—and their reaction is most focused on the shift’s economic and financial requirements. Wider mid-century social, governmental, intergovernmental, and global governance implications are yet to be drawn.

Several decades of resistance and denial have given way to a simultaneous race and scramble: a race for new technologies and sources of renewable energy that recall the arms race and the early political economy of oil, and a scramble for the key resources of the future that is reminiscent of bygone colonial resource grabs. No nation or economy can opt out of the shift because it entails both costs and benefits and will determine who leads, prospers and suffers in the next era.

Net-zero commitments today are still very general, and many governments, companies, cities, and communities do not yet know how to make the necessary changes. The Net Zero Stocktake 2022 Report notes that net-zero pledges still lack transparency and integrity:

More net zero targets alone cannot deliver the temperature goals of the Paris Agreement; the focus needs to be on better targets and identifying the ones that are not credible. While we observe some increase in the robustness of commitments, especially at the national level, an alarming lack of credibility still pervades the entire landscape. (Hans *et al.* 2022: 5)

As targets become universal, the focus moves to pledge integrity and specificity and delivery strategies (Wolf *et al.* 2022). This profound challenge notwithstanding, the direction of travel is now set: the 2015–70 net-zero pivot will define the century.

From Scientific Concept to Geopolitical Reality

Net Zero as Climate Science Concept

The term ‘net-zero emissions’ is defined for the purposes of this chapter as ‘a balance between ongoing anthropogenic release of GHGs into the atmosphere and active GHG removal either through direct capture and disposal or anthropogenically enhanced natural removal processes; the term may be applied to an individual gas, such as CO₂ [carbon dioxide], or a basket of gases combined using a GHG metric’ (Allen, Friedlingstein *et al.* 2022: 878).

It has been less than 15 years since the first scientific papers identified the need for net-zero CO₂ emissions or outlined the concept of an atemporal carbon budget (Allen, Frame *et al.* 2022: 850). At first, scientific inquiry on a warming planet focused on CO₂ *concentrations* and *final* temperatures. It was only in 2009—in the run-up to the failed Copenhagen summit—that the first published studies showed that it is the *accumulation over time* of emissions of very-long-life GHG like CO₂ that principally determines the maximum projected warming of the planet. On the basis of two such studies (which they had contributed to), Allen, Frame and others argued in the journal *Nature* in 2009 that ‘the close link between cumulative CO₂ emissions and peak warming means that the scientific logic of some kind of limit is inescapable’ (Allen, Friedlingstein *et al.* 2009: 56–57).

That fundamental insight was most recently confirmed and upheld by the Intergovernmental Panel on Climate Change (IPCC) in 2021: ‘[F]rom a physical science perspective, limiting human-induced global warming to a specific level requires limiting cumulative CO₂ emissions, reaching at least net-zero CO₂ emissions, along with strong reductions in

other greenhouse gas emissions'. Over the period 1850–2019, an estimated 2,390 billion tonnes of anthropogenic CO₂ was emitted, and the IPCC estimated that the remaining global carbon budget for a 50 per cent chance of staying within 1.5 C warming was around 500 billion tones at the start of 2020 (Masson-Delmotte *et al.* 2021: 27–28).

Net Zero as Global Norm and Geopolitical Reality

The science of net zero was first crystallised in 2013 in The IPCC Fifth Assessment Report before being embedded in the 2015 Paris Climate Agreement, though the term 'net zero' itself was not mentioned. Article 4.1 states, 'In order to achieve the long-term temperature goal set out in Article 2 [to maintain global average temperature well below 2°C above pre-industrial levels and limit the temperature increase to 1.5°C], Parties aim... to achieve a balance between anthropogenic emissions by sources and removals by sinks of GHG in the second half of this century' (United Nations 2015).

In 2017, Sweden was the first nation to legislate a mid-century—2045—net-zero target, followed in 2019 by the United Kingdom, the first large G7 economy, which set the target at 2050. A year later, China, the world's largest current emitter, committed to a 2060 target. Having withdrawn from the Paris Agreement in 2017, the United States, the world's largest historical emitter, re-joined the Agreement in 2021 and committed to a 2050 target. By 2021, the Glasgow Climate Pact explicitly called in art. 22 for net zero around mid-century and urged all parties (art. 32) to communicate their long-term low-emission development strategies (United Nations 2021).

In sum, net zero is a scientific concept now embedded in various international agreements and a matter of state, diplomatic and C-suite executive action in a remarkably short span of time. It arises out of urgent but inescapable necessity but gives rise to considerable potential opportunity. The world, including its three largest carbon emitters, has started to decarbonise in response. In 2022, investment in the low-carbon energy transition jumped 31 per cent to exceed \$1 trillion for the first time and draw level with fossil fuels; one in every seven new cars rolling off the 2022 production line was electric; the global wind energy market passed the 1 terawatt (TW) threshold of installed capacity in 2023 (BloombergNEF 2023; Mackenzie 2023; Meyer 2023).

The rest of this chapter assesses the implications of the 2015–2070 net-zero transition for global governance. It argues that the transition will affect international relations and global governance in two major and distinct ways. First, the transition will expose a set of states to unprecedented vulnerability and threaten their social stability. Second, the transition will itself create new interstate tensions as the materials, technologies and markets needed to prosper or dominate in the next era become a central cause of competition, friction and conflict. These two patterns have implications for global governance for the rest of the 21st century: they will affect existing multilateral (including regional) institutions and processes well beyond the current climate governance architecture; they have already produced a proliferation of new institutions and processes which are likely to need rationalisation; and additional institutions and state groupings are likely to emerge.

Increased State Vulnerability and Fragility

The net-zero transition will expose a non-negligible number of countries to unprecedented instability. This includes states (a) whose economies are highly dependent on fossil fuels, (b) who will likely see their fiscal oil and gas revenues drop drastically in the

coming decades or (c) who will find it difficult to muster the unprecedented human, capital and technological resources needed to carry out the deep economic transformation required. Any or all of these will be more difficult where countries are (d) already seriously affected by climate change, (e) caught in a low development cycle, (f) already heavily indebted, or (g) already experiencing social fragility or conflict. Drastic change and disruption at the domestic level can be expected to translate into change and disruption at the international level.

The First Hurdle: Subsidy Phase-Outs and Energy Volatility

Energy availability and price are critical to consumers and economic activity. As the energy sector decarbonises, it is forecast that the global average cost of electricity will increase in the near term before decreasing again for good, disproportionately affecting lower-income countries and populations.

States rich in oil and gas (and others too) have used fossil fuel consumer subsidies—usually at the gas pump or through household heating costs—to redistribute mineral wealth to the people who cannot participate in or profit from production or other business activity. Such subsidies often generate overconsumption, are wasteful and benefit wealthier portions of the public, such as car- and homeowners.

Reducing emissions and transitioning to clean energy requires eliminating subsidies early in the transition. Nonetheless, phasing out subsidies can trigger social unrest or violence because it causes consumer energy costs to rise, affects transportation for the poorest and is perceived as a social injustice. In the last 15 years, Bolivia, Ecuador, France, India, Indonesia, Jordan, Kazakhstan, and Yemen (to name a few) have experienced marked social unrest when trying to phase out fuel subsidies or apply new fuel taxes.

The 2021 Glasgow Climate Pact (United Nations 2021: art. 36) called on states to ‘phase out of inefficient fossil fuel subsidies, while providing targeted support to the poorest and most vulnerable in line with national circumstances and recognising the need for support towards a just transition’ (United Nations 2021). Since 2015, a growing number of countries have been experimenting with (smarter) subsidy reform even as calls grow for the World Trade Organization to reconsider the energy implications of its Agreement on Subsidies and Countervailing Measures (ASCM). But eliminating consumer subsidies precisely when world energy prices are rising sharply compounds the pain for the most vulnerable and can threaten the stability of governments.

In 2021, we saw an alarming preview of how global energy prices can surge and market imbalances can affect consumers. Natural gas price benchmarks in parts of Europe and Asia were ten times higher in October 2021 than one year prior, while U.S. natural gas prices reached their highest level since 2008. International coal prices were also sharply higher, at five times their fall 2020 levels. After a pandemic dip, subsidies rose again, exceeding \$1 trillion for the first time. The International Energy Agency (IEA) estimates that 2022 gas and electricity subsidies doubled over the previous year, while oil subsidies increased by 85 per cent. But at present, no country is fully pricing all supply and environmental costs into all fuels. Once ‘true’ supply and environmental costs are factored in, the International Monetary Fund (IMF) finds that 2020 fossil fuel subsidies were \$5.9 trillion or 6.8 per cent of global GDP (Parry, Black and Vernon 2021: 3).

The subsidies are concentrated in emerging markets and developing economies, and more than half were in fossil fuel exporting countries. The largest subsidisers in 2021 were (in order) Russia, Iran, China, India, Saudi Arabia, Egypt, and Indonesia (IEA

2023). Several governments, including India, Japan, South Korea, the United Kingdom, and the United States, also tapped their strategic oil reserves. The pattern is clear: looking ahead, governments will need to manage a demanding energy transition (including the phasing out of fossil fuel subsidies) even as their countries are battered by multiple supply and demand shocks.

The Fiscal Fallout: Government Revenue Losses and Social Responsibilities

The fiscal lens offers one important way to assess vulnerability to the net-zero transition. A 2021 study by the Carbon Tracker Initiative¹ finds that under a low-carbon scenario, worldwide combined global government oil and gas revenues would be \$13 trillion lower (51 per cent less) than expected by industry over the next two decades, driven mainly by a drop in prices, but also in volume sold. Of that, \$9 trillion would be absorbed by the 40 states with the greatest current fiscal dependence on oil and gas revenues. Of those 40 countries, 23 face a shortfall of more than 50 per cent of their hydrocarbon revenues in the next 20 years (Coffin, Dalman and Grant 2021: 6–10). A similar taxonomy is offered in a World Resources Institute study of transition impacts on workers and communities in middle-income developing countries whose economies rely heavily on oil and gas (Saha *et al.* 2023: 8–9).

For the seven most fiscally vulnerable countries, Angola, Azerbaijan, Bahrain, Equatorial Guinea, Oman, South Sudan, and Timor-Leste, average revenue shortfalls between 54 per cent and 93 per cent will compound rates of fiscal dependence on oil and gas between 52 per cent and 81 per cent. In the second tier, 12 countries: Surinam, Gabon, Chad, Algeria, Trinidad and Tobago, Nigeria, Congo, Brunei, Saudi Arabia, Libya, Kuwait, and Iraq, combine slightly lower but still paralysing revenue shortfalls and oil and gas fiscal dependence. For example, Nigeria's oil and gas revenues currently account for 45 per cent of its fiscal intake, and it stands to lose 69 per cent of it over the next 20 years; Libya is dependent on oil and gas for 72 per cent of its current revenues and faces an expected shortfall of 44 per cent (Coffin, Dalman and Grant 2021: 49–50).

In the third tier are three consequential cases: Russia is dependent on oil and gas for 23 per cent of its total fiscal revenues and faces a 47 per cent shortfall; Iranian oil and gas make up 37 per cent of its revenues which are expected to drop by 39 per cent; Mexico, which relies on oil and gas for only 18 per cent of its revenues, will lose 84 per cent of it. Together, these countries account for 760 million people.

The fiscally vulnerable states differ in their financial position and ability to respond to these changes. While some have significant sovereign wealth funds, many are already at historically high levels of indebtedness or are struggling to secure basic credit (Coffin, Dalman and Grant 2021: 36–39). Falling gas and oil revenues have multiple repercussions. They erode a government's ability to provide national education, healthcare, security, and transportation. But they also mean less revenue for the sub-national governments that deliver vital social services locally. Public-sector employment falls, as does indirect industry-related employment at the community level. Finally, they can also cause governments to cut subsidies too abruptly (Saha *et al.* 2023: 13).

Though policy prescriptions are not the focus here, there are a number of measures governments can take, including diversifying their economies into services, capturing greater revenue from declining oil and gas resources, expanding tax revenues, incentivising the reinvestment of fossil fuel revenues into long-term non-fossil-fuel assets, boosting innovation, and regulating limits on investment in further oil and gas development (Coffin, Dalman and Grant 2021: 13–14; Peszko *et al.* 2020).

The Capacity Quandary: Jobs and Capital for Infrastructure Investments

A second lens for assessing vulnerability is to look at how well a country is positioned in its capacity to make the required economic pivot, to both seize its opportunities and weather its difficulties. One way to assess this ‘transition exposure’, as McKinsey did in a 2022 study, is to look at the share of an economy’s jobs and capital stock in sectors with emissions-intensive operations, products and supply chains.²

Broadly speaking, the net-zero transition will require a set of urgent and disruptive labour reallocations across sectors and countries. Beyond early energy bumps and oil and gas fiscal weakness, it is unevenly distributed job losses and gains that could prove most socially disruptive as economies transition. The McKinsey study estimates about 200 million direct and indirect jobs gained and 185 million lost by 2050. Some 40 million of the 200 million new jobs will relate to the surge in capital spending (such as building solar or wind farms) and are essentially temporary. The 185 million jobs lost are related strictly to the transition itself and not to other factors like population growth or other societal or industrial shifts, such as remote work, automation, digital commerce, which may in fact be considerably larger (McKinsey 2022: 25–27).

In the energy sector worldwide (65 million people in 2019), the IEA projects considerable shifts in employment as renewables scale up. Job growth will accompany the building of low-emissions infrastructure; job losses will flow from reduced fossil fuel (oil, gas, coal) power and related industrial activities. Across all regions except the Middle East and Russia, clean energy jobs (33 million) already exceed fossil fuel jobs (32 million) and will grow to almost 55 million by 2030 (IEA 2022b: 6; IEA 2022c: 22).

The scale of these numbers translates into considerable uncertainty and fluidity across economies. For example, the fossil fuel power sector’s demand for workers would decrease by four million jobs (60 per cent of today’s workforce), while the renewable power sector’s demand will grow by six million jobs by 2050, though some of those are temporary. The timing of the two trends relative to each other is critical: When specifically in a given economy will demand ramp up for the ‘new’ jobs, relative to the decrease in demand for the ‘old’ jobs? In another example, as food consumption shifts to low-carbon, emissions-intensive meat or livestock farming could lose 19 million jobs, while poultry farming could gain 10 million jobs (McKinsey 2022: 25–27).

In each case, there are winners and losers, but they are not the same people, not mutually replaceable, not transferable, nor even co-located. To give one illustration from the United States: a Gulf Coast oil rig worker might hypothetically transition into a Maine wind farm technician or a Texas cattle rancher into an Arkansas chicken farmer, but not without considerable planning, government support and business investment.

Inequality within: High-Emissions Sectors Will Suffer Disproportionately

The transition will affect all sectors of the economy connected to energy and land-use systems but will have the largest impact on those sectors that produce high emissions, sell high-emissions products or services, or are marked by high-emissions supply chains. Combined, this is roughly 30 per cent of global GDP. The other 70 per cent, though less exposed, is still dependent on that core 30 per cent (McKinsey 2022: 31). Job losses and gains will unduly affect specific sectors and sub-regions, especially those heavily associated with coal, oil and gas extraction, mining, refining, power generation, and auto manufacturing. Some but not all of these effects can be mitigated.

The energy transition has special implications for the oil and gas sector. Like other extractive industries, it creates far more indirect and induced jobs than formal direct jobs. These indirect jobs are often more insecure and informal in character. Their operations are highly concentrated in specific regions where they usually capture the local economy. Rates of unionisation vary considerably, which affects bargaining power. Contract workers are ubiquitous and may be left out of transitional discussions. Direct employees have higher wages than average and may not find non-oil jobs with equal pay. Finally, though women make up a small portion of formal employment, they represent a significant portion of the indirect jobs and will be significantly affected (Saha *et al.* 2023: 16–18).

The more these sector transitions are disorganised, disjointed or unmanaged, the more disruptive they will become socially and economically, with domino effects at national and international levels. How this very complex but vital part of the net-zero transition is managed will be critical and may determine its success or failure. Governments will come under strain if vulnerable or low-income segments of society are hard hit by job losses in specific sectors simultaneous with the wider impact of rising consumer energy costs. And several additional factors can compound the situation: lack of job transition support, hiccups in the energy transition itself (energy blackouts, transportation problems, loss of service) or the perception that the transition is socially unfair. This has prompted the IEA to call for a new approach to energy security:

During energy transitions, both systems are required to function well in order to deliver the energy services needed by consumers, even as their respective contributions change over time. ... Inclusive, people-centred approaches are essential to allow vulnerable communities to manage the upfront costs of cleaner technologies and ensure that the benefits of transitions are felt widely across societies. Even as transitions reduce fossil fuel use, there are parts of the fossil fuel system that remain critical to energy security, such as gas-fired power for peak electricity needs, or refineries to supply residual users of transport fuels.

(IEA 2022c: 25)

Inequality Without: Lower GDP or Fossil Fuel-Dependent Countries Are Most Vulnerable

The world's largest economies—the United States, China, the European Union, Australia, Canada, Japan, and the United Kingdom—will need to spend about 6 per cent of their combined GDP from 2021 to 2050 to build up the physical assets they need for the transition related to decarbonisation and low-carbon growth. By comparison, countries in sub-Saharan Africa, Latin America, India, and some parts of Asia will need to spend about 10 per cent of regional GDP for the same purpose. Countries in the MENA (Middle East and North Africa) and CIS/CA regions (Commonwealth of Independent States/Central Asia) will have to spend an average of 18 per cent of regional GDP (McKinsey 2022: 34–36).

Two categories of countries are most vulnerable. First, countries with a greater proportion of their jobs, infrastructure, GDP and capital committed to high-emissions activities will require a disproportionate effort to reduce that dependency and build a more diversified economy. Even if their higher GDP and/or diversifying economy makes them

less vulnerable than others, oil and gas producers like Russia, Saudi Arabia and Qatar have highly dependent economies and will face an arduous economic transition.

More dramatically, developing countries with lower GDP per capita will have to make a greater proportional economic effort to reduce emissions, build a low-emissions economy and continue to advance economic development. But the greatest challenge falls to countries which have a lower GDP *and* whose economies are exposed to the risks of the net-zero transition. They must simultaneously continue to grow, decarbonise their economy, protect against the increasing physical disruptions of climate change itself, *and* minimise their exposure to various destabilising transition risks; moreover, they often have less access to capital markets and technology (McKinsey 2022: 36–37).

The most vulnerable states combine GDP per capita under \$5,000 and an economy highly exposed (between 45 and 59 per cent) to the transition: Bangladesh, Bolivia, Egypt, Ghana, India, Kenya, Nigeria, Pakistan, Ukraine, Vietnam fall in this category. Many of these countries are also exposed to high physical risks (storms, drought or flooding). Additionally, a second group of countries with GDP per capita below \$30,000 and a transition exposure score between 30 and 45 per cent are notable for their pivotal roles in global governance today, such as Brazil, China, Mexico, Russia, and Saudi Arabia.

Painting a Picture: The Transition Will Compound Existing Challenges

It is known that the physical risks of accelerating climate change disproportionately affect certain regions. This brief review highlights the degree to which decarbonisation will also burden the same vulnerable regions, countries and people. Table 24.1 identifies a set of 51 countries (roughly a quarter) that combine some of the aforementioned factors.

The relationship between low (or slow) development, political instability, underlying state fragility, and conflict is well established and the subject of a considerable literature beyond the scope of the present chapter. Of the 51 countries identified in Table 24.1, 9 are classified as Least Developed Countries (LDCs), 6 as Heavily Indebted Poor Countries (HIPC)s and 14 as ‘fragile and conflict-affected situations’ (FCS) by the World Bank. Using the Stockholm International Peace Research Institute’s (SIPRI) annual 2021 survey of global conflict, two are classified as ‘major armed conflicts’ (10,000+ annual deaths: Yemen and Myanmar), ten as ‘high-intensity armed conflicts’ (between 1,000 and 10,000 deaths: Nigeria, the Democratic Republic of the Congo, Iraq, South Sudan, Sudan, Cameroon, Pakistan, Mexico, Brazil, and Colombia) and three (India, Pakistan and Azerbaijan) are engaged in more rare interstate conflicts (SIPRI 2023: 2). Finally, the table accounts for about a dozen current UN peacekeeping and special political missions (United Nations 2023).

Increased Interstate Competition and Conflict

There is a difficult truth at the heart of the net-zero transition. As critical as the transition is to the health of the planet, it is going to require far greater amounts of critical mineral materials. Clean energy technologies—solar plants, wind farms, electric vehicles, high-capacity batteries—all require more minerals than the oil-based technologies they replace: copper for next-generation electricity technologies and systems; lithium, cobalt, nickel, graphite, and manganese for new battery technologies; ‘rare earth’ elements³ (REEs) for magnets and motors; and the chemicals needed to refine them all.

Table 24.1 Countries most vulnerable to the net-zero transition—by region

	<i>Country Overall Vulnerability to the Net-Zero Transition^a</i>	<i>Lost Revenue: Potential oil and gas revenue shortfall over 20 years (%)^b</i>	<i>Fossil Fiscal Dependence: Current oil and gas share of total govt revenues (%)^c</i>	<i>Transition Exposure: Share of jobs, capital and infrastructure in exposed sectors (%)^d</i>	<i>2021 GDP per Capita: (US\$, market exchange rates)^e</i>	<i>Fragility: Status as an LDC, HIPC or FCS country^f</i>
		<i>Carbon Tracker Initiative</i>	<i>Carbon Tracker Initiative</i>	<i>McKinsey</i>	<i>International Monetary Fund</i>	<i>United Nations, World Bank</i>
AFRICA						
1	Algeria	70	39		4,160	
2	Angola	76	56		4,000	LDC
9	Cameroon	88	15		1,610	HIPC FCS
10	Chad	79	29		754	LDC HIPC FCS
13	Congo (DRC)	67	54		703	LDC HIPC FCS
16	Equatorial Guinea	70	81		10090	
18	Gabon	81	35		9,850	
17	Ghana			50	2,130	HIPC
24	Kenya			53	2,260	
30	Nigeria	69	45	50	2,580	FCS
39	South Sudan	72	78		569	LDC FCS
41	Sudan	87	12		929	LDC HIPC FCS
CENTRAL ASIA + CIS						
23	Kazakhstan	41	32		12,430	
37	Russia	47	23	39	14,700	
45	Turkmenistan	2	n/d		13,020	
48	Uzbekistan	35	n/d		2,550	
MIDDLE EAST = NORTH AFRICA						
4	Bahrain	70	72	37	29,080	
15	Egypt	45	7	49	4,440	
21	Iran	39	37		23,620	
22	Iraq	30	89		6,320	FCS
25	Kuwait	38	67	34	35,260	
26	Libya	44	72		6,390	FCS
32	Oman	54	76	35	23,190	
36	Qatar	41	34	52	89,420	
38	Saudi Arabia	44	69	47	27,010	
46	UAE	34	52	43	48,260	
51	Yemen	0	n/d		871	LDC FCS
AMERICAS						
6	Bolivia	76	19	49	3,790	HIPC
7	Brazil			33	9,570	
12	Colombia	88	3	41	6,940	
14	Ecuador	80	19	42	6,590	
28	Mexico	84	18	31	11,250	
35	Peru			42	7,350	
42	Suriname	94	28		5,040	

(Continued)

Table 24.1 (Continued)

	<i>Country Overall Vulnerability to the Net-Zero Transition^a</i>	<i>Lost Revenue: Potential oil and gas revenue shortfall over 20 years (%)^b</i>	<i>Fossil Fiscal Dependence: Current oil and gas share of total govt revenues (%)^c</i>	<i>Transition Exposure: Share of jobs, capital and infrastructure in exposed sectors (%)^d</i>	<i>2021 GDP per Capita: (US\$, market exchange rates)^e</i>	<i>Fragility: Status as an LDC, HIPC or FCS country^f</i>
		<i>Carbon Tracker Initiative</i>	<i>Carbon Tracker Initiative</i>	<i>McKinsey</i>	<i>International Monetary Fund</i>	<i>United Nations, World Bank</i>
44	Trinidad and Tobago	70	35		20,640	
49	Venezuela	76	n/d	40	3,270	FCS
ASIA + PACIFIC						
5	Bangladesh			53	2,850	LDC
8	Brunei	61	43		41,710	
11	China			48	13,630	
19	India			48	2,690	
20	Indonesia			44	5,010	
27	Malaysia	43	19	37	13,940	
29	Myanmar	45	n/d		1,170	LDC FCS
33	Pakistan			59	1,562	
34	Papua New Guinea	0	6		3,570	FCS
40	Sri Lanka			42	3,742	
43	Timor-Leste	93	52		1,490	LDC FCS
50	Vietnam			56	4,680	
EUROPE + CAUCASUS						
3	Azerbaijan	68	64		6,870	
31	Norway	44	15	29	88,750	
47	Ukraine	74	n/d	45	4,827	FCS

Note

^a Based on author analysis, the darkest shading denotes a country that is considered highly vulnerable to the net-zero transition because it has received the highest classification in at least two of the four other columns or been assigned a transition exposure indicator of 45 per cent and above.

^b Source: Appendix II, Table 4, Beyond Petrostates, Carbon Tracker Initiative (2021). Draws on data from Rystad Energy, IEA, IMF, SSB (Norway), CBL (Libya), CTI analysis. Darkest shading denotes potential oil and gas revenue shortfall above 63 per cent or 1/3 of last decade of revenues.

^c Source: Ibid. Darkest shading denotes oil and gas fiscal dependence above 63 per cent or 1/3 of total government revenues.

^d Source: The net zero transition: What it will cost, what it will bring, McKinsey (2022). McKinsey's Global Institute identifies a net-zero exposure score for each of the 69 countries in their study. The exposure score (%) is based on the average share of jobs, GDP and capital stock in exposed sectors, which are categorised based on their scope 1, 2 and 3 emissions intensity. Individual country scores provided care of the MGI. They draw on the following sources: Oxford Economics, OECD, ILO, World Input-Output Database, IHS Connect, World Bank, International Energy Agency, U.S. Bureau of Labor Statistics, India NSS Employment Survey, China National Bureau of Statistics, United Nations, International Renewable Energy Agency (IRENA), MIN-STAT, INDSTAT, Global Solar Atlas, Global Wind Atlas, U.S. Geological Survey, WEF, McKinsey Nature Analytics, McKinsey Global Institute analysis. Darkest shading denotes the most vulnerable category (4).

^e Source: Data Source: IMF WEO April 2022 and IMF WEO October, 2022.

^f For the United Nations' list of 2021 Least Developed Countries (LDCs), see <https://www.un.org/development/desa/dpad/least-developed-country-category/ldcs-at-a-glance.html>. For World Bank's Heavily Indebted Poor Countries (HIPC) list, see <https://data.worldbank.org/country/XE>. For World Bank's 2023 classification of Fragile and Conflict-affected situations (FCS), see <https://www.worldbank.org/en/topic/fragilityconflictviolence/brief/harmonized-list-of-fragile-situations>.

A Transition Indeed: From Fossil Fuels to Minerals

An electric car requires six times the mineral inputs of a combustion engine car, while an onshore wind plant requires nine times more mineral inputs than a gas-fired power plant. The IEA anticipates a 4 per cent to 600 per cent increase in minerals demand by 2040. Demand for electric vehicles (EVs) and battery storage minerals will grow fastest: lithium by a factor of 40, graphite, cobalt and nickel by a factor of 20 to 25 (IEA 2021: 8). This demand creates significant new economic opportunities for mineral exporting countries, which will face a situation not unlike that of oil exporting countries. As Daniel Yergin notes, ‘big shovels’ are replacing ‘big oil’ (Yergin 2020: 422).

This surge in demand prompts ‘energy security’ concerns about availability and reliability. Existing supply chains are geared toward old models and volumes of demand. Energy transition minerals are more highly geographically concentrated than oil or gas. A very small number of nations control the global production of lithium, cobalt and rare earth elements. Australia and Chile produce 70 per cent of lithium, the Democratic Republic of the Congo (DRC) 70 per cent of cobalt, China 60 per cent of REEs, Indonesia 30 per cent of nickel and Chile and Peru 40 per cent of copper.

The midstream processing of these minerals is even more concentrated. At present, China refines 35 per cent of nickel, 50–70 per cent of lithium and cobalt and 90 per cent of REEs. Finally, the extraction and production of these transition minerals are capital intensive, require very long lead times and are subject to declines in ore quality (a growing concern in recent years) and high exposure to physical climate risks (Bazilian and Brew 2022; IEA 2021: 11–12). Quasi-monopolistic concentrations in critical commodity markets can create bottlenecks and uncertainty around steady supply. For the first time in a decades-long decline in the cost of clean energy technologies, recent price increases in lithium, copper and several other materials have translated into higher manufacturing costs for wind, solar and EV batteries (Birol and Canfin 2023).

The Next Great Power Competition?

The result of a surging global demand and an inadequate, geographically concentrated supply is accelerating competition. At the great power level, that competition has been in evidence in Sino-U.S. relations for some years, even if not clearly understood. Indeed, China appears to have first identified its own long-term energy and mineral supply chain vulnerability. China’s dominant position on minerals today is the fruit of more than a decade of careful planning and expansion: the Belt and Road Initiative (BRI) land, sea and air network connecting present and future markets and primary materials from as far away as sub-Saharan Africa and Latin America.

Beyond China’s own natural endowments in REEs and dominance of midstream processing, it has also invested in mines in the DRC, Brazil, Chile, Indonesia, Argentina, Zimbabwe, Ireland, Canada, and Australia (Bazilian and Brew 2022; Castillo and Purdy 2022: 7; IEA 2021: 12). As a result, China is today the most consequential country in the world with respect to energy transition minerals. Downstream, it accounts for three-quarters of the global production capacity of lithium-ion batteries and EV batteries, and the bulk of solar panels (Bazilian and Brew 2022) and leads research and development on sodium batteries.

The United States has, in recent decades, largely lost its market share as a producer of lithium and has little midstream refining or downstream manufacturing capacity. In

response, recent legislation aims to rebuild the United States' capacity to produce and supply key critical minerals to power the renewable energy and mobility transitions. U.S. industry is now incentivised to ramp up domestic production of the minerals and components that go into batteries, EVs and renewable power infrastructure. Multiple new massive lithium-ion batteries factories are in development (Bazilian and Brew 2022). India, whose energy demand is set to grow more than that of any other country, began focusing on critical minerals policy around the same time as China with a 2011 Planning Commission report and subsequent work. Current recommendations include increased domestic exploration, mining research and development and joint trade partnerships with key governments and acquisition of overseas mining rights (Gupta, Biswas and Ganesan 2016: 43–46).

For many Western governments, the onset in 2022 of the Ukraine War was a vulnerability wake-up call and prompted calls for more secure and resilient mineral supply chains (Castillo and Purdy 2022: 9). Europe is moving along a path similar to that of the United States with a broad strategy of investment in new mines and refineries, innovation, recycling, and higher sustainability standards. A draft Critical Raw Materials Act aims at mitigating future shocks (Birol and Canfin 2023). Beyond the EU, India has placed the issue on the G20 agenda under its own chairmanship (Council on Energy *et al.* 2023). And in its 2022 ministerial communiqué, the IEA committed to further work on the availability, security and responsible sourcing of critical minerals and materials. It also launched a voluntary critical minerals security programme to include stockpiling, cooperation, and data sharing (IEA 2022a).

There are important choices ahead for all players, with profound consequences for international cooperation. Castillo and Purdy identify several interesting scenarios. Optimally for the energy transition, China's dominance of critical minerals supply chains would give way to substantial diversification (United States, Europe) of upstream production, midstream refinement and downstream manufacturing. China would improve its due diligence on critical minerals, opening the way to a globally harmonised set of standards. This scenario is optimal for the transition itself, given the accelerating demand for these minerals. Alternatively, a diversified but bifurcated 'cleaner' and 'dirtier' minerals system would evolve. If China maintains its dominance and does not strengthen due diligence, supply chain hiccups and geopolitical tensions could affect the flow of critical minerals and the transition (Castillo and Purdy 2022: 21–28).

Two tiers of competition are therefore likely. First, at the great power level, China, the United States and the European Union (and perhaps India) will vie for overall control or energy independence from each other at the systemic level. Second, 'major producers' like Australia, Chile, Peru, the DRC, and Indonesia will find themselves dealing with both the competing great powers and with a wide range of other countries eager to access a steady supply of the requisite minerals.

There is of course a long historical relationship between fossil fuels, conflict and geopolitics, from the Biafra secession attempt (1967–70) in Nigeria through the 1990–2003 United Nations Security Council Iraq trade embargo and oil-for-food programme or U.S. oil sanctions on Venezuela or Iran. But Russia's invasion of Ukraine provides perhaps the first window into the relationship between great power geopolitics, conflict and the net-zero transition itself in the decades ahead. The Ukraine conflict was not triggered by the net-zero transition nor by a resources dispute. But, as the world largest exporter of fossil fuels, its web of energy relationships was deeply affected, with a profound effect on the pace of the overall energy transition (IEA 2022c: 19). The *Economist* concludes

that the war may have fast-tracked the entire transition by ‘an astonishing’ five to ten years (‘War and Subsidies’ 2023). Specifically, Russia’s decision to cut natural gas to Europe and European sanctions on Russian oil and coal effectively caused a reorientation of a significant part of the global energy trade to Russia’s ultimate disadvantage.

Europe had planned to wean itself off Russian fossil fuels, but only very gradually, given Russia’s ability to deliver oil and gas at relatively low cost. The invasion triggered a final rupture that could not have been imagined even a year before the war: Russian fossil fuel exports are expected never to return to 2021 levels (IEA 2022c: 24).

A New Front between the Developing and the Developed Worlds?

Beyond superpower competition or friction between major minerals producers and consumers, the climate agenda of the last 15 years is polarising developed and developing nations (Yergin 2022: 11–12). The core issues are disagreements over the speed of the transition, how development priorities will be affected, and who will pay for past and current pollution.

Faced with the long tail of COVID-19 and the economic consequences of the war in Ukraine, many developing countries are struggling to meet their social commitments to their own citizens and their debt obligations to international lenders. Many continue to rely on fossil fuels, both production and consumption, to power their economies and develop their countries.

Global finance is the main battlefield of this polarisation. Developed nations and the multilateral banks they control have started to withhold financing on capital projects (powerplants, mines, pipelines, ports) which they judge to be too fossil fuel oriented (Yergin 2022: 12). In parallel, they have yet to meet their earliest green financing pledges in support of the transition. Beyond the fact that the transition cannot succeed if industrialised countries do not provide the required support (Gallagher 2021), the increasing acrimony is a risk to the transition itself.

Implications for Global Governance

Given what (little) we discern of the transition’s requirements and effects, several preliminary observations emerge.

Instability and Conflict Must Be Expected

An Uncertain Future for the Most Vulnerable States

There will be great variation within and between regions. Some countries will prosper; others will weather the transition; some may not survive it (see Table 24.1). Africa is the most vulnerable region with a group of nations that combine very high potential losses of oil and gas revenues, a high degree of fiscal dependence on oil and gas, and very low development levels. How will countries like Cameroon, Chad, the Democratic Republic of Congo, South Sudan, and Sudan, each with per capita GDP below \$2,000, manage total revenue losses (combining rates of projected oil and gas shortfall and rates of fiscal dependence) of 10 to 56 per cent? How can Nigeria manage the loss of 31 per cent of its income over the next 20 years with a GDP per capita of \$2,580?

In the Americas, equally dramatic revenue shortfalls are mitigated by much lower fiscal dependence on oil and gas and higher GDP per capita. Challenging cases include

Bolivia (total revenue shortfall of 14 per cent against a GDP per capita of \$3,790), Venezuela (very similar to Bolivia, some data missing), Ecuador (total revenue shortfall of 15 per cent against a GDP per capita of \$6,590) and Surinam (total revenue shortfall of 26 per cent against a GDP per capita of \$5,040). Even at higher GDP levels, questions remain: how well can countries like Mexico or Trinidad and Tobago manage total revenue shortfalls of 15–25 per cent against a GDP per capita of \$10–20,000?

By comparison, the MENA feature the highest levels of fiscal oil and gas dependence. Potential oil and gas revenue shortfalls are significant but lower than Africa and softened by higher GDP per capita. Iraq and Libya face total revenue shortfalls of 26–31 per cent against per capita GDPs of \$6,000. By contrast, Bahrain, Oman and Saudi Arabia face higher total revenue shortfalls (30–50 per cent) but against higher per capita GDPs (\$20,000–\$30,000). While there is no oil revenue data for Yemen, its GDP per capita (\$871) makes it acutely vulnerable.

Asia differs again in that it faces neither the same dramatic oil and gas revenue shortfalls nor fiscal dependence. Timor-Leste (total revenue shortfall of 48 per cent against a GDP per capita of \$1,490) is the notable exception. But Asia does include several countries with a different challenge profile: very high exposure, low per capita GDP and acute climate physical risks. These include Bangladesh, China, India, Pakistan, Sri Lanka, and Vietnam.

Finally, the CIS, Central Asia and the Caucasus do not feature the difficult combinations noted earlier to the same degree of severity with the exception of Azerbaijan (total revenue shortfall of 43 per cent against a GDP per capita of \$6,870), though data is missing for several important cases (Ukraine, Turkmenistan, Uzbekistan).

Anticipating how the transition will unfold is difficult, and new economic opportunities will certainly mitigate some of the aforementioned difficulties. But at continental and global levels, the picture is clear: a non-negligible number of states face considerable additional fiscal and macroeconomic headwinds beyond their present challenges. Future state paralysis, failure or fragmentation is possible. Crucially, then, the custodial work of global governance institutions like the Security Council, Peacebuilding Council, Human Rights Council, World Bank, and IMF with respect to state fragility and failure looks to continue through the transition.

The Growing Gap between Developed and Developing Countries

The pattern of individual vulnerability suggests that at the group or regional level, the current fault line between developing and developed nations is unlikely to fade away. Developing nations have long harboured suspicions concerning developed nations' good faith with respect to the unfinished developmental agenda. At the same time, climate change is a problem created by the Global North. For developing nations, therefore, the 2015 Paris Agreement fell within a climate-development nexus in which poverty, prosperity, environmental protection, and climate change are linked. Developed nations did not necessarily share this framing. In the rush to a climate change agreement, broad principles were laid down, but climate financing details were not.

In the years immediately after the agreement, developed nations moved far more quickly to the emissions side of implementation than to adaptation and financing. The Western 'vaccine nationalism' of the 2019–2021 COVID-19 pandemic caused an uproar around the meaning of international 'solidarity'. In the run-up to COP26, developing nations essentially asked why they should 'increase the ambition' on climate action if others were not prepared to share vaccines? When developed nations again sought

support against Russia's 2022 invasion of Ukraine, some developing-country leaders dismissed it as 'Europe's problem' despite being keen on the non-aggression principle.

This is the backdrop against which the net-zero transition now accelerates. Financing and technology transfers are increasingly seen as the good faith bar that must be cleared. This rift poses an additional level of difficulty for the management of an already complicated and unpredictable transition.

The Next Great Power Contest Is Already Here

A better understanding of the net-zero transition yields an improved explanatory framework for the 'strategic competitors' lens that now pervades the United States–China relationship. In the net-zero transition, Europe behaves as a 'power' because its policymaking in the industrial, economic and technological spheres is more concentrated than in other areas. Each of these three has started to vie for overall control or energy independence from each other at the systemic level.

Russia's actions in Ukraine have had multiple effects already described in this chapter, but one of them is to push Europe and the United States closer together, even as differences over their respective industrial policies emerge. That, in turn, has probably pushed China and Russia closer together as well. As demonstrated, great power geopolitics and the transition will affect each other in the decades ahead in deeply unpredictable ways. While Europe had a plan to gradually wean itself off Russian fossil fuels in the decade ahead, the invasion accelerated an energy-relationship rupture that could not have been previously imagined (Wagner 2022).

Major Players Majorly Affected?

Because the transition will impact countries in different ways, it will likely affect the multilateral fora within which those countries operate. For example, within the Security Council Russia has a 39 per cent exposure score and will likely lose 47 per cent of its oil and gas revenues over two decades while China carries a 49 per cent exposure to the transition, more than twice the rate of the other three permanent members (16–21 per cent), compounding the current per capita GDP gap between China and Russia (\$13,000–\$14,000) and the other three (\$42,000–\$78,000).

Over the last 20 years, China and Russia, while remaining within existing institutions, have engaged in counter-institutionalisation by creating parallel 'friendlier' ones like the Shanghai Cooperation Organization or the Collective Security Treaty Organization (Zurn 2018: 254–55). This pattern will likely continue or accelerate under the transition.

Second, nations which are major producers or which control world market share of specific minerals—such as Australia, Chile, Peru, the DRC, and Indonesia—will find themselves orbiting the competing great powers, even as they manage a wide range of others eager to access a steady supply of the requisite minerals.

Finance as Both Transition Backbone and Battleground

'Money, money, money, money', replied U.S. Climate Envoy John Kerry when asked what he needed at Davos in January 2023. 'We need it for the developing world. We need it for the right choices to be made [and] to leapfrog the mistakes' (Mufson 2023). Two months later, at the first meeting of the U.S. Financial Risk Advisory Committee,

U.S. Treasury Secretary Janet Yellen warned that ‘as climate change intensifies, natural disasters and warming temperatures can lead to declines in asset values that could cascade through the financial system. ... A delayed and disorderly transition to a net-zero economy can lead to shocks to the financial system as well’ (Yellen 2023).

Kerry and Yellen’s comments (and global itineraries) underscore a unique aspect of the net-zero transition: the importance and primacy of global finance, economics and political economy perspectives. The hundreds of billions of dollars of climate finance lift needed now, the two hundred plus trillion dollars of new capital infrastructure needed by 2070, the ‘shocks to the financial system’ that a ‘delayed or disorderly transition’ would entail, the astronomical cost of climate disaster: all return financial actors—the Bretton Woods international financial institutions (IFIs) and multilateral development banks (MDBs)—to a prominence unseen since the World War II reconstruction years, except that the scope this time is truly global.

Innovating Financial Partnerships

Because it is both battleground and backbone, finance is a space for reform, renewal and innovation. At COP26 (United Nations 2021), the first ‘Just Energy Transition Partnership’ (JETP) was established as a financing cooperation mechanism to support developing economies make the transition from a heavy dependence on coal. South Africa was the pilot country with a \$8.5 billion package from France, Germany, the United Kingdom, the United States, and the European Union.

In 2022, India, Indonesia, Vietnam and Senegal were announced as the next cohort. The donor coordination group has now been extended to MDBs, national development banks and development finance agencies. Indonesia’s package will reportedly give it \$20 billion, half of it from the private sector. There is continuing discussion about whether JETPs should be limited to countries transitioning from coal to gas (sometimes considered a bridging fuel) or extended more widely (Kramer 2022). Similarly, within Europe, the European Commission has created a Just Transition Mechanism (JTM) to mobilise €55 billion over the period 2021–27 to assist its most affected (coal-producing) regions (European Commission n.d.).

Reforming Existing Financial Institutions

There are growing calls for fundamental reform of the World Bank and IMF. On behalf of the Bank’s largest shareholder, Yellen called in late 2022 for ‘a World Bank evolution roadmap’ to better tackle global challenges without eroding poverty reduction and sustainable development. She called for better incentivisation of investments that address global challenges, for changes to the banks’ operational models, and for financial innovation to responsibly extend lending (Yellen 2022).

Prime Minister Mia Mottley of Barbados and German Minister for Economic Cooperation Svenja Schulze have similarly called for the scientific consensus on climate change to be translated into ‘a new economic paradigm’ at the IFIs. The Bridgetown Initiative wants sustainability and resilience elevated to core institutional goals: analysis and lending to better address new transboundary challenges, MDBs’ financing capacity vastly expanded, and their lending used to catalyse private investment in low-carbon energy, transportation and agriculture in developing countries. Finally, natural disaster and pandemic clauses must be accepted in financing instruments (Mottley and Schulze 2023).

The proposed changes to the IFIs would mark the most significant reform of these global institutions in their entire history. Beyond lending, proposals centred on a sustainability imperative (Esty 2022) increasingly question existing economic frameworks.

New Treaties and Funds

But the urgency and scale of need is yielding even bigger and entirely new multilateral proposals. Old debates on the responsibility for historical emissions are slowly ceding the stage to new debates about sharing and using the gains of the energy transition and global green economy. New initiatives like the campaign for a Fossil Fuel Non-Proliferation treaty include proposals like a Global Transition Fund in which global carbon taxes and fossil fuel subsidy cuts would be pooled to support fossil fuel-dependent developing countries ('Fossil Fuel Non-Proliferation Treaty' n.d.; Newell, van Asselt and Daley 2022).

Second-Order Implications for Global Governance

Beyond increased state vulnerability, exacerbated interstate competition and the risks and opportunities of climate finance, we can begin to discern a range of second-order implications for global governance more widely.

Security, Peacebuilding and Human Rights

As noted earlier, the transition will stress test the world's most vulnerable countries to the point of breakage. On that basis, sadly, the global and regional governance architecture currently focused on state fragility, fragmentation and failure will likely continue to be needed. Actors from the UN Security Council, Peacebuilding Commission, and peace-keeping and special political missions to regional/subregional actors like the African Union's Peace and Security Council and ECOWAS in West Africa, will be needed to manage a range of these situations.

Similarly, in the related area of human rights, oil and gas and mining have long given rise to human rights violations. Indigenous communities have often borne the brunt of extractive economies and poor governance. As exemplified with cobalt in the Congo, a range of such concerns exist today on every continent (Zuckerman 2023). Given the expected 400-to-600 per cent growth in demand for transition minerals in the decades ahead, an increase in this category of human rights concerns can be expected.

In addition, large infrastructure projects, as a category of their own, whether related to the BRI or 'green' infrastructure plans, can foster similar human rights concerns. Here again, parts of the existing human rights architecture will see their case load evolve as a result of the net-zero transition. This includes, at UN level, the Human Rights Council itself as well as 'thematic mandates' like the Special Rapporteurs on (a) the rights of indigenous peoples, (b) the human rights of migrants or (c) minority issues, as well as the Working Group on transnational corporations and other business enterprises (to mention only a few).

Institutional Innovation and Proliferation

A number of older entities like the 1974 IEA, the 1990 Alliance of Small Island States (AOSIS) or the 1991 Global Environmental Facility (GEF) have found their work and mandate transformed by the net-zero transition. But the last 20 years have witnessed an explosion of new institutions, partnerships and initiatives. New formal, informal,

technical, scientific, political or financial entities have emerged and multiplied, composed of national governments, sub-national entities and civil society. To cite a few examples: the International Solar Alliance (ISA; 2015); the Coalition of Finance Ministers for Climate Action (2019); the International Renewable Energy Agency (IRENA; 2009); the Coalition for Disaster Resilient Infrastructure (CDRI; 2019), and its Infrastructure Resilience Accelerator Fund (IRAF; 2022); the Global Green Growth Institute (GGGI; 2012); the Global Centre on Adaptation (GCA; 2018); the Climate Ambition Alliance (2020), and its Race to Zero; Leadership Group for Industry Transition (Lead It; 2019); and the NDC Partnership (2016), to name only a few.

Interestingly, mineral-producing countries are considering new kinds of cartel-like organisations, including Indonesia for nickel or Chile, Argentina and Bolivia for lithium (Dempsey 2022). As demand begins to shift from fossil fuels to transition minerals, the Organization of Petroleum Exporting Countries (OPEC) might give way to a range of Organizations of Mineral Exporting Countries (OMECs). More widely, as the transition progresses and as new technologies emerge, the mandates of a wider set of older institutions will change. As new aircraft fuels and wing designs are commercialised, the International Civil Aviation Organization (ICAO) will evolve its standards and regulatory processes, as will the International Maritime Organization (IMO), the World Tourism Organization (UNTWO) or the International Labour Organization (ILO).

A full examination of this issue is beyond the scope of this survey. But this institutional growth has been explosive and falls within a wider trend of accelerating institutional pluralism (Johnstone and Lincoln 2022). As one analysis notes, ‘[T]here is a need to “launch less and implement more”’ (Roesch and Nobre 2021: 22). Indeed, this institutional proliferation calls for consolidation and streamlining for greater effectiveness.

Final Thoughts

UN Secretary-General Guterres described the 2022 Working Group II report of the IPCC Sixth Assessment simply as an ‘atlas of human suffering’ but also ‘a damning indictment of failed climate leadership’, a blunt reference to increasing frustration over Paris Agreement implementation and the risk of COP summits descending into pageantry. Questions around the pace and impact of the net-zero transition are, therefore, sure to multiply with the first Global Stocktake in 2023 (COP28) and the next iteration of 2025 climate commitments or NDCs.

Previous energy transitions were the result of some combination of technological change and economic motive. In this case, scientific conclusion sparked policy that, in turn, drives economic, industrial and societal change. No previous energy transition has occurred as swiftly as this one, nor ever attempted the total transformation of the global economy in the course of 35 years.

Though happily ignored in good times, government’s importance rises in crisis. The policy challenge is acute. Overlapping crises—an epidemic, a frozen development agenda, accelerating climate change, macroeconomic woes, and a land war in Europe—have strained traditional stovepipe policymaking. Economic and broader energy policy analyses are no exception (Wagner 2022). Pisani-Ferry and Mahfouz (2022) see a lack of credible climate policymaking:

Many governments have pledged to reach carbon neutrality by mid-century, but their actions do not yet align with this objective. In the absence of stronger carrots or sticks, energy producers, unlike carmakers, can and still do hedge their bets. The result ... is that overall energy investment is critically insufficient to meet future demand. Taken

together, these developments threaten to create a stagflationary environment where brown energy is scarce and green energy is still in short supply. Coping with such imbalances will be an ongoing challenge for governments and central banks. Policy-makers can no longer afford to overlook these issues, nor can they rely on fairy tales about what the energy transition entails.

This policymaking challenge is tied to two related phenomena: the widespread loss of trust in government and a slow ‘constrained breakdown’ in multilateral affairs (Homer-Dixon 2006: 23). And yet, ‘constrained breakdown’ has the advantage (relative to sudden collapse) of enabling ‘processes of restructuring, renewal, and long-term adaptation ... which may well prove to be the defining story of this century’ (Kreienkamp and Pegram 2021: 800).

Climate science has delivered on its first responsibility: it has answered over decades big and difficult questions about the earth, its temperature, what warms and cools it, different gases, the oceans, forests and carbon sinks, and the repercussions of human activity. It has also succeeded in delivering that consensus into the public arena. Still ahead is a deeper melding of climate science and other fields of knowledge, including other domains of physical science, but especially the social sciences and humanities (Meyer 2023). Over the horizon then is the allure of an overarching post-climate science grounded in a strengthened planetary framework.

A newly emergent, planet-centred frame of reference has triggered an urgent transition to low-carbon economies and societies. To achieve that transition, a new economic paradigm is being called for. The only certainty is that this transition will be onerous. But it holds one further possibility. Can disaster-motivated better care for the planet and its biodiversity crack the door to a reappraised care ethic that includes humans as well as the planet?

Notes

- 1 Carbon Tracker’s 2021 study compares a country’s current fiscal dependence on oil and gas revenues (as a percentage of overall revenues) and the likely shortfall of future oil and gas government revenue (against industry expectations).
- 2 McKinsey (2022) analyses the economic first-order effects for 69 countries on demand, capital allocation, costs, and jobs through 2050 across energy and land-use systems. The transition will require \$275 trillion of capital spending through 2050, much of it front-loaded in the next ten years and will have uneven effects on specific sectors, geographies, and communities (McKinsey 2022: viii). Specific country scores provided on request care of McKinsey’s Global Institute.
- 3 Rare earth elements (REEs) include 17 metallic elements, four of which—neodymium, dysprosium, praseodymium, and terbium—are of particular relevance to clean energy technologies. Demand for these four elements is expected to rise dramatically (Castillo and Purdy 2022: 8).

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25 Combatting Corruption to Advance Good Governance

Exploring Options for an International Anti-Corruption Court

Augusto Lopez-Claros and Ian J. Lynch

Corruption is deeply entangled in the roots of nearly every catastrophic global risk today and strangles many of the promising paths to mitigating those risks.

Various societies and legal systems define corruption differently. For example, lobbying that would be illegal in some countries is permissible in others, even if the public may look upon such activity with disgust and label it corruption in political discourse. However, there is broad consensus about some of the most egregious and clear-cut acts that constitute corruption. The UN Convention against Corruption requires its 190 parties to criminalise the bribery of public officials at national and intergovernmental levels, the embezzlement and misappropriation of public funds, money laundering, and obstruction of justice.

Loopholes remaining in some national legal codes regarding these crimes must be closed, but the problem will not be solved by legislation alone. Such cardinal acts of corruption continue to be perpetrated at a grand scale globally due to financial secrecy and a staggering gap in enforcement. In many countries, kleptocrats—rulers who use political power to loot state resources—can wield influence over the police, prosecutors and even the courts to establish impunity for grand corruption.

Unbridled grand corruption, the abuse of public power for private gain, affects different countries in different ways, but its proliferation is enabled by the same underlying transnational architecture. The international financial system has afforded kleptocrats and their co-conspirators—including their bankers, lawyers, accountants, real estate agents, and other financial service providers—opportunities to maximise schemes of grand theft. The transnational nature of kleptocracy also creates opportunities for governance innovations to counter the corruption risks inherent in the interdependence of modern economies. Kleptocrats prefer to hide, launder and use their ill-gotten gains in countries characterised by strong rule of law. They know that their time in office in their home countries may be limited due in large part to the corrosive effects of their own rapacity.

Elements within the ruling regime may overthrow their leaders in order to seize their turn to feed at the trough of corruption. This can happen dramatically in the form of a coup or in the opaque, internecine battles of power transitions. In other contexts, kleptocrats can face risks that their flagrant corruption can foment destabilising popular protest or even armed insurgency, requiring them to flee for their lives into exile. Where kleptocracy undergirds the most powerful authoritarians, kleptocrats who are confident in their control over tools of repression will very often feel uninhibited in the pursuit of self-aggrandisement as well. They may, of course, misread the supremacy of their rule, opening

the door to power struggles or the implosion of their governance structures. But the end result is the same: outflows of stolen assets into shadowy transnational money-laundering networks that secure wealth for the corrupt.

Refugee crises driven by devastating corruption in fragile and failed states in Africa, Central America, the Middle East, and elsewhere compound grand corruption's impact on international peace and security. The pervasive violence and lack of economic opportunity in such states, driving people to abandon their homes in utter desperation, cannot be effectively countered without dismantling and deterring kleptocracy.

War and other forms of violence may be the most visceral catastrophic risks that corruption fuels, but they are not the only ones. A recent study analysing data for 175 countries from 2012 to 2018 concluded that the cumulative effect of corruption on growth is that real per capita gross domestic product (GDP) decreased by around 17 per cent. 'The effect of corruption on economic growth is especially pronounced in autocracies and countries with low government effectiveness and rule of law' (Gründler and Potrafke 2019). Another recent study by the European Parliamentary Research Service estimates that the European Union could gain EUR58.5 billion in GDP per year if it improved the legislative framework on corruption and enhanced enforcement (Fernandes and Jančová 2023).

Corruption can exist at all levels, but the ballooning economic consequences of grand corruption is an increasing threat to developing countries and to the stability of the global economy, as an increasing number of countries default on substantial loans. The tightening of financial conditions in 2022 in response to rising inflation has precipitated a debt crisis in emerging market and developing economies, with more than 60 low-income countries now seen to have unsustainable debt profiles. This crisis is occurring at a time when more public resources are needed to address global challenges with local impacts, including climate change, food security and pandemics.

According to UN Secretary-General António Guterres in his 2021 report, 'Our Common Agenda', 'failure to deliver what people need most, including basic services, drives mistrust, regardless of how open institutions are to public participation'. 'Distrust is also fuelled by people's experiences of corruption, which has a disproportionate impact on women, exacerbates inequality and costs the world trillions of dollars annually', he wrote.

The work of Transparency International (TI; 2022a, 2022b, 2022c) and the publication since 1993 of its now well-known 'Corruption Perceptions Index' have played an important role in focusing public attention on corruption. TI has formulated anti-corruption initiatives in such areas as public procurement, conflict of interest and freedom of information laws, as well as the formation of an extended network of national chapters in more than a hundred countries.

While there is far more attention to the problem of corruption and less tolerance for it, TI's (2022a) 'Corruption Perception Index' for 2021 indicates that corruption levels have stagnated worldwide, adding, 'despite commitments on paper, 131 countries have made no significant progress against corruption over the last decade'. While 25 countries significantly improved their scores in that time, 23 countries significantly declined. Over the past decade, even the scores of high-performing countries like Australia, Canada and the United States have fallen, as they have also struggled with protecting the integrity of their public sectors.

As the aforementioned demonstrates, corruption affects all countries. In the United States and other industrial countries, lobbying—to obtain special government dispensation in exchange for some favour—is a multi-billion-dollar industry. Critics contended

that a U.S. Supreme Court decision in 2010 (*Citizens United*) expanded, rather than curtailed, the influence of wealthy donors, corporations and special interest groups in U.S. elections.

‘Lobbying’, on balance, would be beneficial were it limited to enlightened public consultation on the merits of proposed legislation. However, lavish corporate cash spent to buy influence degrades the ability of the political system to address real problems and delays public-sector reforms and efforts, for instance, to mitigate the effects of climate change.

Corruption and bribery, whatever their form and however much the experts may wish to disguise them in the language of costs and benefits and economic choices, also have a moral dimension. Ultimately, they are a betrayal of trust. Ignoring this foundational principle comes at a considerable cost to society, undermining the effectiveness of measures taken to limit their corrosive effects. A plutocracy, a world in which wealth and money rule, is not a system likely to capture the popular imagination or enable citizens to thrive. Equally important, bribery and corruption are deeply at odds with the moral basis of most of the world’s great religions, which remain a compass point for much of the world’s population and often provide the value foundations of the modern state.

Even where windows of opportunity emerge to tackle grand corruption, entrenched kleptocratic forces inevitably fight back and often succeed at reasserting their advantage. The failure of reformist political leaders to fulfil their anti-corruption promises can reinforce public perceptions that there is impunity for grand corruption.

Sri Lanka’s recent experience is an example of how corruption can shatter the hopes of a nation brimming with possibilities for economic growth. Former President Gotabaya Rajapaksa was ousted in July 2022 from a country that had imploded economically. The Rajapaksa political dynasty, in power for decades, had long been accused of corruption and nepotism. Other states such as Brazil and South Africa, which once showed great promise, have similarly been hollowed out by corrupt leaders and their professional enablers. On African Union Anti-Corruption Day in July 2022, Nigeria’s President Muhammadu Buhari admitted that the fight against corruption had been difficult over his two terms as president. He said,

Truly, a lot more work on many fronts is required. For example, civil and public servants must be ethical and professional at all times. The private sector must contribute to curbing corruption. The international community needs to close safe havens. The judiciary requires more impetus. Perhaps, an International Anti-Corruption Criminal Court is needed.

Within President Buhari’s remarks is the shape of what is needed to address the persistent plague of corruption. Having the right laws on the books and well-intentioned political leaders who beat the odds to win elections with anti-corruption platforms are both essential but not enough to change the status quo. Governance innovations that enhance transparency and accountability are necessary at both the national and international levels. New multilateral institutions, such as the proposed International Anti-Corruption Court, can be developed to reinforce anti-corruption reforms at the national level when windows of opportunity emerge for meaningful change but where national capacity to act may be negligible. Seeing corrupt leaders held accountable for their corruption can build citizens’ trust in public institutions, helping to create a virtuous cycle of reform. National governments strengthened by the support of their citizens, based on improving anti-corruption

records, will be more predisposed to cooperating with multilateral institutions designed to assist them in the pursuit of justice. A coalition of states is needed to institutionalise the fight against corruption through a mosaic of interlocking governance innovations that leverage the transnational financial architecture to combat it rather than enable it.

Corruption, Bribery and Their Consequences

Grand corruption, according to TI, is ‘the abuse of high-level power that benefits the few at the expense of the many’. Through such corruption, TI notes on the organisation’s website, ‘[V]ast amounts of public money are systematically siphoned off to the accounts of a few powerful individuals, at the expense of citizens who should actually benefit’. One estimate puts the amount diverted to corruption at 5 per cent of global GDP.

An important source of corruption stems from the distributional attributes of the state. The role of the state in the economy has greatly expanded over the past century, and this has led to a proliferation of benefits under state control. One paper showed that countries with a larger number of administrative tiers and public employees reported more bribery. More rent-seeking was likely as government structures became more complex (Fan, Lin and Treisman 2009).

A large state, however, need not be associated with higher levels of corruption. The Nordic countries, for example, have the highest levels of public spending but are also the least corrupt. In principle, however, the more interactions there are between officials and private citizens, the more opportunities there are for corruption, or ‘rent-seeking’, imposing heavy costs on society. Thus, bribes may be paid to public officials to obtain contracts for the sale of goods and services to the state, to gain preferential access to public enterprises that might be undergoing privatisation, to buy political influence and votes, to buy favourable court decisions, and to shape public policy. In some countries, these are disguised as campaign contributions and the like.

Bribery everywhere is regarded as a perversion, requiring secrecy, deception, and the use of euphemisms, such as ‘gifts’ and ‘contributions’ when disclosed publicly. While it has been criminalised in virtually every country in the world, enforcement of the laws condemning it remains weak, in part because of the way that bribery interacts with power. Those who pay the most will be granted the exemption, shutting out the competitor and gaining the advantage.

Sabotaging Public Finances

Corruption undermines government revenue, limiting the government’s ability to invest in productivity-enhancing education, infrastructure and health. Where corruption is endemic, citizens often view paying taxes as a questionable business proposition, but when those who pay taxes are confident that they will see future improvements in a country’s infrastructure and human welfare, the system works reasonably well, and the budget becomes an important mechanism of distribution.

Corruption sabotages this implicit contract. Corrupt officials create an environment in which those who do pay taxes are either morally outraged at having to do so or feel justified in finding creative ways to avoid paying them. In some cases, lobbying and influence-peddling become attractive alternatives to paying taxes. Such practices are a natural response when government bureaucrats or legislators send a signal to the private sector that they are ‘for sale’.

Ultimately, corruption distorts public investment and boosts overall spending because public monies are diverted. The result is inflated government deficits, an accumulation of public debt, higher debt-service payments, and, inevitably, constraints on other more productive expenditures. By undermining the ability of the government to collect revenue, corruption not only increases government expenditures but also the effective tax burden and is highly damaging to public finances. When corruption depresses revenue, governments are often forced to increase tax rates and forego the benefits of programmes that cannot be financed from the budget.

Public finances are also sabotaged when there is corruption related to large capital projects and when governments undertake projects of greater complexity than warranted by a country's real needs. Additionally, spending is often cut elsewhere, often in socially vital areas, or in operations and maintenance. The developing world is littered with the skeletons of such 'white elephants' that represent a heavy burden on meagre budgets and that often have contributed to increasing the burden of debt.

A recent example is the malfunction of a thermal power plant in Bishkek, Kyrgyzstan, in 2018. While China offered low-interest loans for a \$386 million renovation of the ageing plant, they also insisted that the contract go to a Chinese company having little experience with such work. Despite its supposed modernisation, the plant broke down and left much of the town without heat or electricity in freezing temperatures. Subsequent research found little financial oversight of the project, resulting in accusations that it was substantially marred by inflated purchases, corruption and kickbacks.

Slowing Private-Sector Development

Corruption undermines foreign direct investment since it is equivalent to an additional tax, thus providing incentives for investors to move to less corrupt countries. High levels of corruption impose financial burdens on businesses and undermine their international competitiveness. Unlike a tax, which is known and predictable and can be built into the cost structure of the enterprise in an orderly fashion, bribes are unpredictable and random and undermine cost control, profits and the efficiency of those who must pay them to stay in business.

While damaging the investment climate, corruption also discourages private-sector development and innovation, thus becoming a barrier to market entry. Budding entrepreneurs will be intimidated by bureaucratic obstacles, financial costs and the psychological burdens of starting business ventures on the wrong side of the law. Having to deal with corrupt officials to obtain permits and licences prompts entrepreneurs to either take their ideas elsewhere or withdraw from the market altogether. Corruption is particularly devastating for small- and medium-sized enterprises—often the engines of economic growth and job creation in the developing world—since they usually lack the clout of big companies that might protect them from requests for bribes.

Corruption also contributes to a misallocation of human resources. To sustain a system of corruption, officials and those who pay them must invest time and effort in the development of certain skills, nurture certain relationships and build up a range of supporting institutions and opaque systems, such as off-book transactions and secret bank accounts, 'assets' not easily transferable to the formal economy. By their very nature, they are intended to redistribute 'rents' or personal benefits and advantages, which do not create economic growth. The more corruption in a country, the more time must be spent complying with regulations, avoiding penalties and dealing with the bribery that underpins them.

Worsening Inequality

Studies by the International Monetary Fund (IMF) show that corruption aggravates income inequality and distorts the tax system because the wealthy and powerful use their connections to ensure that the tax system works in their favour. Corruption is also often associated with the ‘use of wealth by the well-to-do to lobby governments for favourable policies that perpetuate inequality in asset ownership’ (Gupta, Davoodi and Alonso-Terme 2002). It also leads to inefficient targeting of social programmes, creating regressive benefits disproportionately allocated to those in the wealthier brackets, as when a wealthy doctor with three children gets triple the sum of a poor single mother with one child.

Energy subsidies are typically highly regressive, also leading to smuggling and other forms of crime. According to a 2015 IMF study, 61 per cent of the benefit of gasoline subsidies are allocated to the wealthiest top 20 per cent in the income distribution (Coady *et al.* 2015).

Where corruption is rife, politicians will want to remain in office as long as possible, not to serve the public good but to avoid yielding to others the pecuniary benefits of high office. Hence, the prevalence of ‘presidents for life’ in many countries, or efforts by autocrats to amend the constitution to ensure longer stays in power, fearful of losing the impunity of their office. New autocratic leaders who come to power, whether through elections, coups or even planned transitions, will often use anti-corruption laws to consolidate power by selectively using them against opponents or potential opponents within the political elite. Such anti-corruption cases are easy to substantiate in kleptocracies, and they have the added benefit of helping convince restive publics that new leadership may actually clean up government corruption. Unfortunately, such anti-corruption campaigns are frequently false dawns. Losing power presents a high risk to former leaders that they will be held accountable for their rapacious corruption, regardless of the regime type that follows their rule. And, when long stays in office are no longer an option, a new government will want to steal as much as possible quickly, given the short window of opportunity.

Significant inequity is associated with Western governments which criminalise bribery at home but look the other way when bribery involves foreign officials in less developed countries—the sad legacy by which governments in developed countries justify bribery abroad by seeing it as part of the ‘cultural landscape’ of the developing world and a cost of doing business in alien (and presumably more corrupt) settings.

Weakening Government

Corruption is a betrayal of trust and diminishes the legitimacy of the state and the moral stature of the bureaucracy in the eyes of the population. While efforts are made to shroud corrupt transactions in secrecy, the details often leak out and tarnish the reputation of the government, damaging the government’s credibility and limiting its ability to become a constructive agent of change in other areas of policy. Corrupt governments have great difficulty being credible enforcers of contracts and protectors of property rights.

There is no limit to the extent to which corruption, once unleashed and beyond control of the authorities, can undermine the stability of the state and organised society. Tax inspectors will extort businesses; the police will kidnap innocents and demand ransom; the prime minister will demand payoffs to make himself available for meetings; aid money will disappear into the private offshore bank accounts of senior officials; the head of state will demand that taxes be credited to his personal account. Investment ceases, and capital

flight leads to disinvestment. The five most corrupt countries in TI's (2022a) Corruption Perceptions Index 2022 include Yemen, Venezuela, South Sudan, Syria, and Somalia. It is hard to see how such countries can recover from their myriad crises without dramatic reductions in corruption levels.

When corruption becomes enmeshed in domestic politics, separate centres of power emerge to rival the power of the state. At that point, the chances that the government will want, or even be able, to do anything to control corruption may disappear, and the state may mutate into a kleptocracy. Corrupt, failed or failing states become a security threat for the whole international community 'because they are incubators of terrorism, the narcotics trade, money laundering, human trafficking, and other global crime—raising issues far beyond corruption itself' (Heineman and Heimann 2006).

Combatting Corruption

Fortunately, international public awareness of corruption has been rising, especially since the 1990s. This development has been due, in part, to media exposure of the many scandals involving political figures engaged in various forms of bribery or corruption. In recent years, there have been a series of investigations into major leaks of financial documents, beginning with the 2016 Panama Papers led by the International Consortium of Investigative Journalists (ICIJ), that have lifted the lid on the grand scale of transnational corruption facilitated by complex networks of bankers, lawyers, accountants, real estate agents and other financial service providers.

Greater transparency has, however, produced some change. In India, Malaysia and Pakistan, for example, prime ministers were defeated largely because they were dogged by corruption charges. In South Korea, two presidents were jailed following disclosures of bribery. In Italy, magistrates sent several dozen members of the political class to jail and exposed a vast corruption network that had linked political parties and the business community for decades. Investigations led by the U.S. Department of Justice into alleged bribery of former presidents and other government officials by Brazilian construction giant Odebrecht to win contracts produced upheaval across the political spectrum in Latin America. The outcomes have varied greatly. In some Latin American countries, former presidents and ministers have gone to jail. In others, such as Mexico and Venezuela, investigations have progressed little or not at all. In most places, revelations of grand corruption brought to light by investigative journalists or law enforcement have led to heavily politicised debates about the veracity of corruption allegations.

More recently, some 70 members of the mafia group 'Ndrangheta were convicted by Italian courts. Several former heads of state in Central America were indicted and await extradition to the United States on drug trafficking charges. Africa has seen less progress, but corruption has become undoubtedly harder to hide, owing partly to new communication technologies that allow for more openness and transparency.

Citizens can now scrutinise government activities and debate the merits of public policies. Press freedoms and higher levels of literacy ensure access to the performance of politicians and the content of their policies, thus shaping the context for reforms in important ways. An active civil society that encourages participation in civic organisations also supports strategies aimed at reducing corruption.

The internet has proven effective in reducing corruption (Andersen *et al.* 2011), and its potential can be better understood when applied to tax collection, public procurement and other forms of interactions between citizens and the public sector. For example,

Chile's e-government reforms have been recognised as pioneering efforts in the use of technologies which enhance transparency and efficiency in government. The country has introduced online platforms to facilitate government interactions with citizens and businesses and has created one of the world's most transparent public procurement systems. Chile Compra, launched in 2003, is an Internet-based public system for purchasing and hiring that has earned a worldwide reputation for excellence, transparency and efficiency.

Every two years, the United Nations produces an e-government survey ranking countries according to their progress on digital government. Over the past 15 years, many countries have enabled individuals and businesses to comply with their tax obligations using online platforms, reducing the need for interactions with tax officials and opportunities for bribery in the filing of tax returns.

Reducing Red Tape

World Bank data has long shown a strong correlation between the incidence of corruption and bureaucratic red tape. Hence, the critical necessity of eliminating as many needless regulations as possible while safeguarding the state's essential regulatory functions. Many regulations on the books of many countries that require citizens to acquire a plethora of certificates and licences for routine interactions with the state are a legacy of the past and no longer relevant to present-day needs and have metamorphosed into potential sources of economic rents and lured officials into corruption and illegality.

The most competitive economies are those that have managed to lighten the regulatory burden and enhanced efficiency, so essential for international competition. According to the World Bank's (2020) 'Doing Business' report, it takes only one day and one procedure to establish a small business in New Zealand at minimal cost. Not surprisingly, New Zealand has enviably low levels of corruption, as per the latest report by TI. There will always be scope for a minimum set of rules, consumer protection, management of the environment, and requirements related to banking, but these can be designed in a way that does not hamper entrepreneurship or create opportunities for bribery.

Better Targeting of Subsidies

Subsidies can also enable governments to distort incentives and create opportunities for corruption. Governments may want to support certain vulnerable groups through well-targeted income support. In practice, however, they provide much of their subsidy support without regard to recipients' income levels.

Consider energy subsidies. According to IMF (2022) data,

[F]ossil fuel subsidies were \$5.9 trillion or 6.8 per cent of GDP in 2020 and are expected to increase to 7.4 per cent of GDP in 2025 as the share of fuel consumption in emerging markets—where price gaps are generally larger—continues to climb.

These subsidies

have sizeable fiscal costs (leading to higher taxes/borrowing or lower spending), promote inefficient allocation of resources (hindering growth), encourage pollution (contributing to climate change and premature death from local air pollution), and are not well targeted at the poor (mostly benefiting higher income households).

Artificially low prices created by subsidies can put the government at the centre of corruption-generating schemes. For example, when Russia transitioned to a market economy in the 1990s, there were large discrepancies between domestic and international prices of oil and other commodities. By buying off corrupt officials to acquire export licences, a whole new class of wealthy oligarchs was created. Governments may also hesitate to eliminate subsidies because of potentially violent protests by a public accustomed to low prices. Hence, subsidies can become entrenched and diminish the government's ability to spend in more productive areas.

Improving Budgeting

Governments collect taxes, tap capital markets to raise money, receive foreign aid, and develop mechanisms to allocate these resources to satisfy multiple needs. Some do this in ways that are relatively transparent to ensure that resources will be used in the public interest. New Zealand, a pioneer in this area, approved its Fiscal Responsibility Act in 1994 to provide a detailed legal framework for transparent management of public resources.

The IMF has identified good practices that have proved to be effective in promoting better management of public funds. Some relate to mechanisms used by governments every year to approve the budget. There is broad consensus that the draft budget should provide detailed explanations of fiscal targets and priorities, free and open legislative debate and authorisation, the transparent execution of the budget, and public disclosure of performance and audits. There is also agreement that the use of extra-budgetary funds should be strictly limited and that the budget should capture all sources of revenue and all items of expenditure. As part of the requirements to accede to the European Union, countries in Central and Eastern Europe are good examples of reforms implemented to improve the transparency of budget procedures.

Taxes and tax collection should be based on established laws and provisions, not left to the discretion of the tax authorities. The tax codes of many countries clearly lay out taxpayers' rights and obligations, regulate the imposition of penalties to ensure that they are not used by unscrupulous politicians against political opponents, and establish independent review agencies with the authority to investigate government operations. Following New Zealand's lead, other countries have established clear lines of responsibility among different levels of government, reduced the possibility for discretion, and lessened uncertainty.

How governments manage the budget affects the incidence of corruption because it represents the single largest pocket of resources in a country's economy, sometimes equivalent to almost half of GDP. The more open and transparent the process, the less opportunity for malfeasance and abuse.

Improving processes and mechanisms for preparing and executing the budget may well be among the most fruitful areas in which multilateral organisations can assist in the fight against corruption. Given their reluctance to wade into 'political' waters, there is no need to frame such reforms as reducing corruption. It is enough to focus on the benefits of transparent budget processes, including gains in efficiency, better resource allocation and improved economic growth.

Implementing International Conventions

Because corruption increasingly has cross-border effects, the international legal framework for corruption control is key. This framework has improved substantially over the past decade. Besides the Anti-Bribery Convention of the Organisation for Economic

Co-operation and Development (OECD), which went into effect in 1999, the Organisation works with six regional anti-corruption programmes that cover, among others, Africa, Europe and the Americas. In addition, the United Nations Convention against Corruption (UNCAC) entered into force in December 2005 and had been ratified by 189 parties by the end of 2021.

The UNCAC is a very promising instrument because, unlike the OECD convention, it creates a global legal framework involving both developed and developing nations. It also covers a broader range of subjects, such as domestic and foreign corruption, extortion, preventive measures, anti-money-laundering provisions, conflict-of-interest laws, and the means to recover illicit funds deposited by corrupt officials in offshore banks.

Because the United Nations has no enforcement powers, the effectiveness of UNCAC depends on the establishment of adequate monitoring mechanisms to assess government compliance. The United Nations Development Programme, the World Bank, and other international organisations could help by providing technical assistance to countries willing to develop their capacity to comply with the convention's provisions. Even so, the ambitious scope and country coverage of UNCAC suggest that it could take some time before its benefits are fully realised.

In the meantime, Heineman and Heimann (2006) argue that a more workable approach in the fight against corruption may be more robust implementation of the anti-corruption laws in the 40 states that have signed the OECD's Anti-Bribery Convention.

This approach would require governments to be more proactive in cracking down on OECD companies which, contrary to the convention's provisions, continue to bribe foreign officials. This is a serious problem, as well-publicised cases against Siemens and Daimler make clear. More recently, there have been fines against international banks for various forms of market manipulation (e.g., LIBOR setting). Governments have sometimes been tempted to shield companies from the need to comply with anti-corruption laws, a misguided attempt to avoid undermining the companies' competitive position in other countries.

To add credibility to their announced commitment to the goals of the convention, governments also need to develop an effective mechanism to investigate and prosecute cases of corruption. But the responsibility for corruption control does not rest with governments alone. As originators of bribery and frequent victims of extortion, businesses, particularly multinational corporations, also have a key part to play.

In past decades, multinational corporations frequently engaged in bribery, and some, particularly in the extractive industries, continue to do so in countries where it is difficult to gain access without engaging in bribery. However, given what we now know about the damage caused by corruption worldwide, no self-respecting multinational corporation with credible long-term strategies for growth and brand development will want to be associated with bribery and other forms of malfeasance. The potential for damaging revelations and multimillion-dollar fines suggests that bribery is not only not cost-effective, but a completely senseless business strategy. Reputational and financial damage should incentivise an overall trend towards more honest business, but only if journalists and activists continue to uncover wrongdoing and courts continue to hold companies and their co-conspirators accountable.

The Need for a Global Response

At the international level, there are increasing efforts to build coalitions to combat corruption. For example, the Financial Action Task Force has brought together nearly 40 member countries to work on combatting terrorist financing, money laundering and

financing of weapons of mass destruction. Among other goals, it sets global standards and publishes best practice and guidance to stop illicit finance.

There are also different models and legal instruments being used in some countries that may lend themselves to being strengthened and scaled up to target corruption, and especially grand corruption, in a more comprehensive way globally. In the United States and Canada, for example, beneficial ownership registries are in the process of being created so that companies are required to reveal their true owners. The 2021 Corporate Transparency Act that requires the U.S. government to establish such a registry was an important achievement after a decade of civil society campaigning. However, the law mandates a registry that is accessible only to U.S. law enforcement. Such registries should be publicly accessible, like that of the United Kingdom, so that citizens, civil society organisations and investigative journalists can also use them to uncover corrupt schemes.

As one recent example, Chatham House, a policy institute based in London, released a report (Heathershaw *et al.* 2021) on properties that post-Soviet elites were buying in the United Kingdom, presumably with illicit funds stolen from public coffers. The family of Kazakhstan's former president, Nursultan Nazarbayev, bought 34 properties in the United Kingdom alone at a cost of £530 million. Secret offshore ownership of property, where beneficial ownership is hidden, is a growing problem globally, although it is receiving more citizen and media attention. Making this information public also makes a big difference.

There remains far more work to be done to expand open-access information, and progress cannot be taken for granted. The Court of Justice of the European Union issued a troubling ruling in November 2022 that invalidated a key provision of the 5th European Union Anti-Money-Laundering Directive, which required public access to information on the real owners of companies. The ruling says that law enforcement, journalists and civil society organisations must continue to have access to European Union states' beneficial ownership registries. Implementing new procedures for journalists and civil society to gain access will take time, and it is possible that non-European stakeholders will have difficulty gaining access at all. Publicly accessible beneficial ownership registries and other transparency measures are essential to provide accountability mechanisms, such as the newly proposed International Anti-Corruption Court, with high-quality evidence that can be used to build successful prosecutions.

The United States has increasingly been involved in levying financial sanctions on corrupt actors, especially over the past two decades. While some, including European allies, have criticised the U.S. approach as being unilateral and heavy-handed, U.S. enforcement has helped to establish better compliance controls across the international banking sector and brought more attention to the laundering of illicit funds. The U.S. Global Magnitsky Act allows the United States to sanction foreign officials for grand corruption and human rights abuses. Other countries, along with the European Union, have passed similar laws that can only be used to designate human rights abusers. As unilateral administrative branch tools, sanctions in general are applied unevenly across cases, based on the particular foreign policy objectives of different states. As punitive measures against individuals, Magnitsky sanctions may constitute a form of ad hoc accountability, but it is unclear whether they produce deterrence to the extent that the consistent application of criminal law can.

Ensuring that those engaged in corruption and extensive looting of public resources are prosecuted is also fundamental to demonstrating to beleaguered societies that accountability rather than impunity is possible. National institutions such as the High

Anti-Corruption Court in Ukraine and the now-defunct hybrid national-international Commission Against Impunity in Guatemala can prove effective. However, in each case, kleptocrats can influence or abolish such institutions when they gain power.

Regardless of some working models and systems, there has been limited success in checking the growth of multiple forms of corruption across the planet, affecting both developed and developing countries alike. As such, the establishment of an International Anti-Corruption Court has been proposed. Such a court would be immune from the domestic manipulations of kleptocrats and, therefore, would complement the existing global legal architecture for combatting anti-corruption.

The Rationale for an International Anti-Corruption Court

At present, there is no international institution to hold kleptocrats accountable for their crimes of corruption when the countries they rule are unwilling or unable to do so. An International Anti-Corruption Court (IACC) would fill the crucial enforcement gap in the international framework for combatting grand corruption, wrote Mark Wolf, Richard Goldstone and Robert Rotberg in a 2022 paper on the proposal for an IACC. Today, note the authors, some states are ‘governed by kleptocrats who enjoy impunity in the countries they rule because they control the police, prosecutors, and courts, which are often also corrupt themselves’. As such, they are unlikely to allow honest investigations. A kleptocrat prosecuted by an IACC could lead to that individual’s imprisonment or removal from office and ‘would provide the best antidote to grand corruption: the opportunity for the democratic process to replace kleptocrats with leaders dedicated to serving their citizens rather than enriching themselves’, they wrote. An IACC, they added, ‘would provide a forum for the enforcement of existing obligations that are codified in the criminal laws of virtually every country but not enforced against kleptocrats and their collaborators in the countries that the kleptocrats rule’.

There would be no reason for an IACC to be involved when member states have the ability and resources to prosecute those engaged in grand corruption. Rather, the rationale behind such a court would be to fill in existing gaps, to enforce laws required under the United Nations Convention against Corruption—which nearly all countries have signed—and, overall, to punish and deter kleptocrats and their co-conspirators, often referred to as professional enablers, who help them launder vast quantities of stolen assets.

It is critical that the IACC learn lessons from the experiences of existing international courts and tribunals. Convincing states, which are inherently prone to maximising their sovereignty, to establish international and hybrid justice institutions has relied on the fundamental legal principle of complementarity that ensures they are mechanisms of last resort. Complementarity can incentivise the development of national institutions. An IACC can be designed to actively go further by empowering national institutions. Its expert investigators and prosecutors would serve as resources for their national counterparts working to develop cases. Independent anti-corruption commissions, special prosecutors’ offices, and specialised national courts exist in many countries but often face barriers preventing them from going after the proverbial big fish. They can also submit successful mutual legal assistance requests for evidence from other states. As grand corruption often involves transnational money-laundering networks, evidence located in other states must be obtained to indict corrupt actors, and an IACC could help facilitate more successful mutual legal assistance requests. Where possible, cases built through cooperation between national authorities and an IACC should be adjudicated in national

courts. By working with national anti-corruption institutions in the investigatory phase, an IACC would be well placed to bring cases to its trial chambers in instances where it is not possible for national authorities to take action. Not all cases that fall within an IACC's purview will present opportunities to do so, but where it can, an IACC will act in the first instance as an institution that empowers its national counterparts.

Moreover, the IACC would have the capacity to recover, and then repatriate or repurpose, stolen assets for the benefit of the victims. Asset recovery and return are fraught aspects of anti-corruption practice which require significant improvement. Policymakers, particularly in the United States, have been calling for some of the illicit fortunes and frozen assets of Russian oligarchs to go towards the rebuilding of Ukraine following Russia's illegal invasion in February 2022. Besides the infrastructure extensively damaged by Russia's aggression, compensation should also be given to the close to 1 million refugees whose lives have been upended by the war and who are innocent bystanders in an unprovoked conflict.

While many proposals have been put forward to make more of Russia's assets available to Ukraine, legal questions have been raised about the precedents that would potentially be set, such as the taking of private property for public use, among others. The United States, for example, has strong legal protections to protect foreign assets, and reversing that posture would have significant repercussions on domestic and international law. As these questions are debated, they could inform how assets may, or may not, be distributed by a future IACC. Furthermore, sanctions laws that enable authorities to seize and repurpose stolen assets are inherently political responses to the problem of grand corruption. As a rule of law response to the problem, working towards the creation of an IACC is an opportunity to design a means to impartially adjudicate the recovery and return of illicit assets.

Some have suggested that the International Criminal Court (ICC), in existence since 2002 and supported by 123 member states, should prosecute grand corruption. However, the ICC has a mandate to focus on war crimes, genocide and crimes against humanity. It does not have the authority, nor the specialised expertise, to prosecute grand corruption. Amending the ICC's Rome Statute to include grand corruption would require ratification from seven-eighths of its member states and would be less politically feasible than for a group of like-minded states to create a new IACC. In any event, even if grand corruption were added to the ICC's jurisdiction, its prosecutor would be hard-pressed to prioritise such crimes over the crimes already within the court's jurisdiction. An IACC, in contrast to the ICC, would have a more limited focus and jurisdiction.

An IACC would be able to prosecute nationals of member states or foreign nationals who commit part of a crime in the territory of a member state. Prosecuting individuals from non-member states would be more difficult but not impossible. If a kleptocrat used the banking system in a member state, he or she could be prosecuted for money laundering (Wolf, Goldstone and Rotberg 2022).

Recognising the global challenge of addressing corruption, a declaration in support of creating an IACC has been signed by more than 300 thought leaders from over 80 countries, including by more than 45 former presidents and prime ministers and over 30 Nobel laureates. The governments of Canada and the Netherlands have included in their official foreign policies the express goal of working with international partners to establish the court. Early in the process of interstate discussions of the concept, Ecuador, Nigeria and Moldova stated their express commitment to work towards establishing the IACC in November 2022, January 2023 and March 2023, respectively. The first country

to endorse the IACC concept was Colombia in 2016 and the president of Timor-Leste has signed the declaration calling for the court.

In describing the rationale for such a court at the World Justice Forum in June 2022, Dutch Foreign Minister Wopke Hoekstra acknowledged that grand corruption often goes unpunished and, therefore, the international community needed to ‘step in with a complementary court that can take over grand corruption cases when states are simply unable or unwilling to do so’. As a court of last resort, the IACC ‘would fill an accountability gap, strengthen international justice, and show victims of corruption that the international community finally takes these cases seriously’, he said. Doing this at an international level is crucial, he added, given the international dimensions of the problem.

Governments run by kleptocrats will inevitably label an IACC as a political, neo-imperialist project. Looking past such bad faith criticisms, a cross-regional group of diverse countries committed to the rule of law can come together to create an impartial IACC. The court can be effective with a relatively small number of founding member states as long as those states include several of the world’s major financial centres polluted by money-laundering networks, with additional countries joining gradually. To accelerate this process, it will be important to obtain vital support from civil society organisations across the world. Many have already joined this initiative. Together, they can strive to create an institution that is fair and effective at changing the global incentive structures that currently make grand corruption far too easy for kleptocrats and their collaborators.

Conclusion

Recognition of the risks posed by grand corruption is growing among policymakers. But responses to the problem still lack the requisite urgency. Mitigating the risks posed by war, pandemics, economic crises and climate change requires a global response to grand corruption. The anti-corruption puzzle includes a range of innovations at all levels of governance in both developed and developing countries. Transparency must be enhanced through the proliferation of publicly accessible beneficial ownership registries, open procurement processes and more. Journalists, civil society organisations and citizen investigators who make use of transparency tools to uncover grand corruption must be afforded protection. Existing international commitments must be implemented. National anti-corruption institutions, including specialised anti-corruption courts, must be created and strengthened. An IACC is needed to work in tandem with national counterparts to provide an institution of last resort, ensuring that accountability can reach into states that are captured by kleptocrats.

The path forward demands a coalition of concerned states to work closely with civil society to pursue what must be an ambitious global anti-corruption agenda. A number of states have shown an interest in giving anti-corruption more attention, and some, such as Canada and the Netherlands, have begun exploring how to bring these states together in an organised fashion. To be effective, a coalition of states must move beyond the rhetorical refrains that have become commonplace at various international summits and engage in concerted action that deepens the cooperation and coordination that can put lofty commitments into actual practice.

A coalition focused on institutionalising the fight against corruption should work energetically to take the necessary steps to create an IACC. Possibilities include new multilateral institutions, such as a rapid response force of international prosecutors that can be deployed to work with national authorities to capitalise on windows of opportunity

for change; a stable of judges expert in transnational financial crime that can advise or even be seconded to sit alongside their national counterparts; an office to facilitate mutual legal assistance requests; a programme to provide whistleblowers advice and protection; and other ideas that would address parts of the existing gaps in the international framework for fighting corruption. Such ideas should be carefully considered and designed in ways that avoid duplication and provide for efficient collaboration between national and international anti-corruption institutions, including a future IACC. Only a vast, interlocking tapestry of anti-corruption institutions will lead to substantial progress and provide the international community with greater capacity and the opportunities to tackle other pressing global challenges.

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26 Global Health Governance

Lessons from the Pandemic

Thidar Pyone and Soumya Swaminathan

The COVID-19 Pandemic and Its Impact

Coronavirus disease (COVID-19) is an infectious disease caused by the SARS-CoV-2 virus. Most people infected with this particular virus experience mild to moderate respiratory illness and recover without requiring special treatment. In some cases, the disease is more severe, requiring hospitalisation, oxygen and medical interventions. The elderly and people with underlying medical conditions such as heart disease, diabetes, chronic respiratory disease, or cancer are more likely to develop severe disease. However, anyone can get sick with the COVID-19 infection and become seriously ill or die at any age. According to the World Health Organization (WHO), as of May 24, 2023, more than 766 million people have been infected with the virus, and over 6.9 million people have died from COVID-19 (World Health Organization 2023d). These numbers are underestimates because of the lack of access to diagnostics and under-reporting. Excess mortality during the pandemic was already 18 million by the end of 2021. This tragic death toll is a global failure at different levels.

Impact of COVID-19 on Health Systems

The pandemic has affected health systems worldwide. According to the WHO global pulse survey, significant health service disruptions were reported: nearly 50 per cent of countries with disruption in routine immunisation services, more than 50 per cent of countries with disruption in routine primary and community care and 30 per cent of countries with disruption in elective and operative care provision in the last quarter of 2021 (World Health Organization 2022d). Lower-income countries generally reported more disruption to services than high-income countries (HICs) due to closures or postponement of services (40 per cent of countries), staff shortages, lack of essential medicines and diagnostics, and inadequate space in health facility infrastructure (36 per cent of countries). The pandemic has wiped out years of gains in infectious disease programmes like HIV and TB. At least 25 per cent of HIV prevention services were disrupted in 17 per cent of countries in the last quarter of 2021 (World Health Organization 2021b).

Similarly, the pandemic has significantly disrupted TB control efforts as TB diagnostic infrastructure was repurposed for COVID-19, with a global reduction in newly diagnosed and reported cases of TB, from 7.1 million in 2019 to 5.8 million in 2020 and 6.4 million in 2021 (World Health Organization 2022b). The pandemic also disrupted non-communicable disease (NCD) service provision, and ironically, people with existing NCDs are at increased risk of severe illness and death due to COVID-19 (Mahamat-Saleh *et al.* 2021).

One of the key reasons for disruptions in health service delivery during the pandemic was the unprecedented pressure on health systems' capacities, particularly health workforces. Owing to persistent health workforce shortages, many countries were already struggling to provide essential health services even before the pandemic. In 2016, WHO had already projected a global shortfall of 18 million health workers by 2030, especially in the WHO African and South-East Asia regions (World Health Organization 2022d). The pandemic caused further health worker shortages and burnout with reduced capacity to provide essential health services (Boniol *et al.* 2022).

WHO estimated that between 80,000 and 180,000 health and care workers may have died from COVID-19 between January 2020 and May 2021, a figure that may be *underestimated* by about 60 per cent (United Nations 2021). Therefore, WHO Director-General, Tedros Adhanom Ghebreyesus, highlighted that 'COVID-19 is a powerful demonstration of just how much we rely on these men and women, and how vulnerable we all are when the people who protect our health are themselves unprotected' (United Nations 2021).

Because so many health workers' themselves lost their lives, many countries were unable to rebuild back the depleted workforce, which, as noted earlier, was already under strain. The pandemic has caused an additional burden of burnout and illness, including long COVID (European Commission 2022). Many health workers felt lacking in motivation or exhausted as they have watched their colleagues die or become sick, leading to a loss of trust and interest in their professions (Kluge *et al.* 2023). Their situation was compounded by the loss of public trust in health workers, as some were attacked during the pandemic, especially by the people who did not accept the public health and social measures (PHSM) to control the transmission of the virus. This was worsened by misinformation and disinformation from social media, which in turn undermined trust in government officials (Wang *et al.* 2022). Health workers began to reassess their work-life balance, many migrating to places that offer better working conditions or taking premature retirement (World Health Organization 2022c).

Though the pandemic was caused by a virus and was primarily a health emergency, its impact was felt on whole economies, food systems, supply chains, nutrition, and family relations, as outlined in the following section.

Impact of COVID-19 on the World's Economy, Nutrition and Food Security

The International Monetary Fund (IMF) World Economic Outlook 2022 reported trillions of dollars in global economic losses due to the COVID-19 pandemic. The pandemic caused significant divergence between advanced economies' economic recovery and emerging and developing markets (International Monetary Fund 2022). Recoveries in HICs are faster, while those in low- and middle-income countries (LMICs) have been slow (International Monetary Fund 2023). Frequent and more wide-ranging lockdowns in China—including in key manufacturing hubs—also slowed activity there and continue to cause bottlenecks in global supply chains (International Monetary Fund 2023).

COVID-19's impact on the world's economy had a detrimental effect on nutrition and food security, disproportionately affecting populations with low socio-economic status due to its consequences on employment, income-generating activities, purchasing power, availability, and access to food (Picchioni, Goulao and Roberfroid 2022).

Even before the pandemic, 690 million adults in the world were malnourished, 144 million children under 5 (U5C) were stunted, 47 million U5C were wasted, 38 million

USC were overweight, and almost three billion people were unable to afford a healthy diet in 2019 (Carducci *et al.* 2021; UNICEF 2020). World Bank estimated that an additional 83–132 million adults could be undernourished due to the pandemic (UNICEF 2020). The Intergovernmental Panel on Climate Change (IPCC) noted, ‘Food systems support the livelihoods of 1 billion people globally’ (Mbow *et al.* 2019). Lockdowns at the onset of the pandemic led to the closures of different formal and informal workplaces, with significant job losses. This was compounded by the sudden reverse migration in some regions (Ratha *et al.* 2020). The situation has been further worsened by climate change, war and conflicts in some regions, worsening food and livelihood security (FAO 2020).

These impacts highlight the importance and urgency of having strong multilateral, multisectoral, cross-disciplinary cooperation to mitigate the consequences of any future pandemic or global health threat.

Rationale and Objective of the Chapter

In this chapter, using the three pillars of the global health emergency framework (HEPR): (a) preparedness, (b) response and (c) resilience, we reflect on the lessons from the COVID-19 pandemic for their implications for global governance in this area. The rationale for using the framework is that it results from more than 300 recommendations discussed and debated through several international processes such as the Intergovernmental Negotiating Body (INB) and Working Group on Strengthening WHO Preparedness and Response to health emergencies (WGPR), G7 and G20. The framework is also informed by recent reports from the Independent Panel for Pandemic Preparedness and Response (IPPR), the Global Programme Monitoring Board (GPMB), the Independent Oversight and Advisory Committee (IOAC), the International Health Regulations (IHR) Review Committee on the functioning of the International Health Regulations (2005) (World Health Organization 2016) during the COVID-19 response, and many others. Using the three pillars of the framework: governance, systems and structure and financing, we reflect on lessons for the future.

The first part highlights key governance issues *during* the pandemic and challenges to working collectively within and across countries, sectors and communities. This is followed by lessons on systems and structures to prepare for, prevent and respond to health emergencies at the global level. Thirdly, financing health emergency preparedness and response architecture requires innovative financing in addition to more funding. The chapter then ends with a broad proposal for the way forward to ensure a significantly more prepared world for future pandemics. The chapter highlights how the COVID-19 pandemic has exposed the importance of global health governance, which is dominated by power distribution, geopolitical tensions, populist nationalism and ideological competition.

Lessons from the Pandemic

Governance

The devastating impact of the COVID-19 pandemic has highlighted the complexity of the global health ecosystem, the governance of which is weak and lacking in coordination. The extent of enforcement of both formal and informal rules governing the global

health architecture, such as regulations, accountability and leadership, had a major influence on the response to the COVID-19 pandemic. The IHR is the only multilateral legal instrument among WHO member states, first adopted in 1969, with the last amendment passed in 2005 after the outbreak of severe acute respiratory syndrome (SARS) in 2003. The SARS outbreak reinforced the need for a more effective legal international framework to cover ‘all events potentially constituting a public health emergency of international concern (PHEIC)’, not only for infectious diseases. The SARS outbreak accelerated the revision of IHR 2005, which came into effect in June 2007.

IHR 2005 (World Health Organization 2016) was transformative in these aspects, bringing a shift in emphasis from a disease-specific approach that focused on three diseases to be included in all public health threats, the passive to the proactive use of real-time surveillance and cross-border control for detection and containment at the source.

The IHR 2005 (World Health Organization 2016) gives the WHO the power to designate a PHEIC. The IHRs recognise the interconnected nature of the world and how vulnerable it is to the rapid spread of diseases, not limited to infectious diseases but other potential public health challenges as well, including environmental challenges, chemical hazards and radio-nuclear threats.

The IHR 2005 (World Health Organization 2016) has a set of ‘core capacities’ necessary for the member states to effectively detect, assess, notify, and report events and respond to public health emergencies of national and international concern. The IHR facilitates the communication and reporting processes between WHO Country Offices and national IHR focal points in relevant member states to promote proactive risk management through early detection of potential international health threats and to prevent unjustified border closings to prevent unnecessary economic loss. Member states are responsible for maintaining their IHR core capacities while WHO provides technical assistance. Since they were revised in 2005, the IHRs have been a valuable global framework for international health coordination and collaboration for global health security, including seven PHEIC declarations, beginning with the H1N1 influenza pandemic in 2009, polio and the West Africa Ebola outbreak in 2014, the Ebola and Zika viruses in 2016, COVID-19 in 2020, and MPox in 2022.

However, several areas were identified for improvement with the IHR during the COVID-19 pandemic, as they failed to ensure a robust global response to the emergence of SAR-COV2. Although the IHR document was a formal, legally binding instrument, governing the IHR was challenging during the pandemic due to a lack of enforcement, and WHO did not have adequate financing, a coherent mandate or strong political backing. During the pandemic, instead of complying with IHR and delegating some responsibility for decision-making to a global coordinating body like WHO, countries chose to collaborate or cooperate (or not) according to their leaders’ choice and national interests (Duff *et al.* 2021). Moreover, there is no penalty for non-compliance, although all WHO member states are legally obliged to follow the IHR (20). As Gustafsson (1998) stated, ‘[I]nstitutions without enforcement are not institutions at all’; thus, the outcomes of an institution or rule (in this case, the IHR) depend on how these rules are *enforced* (Pyone and Mirzoev 2021).

The situation was further complicated by the increasing political tensions among some major nations, and WHO ended up being the victim of their differences. Indeed, the role of WHO is constrained by the rivalry among strong geopolitical actors, who, by virtue of the veto and state practice, are not held accountable for violations of the UN Charter or International Law. Disruptive behaviour by the United States early in COVID led to

defunding and attacks on WHO. Also, the refusal by some countries to suspend sanctions during the pandemic—despite a plea from the UN Secretary-General—shows the low priority given to humanitarian concerns when strategic interests are at stake.

The WHA (World Health Assembly)—which governs the WHO and is composed of the health ministers of WHO member states—proved to be inadequate to the task of responding to an outbreak on the scale of the COVID-19 pandemic, which demanded a whole-of-government approach, that is, beyond the health sector, to control the outbreak effectively (Sachs *et al.* 2022). Thus, health ministers need more political authority within their governments to make decisions (*ibid.*). This is complicated by the governance of WHA, which is too large to take executive decisions on behalf of the 193 WHO member states, which meet only once a year. At the same time, an outbreak response requires daily, interactive, hands-on decisions and actions (*ibid.*). Therefore, in theory, WHO is supposed to coordinate and govern, but in practice, the WHO mainly provides technical recommendations, norms and standards and supports decision-making processes, leaving countries to make independent decisions on their own course of action (Hannon *et al.* 2022). Further, the primary focus of the IHR is capacities at the national level, and these may not necessarily be adequate for improving *global* oversight and coordination (*ibid.*).

Therefore, it is time to revisit the IHR 2005. Two parallel processes are currently ongoing at the WHO: (a) negotiations on the pandemic treaty or accord via the INB and (b) the revision of the existing IHR coordinated through the IHR Working Group (WGIHR). Both the INB and WGIHR are bodies appointed by the WHA, and their aim is to have the treaty text and the amendments to the IHR ready for adoption when the WHA convenes in May 2024 (Behrendt and Müller 2023). The goal of the pandemic accord is broader than the IHR: to set the rules to be followed by all countries in the event of a pandemic and to ensure that equity is at the heart of all actions undertaken.

Thus, it is clear that the key governance challenge during the pandemic was the failure of international cooperation and coordination among countries. Instead of solidarity during the crisis, countries failed to coordinate containment strategies and failed to examine, share and adopt best practices for controlling the pandemic (World Health Organization 2021a). Global funding for LMICs fell short. Countries competed to seize limited supplies of major goods and commodities such as personal protective equipment and medical countermeasures like diagnostics, therapeutics and vaccines (*ibid.*). This led to severe inequities in access to all these essential products between countries, resulting in many preventable deaths.

As if this were not enough, the situation was worsened by the lack of sharing of timely, accurate and systematic data on infections, deaths and variants and a failure to fight the *infodemic*. WHO defined an infodemic as ‘too much information, including false or misleading information in digital and physical environments during a disease outbreak’ (World Health Organization 2023b). The infodemic during the COVID-19 pandemic has undermined public health responses, leading to public mistrust of health authorities. Social media played a critical role during the pandemic, influencing public attitudes and reactions, including people’s emotions, convenience and feasibility of following certain PHSM. These had to be adapted in accordance with the evolving scientific understanding of the virus, such as reproduction rate, mode of transmission, susceptibility factors, and variants of concern (Sachs *et al.* 2022). Clickbait headlines from social media influenced public perception and attitudes towards the virus without regard for scientific evidence, often undermining the required PHSM adjustments. The social media posts that originate such unscientific opinions often leave no room for in-depth discussion and instead offer mere ‘beliefs’ without scientific evidence (Sachs *et al.* 2022).

There were also instances when the infodemic was exaggerated by some irresponsible political leaders whose actions were influenced by political interests and not by science. As the pandemic was a learning curve for most political leaders, and SARS-CoV-2 was a novel disease with many unknowns, some political leaders made irresponsible statements in the first few months of the pandemic, neglecting scientific evidence and risking lives for political gain (Sachs *et al.* 2022). Governing the infodemic during the pandemic was challenging, as the world was in need of more effective mechanisms to ensure accountability (World Health Organization 2021a). The pandemic has exposed ‘a polarised world characterised by heightened nationalism, distrust, and inequality’ (Sachs *et al.* 2022).

Nonetheless, there were many positive aspects during the COVID-19 pandemic. Governments from many upper-middle and HICs established support systems for small businesses, expanded social support nets and used telemedicine and telehealth to mitigate the pandemic’s consequences (Sachs *et al.* 2022).

Moreover, multilateral financial institutions such as World Bank and the IMF provided emergency funding for the pandemic response. World Bank (2022) allocated nearly US\$14 billion for pandemic relief and approved US\$12 billion in 2020 for countries to buy and deliver vaccines. However, the speed of distribution of these funds was not at the pace needed by countries, and the procedures were complex. The IMF also promised support of approximately US\$170 billion for some 90 countries (Sachs *et al.* 2022).¹ The Global Fund to Fight AIDS, Tuberculosis and Malaria repurposed their health programmes to COVID-19 responses by allocating up to 5 per cent of their grants (Global Fund 2022).

Many health systems around the world introduced innovative solutions to continue essential health services during the pandemic. The use of digital health was maximised as ministries of health looked for ways to deliver health care. Digital technology was integrated into policy, service delivery and health care at a scale never before seen. Health service delivery improved due to the increased use of telemedicine and telehealth. Digital technology was used in surveillance, contact tracing, screening for infection, testing, isolation and quarantine, clinical management, and tracking medical supplies, etc. (Whitelaw *et al.* 2020).

Digital data dashboards, migration maps, machine learning, and real-time data from wearable technology (such as smartphones) were used to track the virus in real-time as the technology allowed visual depiction of spread, announced border restrictions, guided resource allocation, and informed forecasts (Whitelaw *et al.* 2020) The use of Artificial intelligence (AI), digital thermometers, mobile phone applications, thermal cameras, and web-based toolkits in screening infections provided information on disease prevalence and pathology and identified individuals for testing, contact tracing and isolation (*ibid.*). AI for diagnostics and machine learning algorithms were increasingly used in clinical decision-making, diagnostics and risk prediction (*ibid.*). Telemedicine and virtual care rapidly expanded in countries where it was possible from technical, legal and regulatory standpoints. This technology also enables efficient service delivery, facilitates patient-centred remote care and helps with infection control (*ibid.*).

However, countries with better infrastructure were better able to implement digital technology than those with poorer infrastructure. Indeed, countries such as South Korea were able to flatten their incidence curve because they successfully integrated digital technology into government-coordinated containment and mitigation processes (Whitelaw *et al.* 2020).

One important human characteristic which informally enforces governance of the COVID-19 pandemic response is public trust in government and science. The pandemic

has shown that global trust at all levels of society is fundamental to the success of science and policy. We have witnessed that the public responded differently to government instructions in different countries. Even within the same country, public attitudes towards the pandemic were diverse, as formal rules, actions and statements of national leaders and informal norms and standards such as culture, path dependence, peer groups, and education level influenced public attitudes. The pandemic highlighted the importance of public trust in science as PHSMs such as mask-wearing, social distancing and isolation played a vital role in the control of spread. These control measures can be effective only when the public trusts the authorities and complies with these measures (Battiston, Kashyap and Rotondi 2021; Bromme *et al.* 2022; Travis *et al.* 2021).

Studies reported that countries with high levels of trust (some Nordic and East Asian nations) outperformed countries with low confidence in their authorities (Thornton 2022). High levels of government and interpersonal trust were reported to be associated with lower infection rates and higher COVID-19 vaccine coverage (Thornton 2022). An empirical study published in 2021 reported that governments that were perceived as organised and fair and which produced clear messaging on COVID-19 inspired public trust (COVID-19 National Preparedness Collaborators 2022). This trust in the government was associated with greater adoption of health and prosocial behaviours (COVID-19 National Preparedness Collaborators 2022; Han *et al.* 2021). Cultural practices also influenced community responses to the pandemic. Cultural psychologists reported that tight cultures had higher adherence to social norms than loose cultures that favour individualism, freedom of choice and human rights (Gelfand *et al.* 2021). Indeed, cultural and behavioural practices have influenced the implementation of PHSM that were used to control the spread of SARS-CoV2, such as mask-wearing, physical distancing and isolation (*ibid.*).

Looking to the future, it is clear that governance, including rules, regulations and practices, must be clear at the national and international levels. Further, regional bodies could also play an essential role in financing, procurement and cross-border cooperation. One excellent example is the Africa Centres for Disease Control for the whole of the African continent.

Systems and Structures

An effective response to COVID-19 and any future pandemic requires a checklist of policy actions and health systems that can deliver needed outcomes and support individuals to perform prosocial behaviours (Sachs *et al.* 2022). Many LMICs—particularly those that have faced other epidemics, such as HIV, Ebola and Zika—were able to integrate their responses to COVID-19 with well-established community screening and contact-tracing capacity and to deploy community health workers rapidly (Sachs *et al.* 2022). Indeed, the ability to prepare for, prevent, detect, and respond effectively to health emergencies at national, regional and global levels depends on the operational readiness and capacities of a central coordination body like WHO at the global level and collaborative surveillance and public health intelligence, skilled and trained health workforce, and access to medical countermeasures, including research at national and regional levels (World Health Organization 2022a).

Indeed, the role of the 75-year-old global health coordinating body that is WHO should be re-emphasised since it is central to the entire global health ecosystem. WHO is the only organisation with the mandate and legitimacy to advocate and lead global health emergency preparedness and response to meet the needs of all countries and deliver on

equity (World Health Organization 2022a). Even though WHO's response to the pandemic was not perfect, the agency at all times played a vital and instrumental role in the fight against the COVID-19 pandemic. WHO brought the best skills, technical expertise, science, and evidence to inform policy and practice by setting globally applicable norms and standards. Within a month of the announcement of the PHEIC, WHO published the Global COVID-19 Research Roadmap, outlining key research areas and priorities (World Health Organization 2023a). The Roadmap included research priorities on the natural history of the virus, epidemiology, diagnostics, clinical management, ethical considerations, and social sciences, as well as longer-term goals for therapeutics and vaccines (World Health Organization 2023a).

WHO and its partners launched the Solidarity trial, a unique, multi-arm, adaptive international clinical trial that aimed to generate robust data to find the most effective treatments for COVID-19. Enrolling large numbers of patients in a single trial made rapid testing of unproven treatments possible while generating strong evidence to inform treatment guidelines (World Health Organization 2023a).

To facilitate approval of different COVID-19 vaccine products, WHO facilitated the harmonisation of regulatory agencies across the world to standardise regulatory standards for manufacturers of COVID-19 vaccines; this facilitated rapid approval for pre-qualification and/or Emergency Use Listing. Regarding policy advice, WHO's Strategic Advisory Group of Experts on Immunization (SAGE) reviewed the emerging vaccine clinical trial data and provided updated policy recommendations on how best to use the various vaccines. Rapid development, deployment and access to diagnostics and therapeutics posed additional challenges due to many technical and financing issues. It is encouraging to note that a diagnostics resolution has been passed for the first time at the 76th WHA. This resolution is an essential step towards improving global access to diagnostic tools since nearly 50 per cent of the global population has little or no access to diagnostics, and this lack of diagnostics leads to premature mortality (Fleming *et al.* 2021).

Instead of systemic reform after every health crisis, a piecemeal response has resulted in a proliferation of independent health-related agencies outside the WHO framework. Competition for finances and overlap in mandates have resulted in complicating and sometimes weakening the WHO's role as the global health agency. While the Global Fund, Global Alliance for Vaccines and Immunizations (GAVI) and the Coalition for Epidemic Preparedness Innovations (CEPI) were set up with clear goals to meet a perceived need, it is essential, going forward, to learn lessons from the COVID-19 pandemic and previous epidemics in order to have a solid framework for cooperation during future emergencies. The new 'pandemic countermeasures platform' should be developed based on the outcomes of the INB deliberations and should provide the framework for a nimble, efficient and effective platform for providing equitable access to countermeasures to populations across the world. Preparedness for future pandemics inevitably requires strengthening the public health system within countries, as well as WHO, bringing greater coherence to the global health system.

The COVID-19 pandemic has exposed weaknesses in global *surveillance systems and structures*, regardless of the country's income status (IANPHI 2022). Even some HICs had challenges in getting information in a timely and useful way if the country has a federated system of government which collects surveillance data for different purposes using different approaches. Moreover, some countries' National Public Health Institutes did not have the authority to request data without data agreement from relevant jurisdictions (*ibid.*).

Similarly, in some LMICs, the pandemic has exposed long-term structural weaknesses in the surveillance system. These included challenges for human resources and reporting; a country may still be using paper-based reporting, and even when there may be electronic reporting, there may be a lack of interoperability and compatibility in systems among different ministries in the same country. The resulting problems can be compounded by fragmented surveillance systems operating in siloes, which can create difficulties for a country's National Public Health Institute when faced with the need to coordinate national surveillance and respond to the pandemic at all levels since it was next to impossible to collect data from all over the country (IANPHI 2022).

Though the pandemic revealed gaps in current surveillance systems worldwide, it helped raise the importance of integrated and collaborative surveillance. Countries began to recognise that the type of data that was collected through their existing surveillance systems during the pandemic needed to be at a sufficiently granular level to identify and understand patterns of risk and vulnerability in order to tailor response efforts to specific populations or geographic areas. Some datasets needed to be manually enhanced with additional information, such as location, in order to be useful for contact tracing. The pandemic also highlighted the potential role of harnessing non-traditional sources of surveillance data, such as social media activity, and the need to evaluate their relative utility and reliability moving forward. Alternate methods, such as wastewater surveillance (traditionally used for polio), were also activated. Over the course of the pandemic, there was heavy reliance on laboratory and diagnostic capacity in some countries, highlighting the need to strengthen these capacities in terms of physical infrastructure, transport, supplies and equipment, and human resources. In some countries, funding was diverted to COVID-19 response at the expense of other priority pathogens, such as TB, for which surveillance and response were interrupted.

Indeed, the pandemic brought high-level political attention to disease surveillance and heightened awareness of the need for good-quality surveillance systems. Many HICs began to invest in integrated and collaborative surveillance. For instance, Singapore recently set up a new Communicable Diseases Agency to oversee disease preparedness, prevention and control, surveillance, risk assessment, and outbreak response and to consolidate public health functions under the Ministry (Channel News Asia 2023). At the international level, the WHO set up a new Hub for Pandemic and Epidemic Intelligence in Berlin, Germany, in September 2021, with an initial investment of US\$100 million from the Federal Republic of Germany (World Health Organization 2021c). The aim of the Berlin hub is 'to harness broad and diverse partnerships across many professional disciplines, and the latest technology, to link the data, tools and communities of practice so that actionable data and intelligence are shared for the common good' (World Health Organization 2021c). Similarly, the United Kingdom announced a plan for a new 'Global Pandemic Radar', an advanced international pathogen surveillance network, to identify and track new COVID variants and emerging diseases, building on U.K. health security expertise to help stop the spread of COVID-19 and prevent future pandemics (Government of UK 2021). Indeed, the COVID-19 pandemic has raised public awareness and political attention to public health surveillance, including digital innovations using electronic surveillance systems.

Of core importance for such systems is a skilled, trained and protected health workforce, one that is able to reach even the most marginalised communities. The existing health workforce shortage was further worsened by the COVID-19 pandemic, especially in the African and Eastern Mediterranean regions and Small Island Developing States (World Health Organization 2023e). The health workforce challenge is not exclusive to

LMICs. Across the G7, OECD and HICs, there are growing demands for health and care workers, high vacancy rates, strikes, and protests. During the COVID-19 pandemic, many HICs had to rely on insufficiently trained temporary staff for contact tracing. Therefore, it is imperative that governments in LMICs double their health workforces over the next ten years, something that is financially and technically feasible with political will and implementation of the Working for Health Action Plan (2022–30). Furthermore, countries need to respect the Global Code of Practice from the International Recruitment of Health Personnel and stop recruiting from the 55 countries on the WHO Support and Safeguards list (World Health Organization 2023e).

There were significant inequalities in accessing medical countermeasures, including vaccines (Mathieu *et al.* 2023). While vulnerable populations such as older adults and people with existing co-morbidities need special attention in a pandemic, frontline workers such as health and social workers should be the first ones to receive vaccines, as they were critically underserved by vaccination programmes in many LMICs due to limited access to the COVID-19 vaccines. Such inequity in access to medical countermeasures occurred not only in the recent COVID-19 pandemic but was experienced in the previous outbreaks of HIV and Ebola.

Although there was a massive increase in investment in research funding during the COVID-19 pandemic, most of this investment occurred in HICs. Moreover, much of the research that did take place was not well coordinated and led to much duplication (Bucher *et al.* 2023). Therefore, better coordination is required among agencies that fund infectious disease research, and attention must be paid to funding research, including clinical trials, in low-income countries. This was the conclusion that Glopid-R—a group of about 30 national funding agencies that support infectious diseases research—came to as well. While research relating to diagnostics, therapeutics and vaccines (from basic research onwards) all received substantial investment across a wide range of different studies around the world, there were gaps in some areas, especially in the areas of operational and social science research, to better understand the effectiveness and potential downsides of PHSM (McCartney 2020).

It is vitally important that we take stock of achievements over the past three years and analyse what did not work well. Reorienting the research system towards the global public interest is not straightforward, as country priorities do not always align with global funding flows. Countries often have industrial, economic and political objectives for investment, as witnessed in the case of the production of COVID-19 vaccines. Yet international agreements can structure cooperation to meet each country's needs, as shown by the influenza (PIP) framework (Swaminathan *et al.* 2022).

Health Financing

The COVID-19 pandemic led to a deep global recession in February–April 2020. In March 2020, uncertainty was so high that it led to a dash for cash and general malfunctioning in financial markets (Sachs *et al.* 2022). Substantial employment losses accompanied the recessions caused by COVID-19 in many countries in 2020. These losses were significant in emerging markets and differed only in the age and education level of the workers affected. Workers who had received tertiary education were generally the least affected by employment losses (*ibid.*).

Current health financing is primarily provided by national (domestic) resources, which include both government and private health expenditures, in addition to out-of-pocket

spending, with modest levels of international support by donors for LMICs (Global Burden of Disease 2020 Health Financing Collaborator Network 2021; OECD 2019). As measured by the OECD Development Assistance Committee, total official development assistance for health came to a mere \$23 billion as of 2019, or less than 0.05 per cent of the GDP of donor governments (Global Burden of Disease 2020 Health Financing Collaborator Network 2021). This assistance amounted to roughly 1.5 per cent of the health financing of LMICs, a very modest sum (OECD 2019). The pandemic did not alter this picture in any decisive way. Even these modest amounts of official development assistance have proven decisive in scaling up disease control in many areas. The Global Fund and the GAVI have each saved tens of millions of lives with modest outlays of a few billion dollars per year (Friebel *et al.* 2019; Global Fund 2021; Zerhouni 2019). These programmes prove that international financing for health can result in practical solutions, despite being highly underfunded, considering the broad scope of their missions.

While Official Development Aid (ODA) for health represents only 1.5 per cent of total funding resources for health available in LMICs, all of these funds are reportedly not channelled directly into the LMICs (55). Instead, they are funded through public-private partnerships such as the Global Fund, CEPI, COVAX, the WHO Foundation, and World Bank's Financial Intermediary Fund (FIF) (Velásquez 2023). Nearly half of the ODA for health goes to medicines and vaccines produced in a handful of ODA donor countries (*ibid.*).

The creation of the Access to COVID-19 Tools (ACT) Accelerator and COVID-19 Vaccines Global Access (COVAX) in April 2020 aimed to set up an end-to-end mechanism for development and deployment of COVID-19 countermeasures, but both fell short of their ambitious (and highly ethical) goals (Sachs *et al.* 2022). Raising even a few billion dollars of international support for ACT Accelerator and COVAX proved extremely difficult despite the urgency of the pandemic. The modest funding was insufficient to obtain crucial PPE supplies, testing supplies and, especially, vaccines. Bilateral deals between countries and manufacturers for the purchase of these commodities were prioritised at the expense of COVAX. Many producing countries also implemented temporary export bans on essential products (e.g., PPE, pharmaceuticals, and hand sanitiser), with wider effects on access for countries in need. The multilateral development banks similarly provided too little health financing and too slowly to make up the pandemic financing gap (Okonjo-Iweala, Shanmugaratnam and Summers 2021).

The current proliferation of special health funds needs to be rationalised. The COVAX Facility is part of the ACT Accelerator, co-managed by WHO, GAVI, UNICEF, the Global Fund, CEPI, and other partners. Previously, for epidemic and pandemic response, World Bank Group hosted the Pandemic Emergency Financing (PEF), while WHO had a Contingency Fund for Emergencies (CFE). The PEF and the CFE were established after the 2014–15 Ebola outbreak in West Africa. The PEF was closed in 2021 after failing to catalyse funding for outbreak response due to delays in complex procedures required to legally release funds during epidemics (Brim and Wenham 2019). Furthermore, the PEF failed to link explicitly to the IHR and provide funding at the early stage of epidemics or at the declaration of a PHEIC (Wenham *et al.* 2021). The same year that PEF closed, World Bank announced a new grant-based health emergency preparedness and response (HEPR) Umbrella Programme, followed by the establishment of the FIF (later renamed the Pandemic Fund) in 2022.

The Pandemic Fund represents a new financing mechanism designed to provide greater financial resources for preparedness and response efforts in LMICs. The Pandemic Fund

is focused heavily on prevention and preparedness efforts, which are widely regarded as more cost-effective than financing response efforts (Boyce, Sorrell and Standley 2023).

Ideally, one needs a well-resourced, nimble and efficient fund that will support preparedness in low-income countries as well as be ready to disburse large amounts quickly, for response, when needed. The fund could be effective even with guarantees from HICs that they will refund the countermeasures platform for emergency purchases and investments in drugs, diagnostics and therapeutics development and procurement.

The Way Forward

The COVID-19 pandemic has demonstrated the importance of global health governance for health system preparedness, resilience and response and how weak it currently is. The pandemic has diverted scarce resources from achieving Sustainable Development Goals (SDGs). On May 5, 2023, WHO announced that COVID-19 is no longer a PHEIC, following a recommendation from the COVID-19 emergency committee (World Health Organization 202c). However, COVID-19 is still a global health threat.

It is now time for countries to transition from emergency mode to managing COVID-19 alongside other infectious diseases (World Health Organization 2023c). Recovering from the pandemic will take much time for many countries due to the effects it has had on the wider social and economic conditions. While it is critically important to invest in health system preparedness and response capability, as well as universal health coverage, countries urgently need to invest to build back their economies, which are critical for restoring good health systems, access to education, nutrition, social connections, and healthy environments. These investments should not be siloed but rather should be comprehensive and coordinated across sectors to make them sustainable. Politically powerful countries should set aside political rivalries and work together to counter the effects of this pandemic and prevent the next global crisis.

Keeping the peace is the first step, as disease outbreaks exploit the presence of wars, conflicts and social instability. Official development assistance or aid should be driven by the recipient country's needs and not a donor-driven agenda. If equity and solidarity are the heart of humanitarian or outbreak response, the global community has to find a way to give voice to the voiceless, not simply as a slogan.

Countries should invest in primary health care to achieve universal health coverage while simultaneously enhancing their readiness for any future pandemic and developing the capabilities prescribed in the WHO Joint External Evaluation. Most LMICs do not have strong health infrastructure and are struggling with weakened existing health systems and endemic diseases, let alone having to prepare to respond to future public health emergencies. The COVID-19 pandemic has shown us that countries must take more responsibility for their own and others' health security. Moon and Kickbusch (2021) express beautifully the compelling responsibility of the nations of the world to accept their role in caring for the whole human family by avoiding 'the self-interested behaviour of sovereign states' and accepting 'the challenge of ensuring that they comply with international rules when their perceived interests lie elsewhere'.

Thus, countries need to increase total expenditure on health systems worldwide, with increased investments in research and development, not only in biomedical research but also in social and behavioural research. For public health systems to function better, we need to maximise the contribution of the behavioural and social sciences to improving and protecting the public's health and well-being and reducing health inequalities. For

instance, many risk factors causing NCDs are behaviourally driven, such as smoking and a sedentary lifestyle (Ghebreyesus 2021). The misuse of antibiotics in human health care is a principal, but avoidable, driver of antimicrobial resistance (Torreele *et al.* 2023). Hand hygiene is one of the most effective measures to stop the spread of infection, but people often fail to maintain adequate hand hygiene, even where water and soap are available (*ibid.*).

Countries should support the review of the IHR 2005 and effectively engage in developing the pandemic treaty with real participation from LMICs. A binding pandemic treaty is an important step but will only be successful if commercial interests are kept aside, and it will require real political commitment to make that happen. Furthermore, it is important that equity stays at the heart of the pandemic treaty and that equitable access to health products be assured, regardless of the ability to pay. The review of IHR needs to incorporate appropriate enforcement mechanisms, with incentives for countries to cooperate, sanctions for non-compliance or both (Duff *et al.* 2021). A careful balance is required for setting incentives and sanctions to enforce IHR: consideration of a particular country's characteristics and unique circumstances and its access and ability to mobilise resources (*ibid.*). Additionally, countries should ensure that WHO is well funded and independent so that its decisions and recommendations are science-based and data-driven, with minimal political and ideological interference (*ibid.*).

Investments in health should take a One Health approach, which integrates different disciplines and sectors, including veterinary medicine, biology, epidemiology, immunology, human medicine, public health, behavioural and communication science, anthropology, sociology, psychology, education, and others. Focusing on and investing in proactive and preventive strategies and policies, along with strengthening surveillance, rapid risk assessment, and risk communication, are of paramount importance to prevent or detect emerging and re-emerging diseases at an early stage when localised control is still possible.

Multiple disease surveillance efforts should be integrated, such as for malaria, rabies, HIV, and TB, avoiding vertical funding. Indeed, the integrated surveillance system should use a broad-based, multi-source horizontal platform able to detect different pathogens. The system should capture useful contextual information, such as clinical and epidemiological information, supply chain data and information about available resources, as they are indispensable for providing the right policy and response decision. The contextual information must include real-time social data, which is essential for identifying the most relevant response to the crisis on the ground. We also need to explore the potential role of harnessing non-traditional sources of data, such as social media activity, and evaluate its relative utility and reliability.

It is vital to build health systems that can switch efficiently and quickly into emergency mode. Many innovations, systems and resources built during the pandemic should also be sustained in the interpandemic period so as to be ready for the next pandemic before it arrives. Post-COVID-19 financing needs to be strategic and should focus on the core elements of the national investment plan for health system strengthening, including pandemic preparedness. Therefore, national governments should steer all investments (domestic and international) to ensure the scalability, agility, flexibility, and sustainability of their health system. A piecemeal project-based approach to funding should be avoided, as this can lead to a cacophony of different initiatives.

Research funding should balance biomedical research (on vaccines, therapeutics and diagnostics) and behavioural and social science research. Different scenarios to optimise biomedical research are setting up pre-negotiated public-private partnerships like ACT-A

(a dedicated public research and development infrastructure) or long-term technology transfer initiatives (Torreel *et al.* 2023). The WHO Council on the Economics of Health for All has just produced a new model of Research and Development (R&D) for public good, which is not a typical model in the biotech sector (WHO Council on the Economics of Health for All 2023). One excellent example is the WHO mRNA technology transfer programme, which uses a network model with its technology transfer hub based in South Africa and links with 15 partners in Africa, Asia, Europe and Latin America. The programme also aims to establish an R&D network within these network partner countries, not only with industries but also with local academic institutions, to support the development and manufacture of mRNA vaccines (beyond COVID-19) against priority diseases relevant to each region.

Going forward, we should learn lessons from the COVID-19 pandemic, as there have been many scientific advancements in the past few years. For instance, we have produced COVID-19 vaccines in a record-breaking 11 months using mRNA technology. Similarly, there are newer epidemiological surveillance tools, such as the re-emergence of wastewater surveillance; evolution of rapid, multiplex and easy-to-use diagnostics; prompt development and evaluation of therapeutics with fewer regulatory and financial hurdles; increased use of digital tools and AI; and leverage of the mRNA platform for other diseases, including vaccines. We watched how international solidarity failed and equity became a slogan, revealing eloquently the urgent need for a binding pandemic treaty. It is time to enhance preparedness for future pandemics and strengthen the public health sector, including WHO itself. Funding should not be segmented into different mechanisms and entities. Most importantly, it is crucial to rebuild trust and invest in the health workforce so that they can be confident about their working conditions, enabling them to deliver quality care to the public to whom they are accountable (Kluge *et al.* 2023).

Note

- 1 The IMF was quick to respond to the COVID crisis and created two facilities: the Rapid Credit Facility (RCF) and Rapid Financing Instrument (RFI), the latter a facility providing fast-disbursing support to countries experiencing commodity price shocks, natural disasters and other fragility-related emergencies.

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27 What Do Extreme Poverty and Inequality Mean for Global Political Stability?

Asif M. Islam, Ani Rudra Silwal and Federica Saliola

Poverty and inequality are long-standing, complex global issues that require concerted and long-term engagements to address. Poverty denies individuals basic freedoms to attain a fulfilling life. Inequality can weaken the social fabric of society. It can discourage social mobility, increase political instability, create a political environment that misallocates resources, and potentially harm growth by decreasing human capital investments. Political upheavals like the Arab Spring have demonstrated how economic inequality and poverty can lead to social unrest and political instability as people seek to express frustration with the lack of inclusive economic progress.

Global poverty fell steadily for a few decades prior to the pandemic, yet this reduction had not been strong enough, and the target of ending global extreme poverty by 2030 (Sustainable Development Indicator 1.1.1) was already falling out of reach. The COVID-19 pandemic dealt the biggest setback to global poverty in decades. More than 70 million people were pushed into poverty by the end of 2020 compared to a year earlier. World Bank (2022b) projected that 7 per cent of the world's population—roughly 574 million people—will remain in extreme poverty in 2030, far short of the Sustainable Development Goal (SDG) goal of 3 per cent. The pandemic has also caused severe labour market disruptions in developing countries, bringing hardship especially for the self-employed, the uninsured and those least resilient to income shocks.

This chapter assesses current progress in the fight against extreme poverty before discussing the implications for global political and social stability. It puts a strong emphasis on the intertwining between poverty and labour income, with labour being the largest asset owned by the poor. The poverty reduction successes of the last 50 years, a period in which the world population increased by 4 billion (UNDESA 2019), are all to be found in countries that transformed their economy to create more productive and better-paid jobs, raising earnings. Despite these success stories of increased labour earnings reducing poverty, too many people in developing countries are still working in low-productivity, insecure jobs (World Bank 2019).

This chapter is organised as follows. First, recent trends in extreme poverty and inequality in the world are described, focusing on the impact of the pandemic. Various channels through which poverty and inequality can affect global political and social stability are then discussed. The chapter concludes by discussing some possible remedial policies.

Extreme Poverty and Global Inequality after COVID-19

Prior to the COVID-19 pandemic, the global community was making steady progress towards poverty reduction (World Bank 2022b). The pandemic dealt a major setback to

global poverty reduction, making 2020 a historic turning point in which global income convergence began to give way to global divergence. During the pandemic, the poorest suffered disproportionately along many aspects of well-being. Moreover, the economic recovery from the pandemic has been uneven and affected some demographic groups more than others.

Pre-pandemic Trends

Global poverty fell steadily for a few decades prior to the pandemic. Global extreme poverty, defined as the population living under \$2.15 in 2017 per person per day (PPP), has fallen steadily in recent decades. In 1981, the first year for which World Bank published global poverty estimates, nearly 44 per cent of the global population lived in extreme poverty. In 2019, this had fallen to less than 9 per cent (World Bank 2023a). Much of this progress was due to the remarkable progress that China made during this period, lowering its poverty rate from more than 90 per cent in 1981 to less than 1 per cent in 2019; it moved close to 800 million people out of poverty during this period (World Bank 2022a). All regions of the world, with the exception of Middle East and North Africa, have seen steady progress in poverty reduction. The global population living under poverty hovered between 1.8 and 2.0 billion between 1981 and 2000 before falling steadily to about 660 million in 2019.

Despite the progress in poverty reduction, the world was already off-track in meeting the SDGs. However, this reduction has not been strong enough, and the target of ending global extreme poverty by 2030 (Sustainable Development Indicator 1.1.1) was already falling out of reach. This is because poverty reduction was already slowing down on the eve of the pandemic. Global poverty rate fell at a rate of 0.6 percentage points per year between 2014 and 2019, much slower than the 1.4 percentage points per year between 2008 and 2013 (World Bank 2022b). Despite the steady progress in poverty reduction, it was already looking unlikely that the SDG target of 3 per cent poverty rate by 2030 would be met.

Global inequality also declined from the 1990s until the pandemic began. Similar to poverty, global inequality was also trending down prior to the pandemic (Mahler, Yonzan and Lakner 2022; World Bank 2022b). The global Gini index, which summarises the dispersion of income across the entire income distribution and ranges from 0 (perfect equality) to 100 (extreme inequality) points, hovered slightly under 70 points in the 1990s before falling steadily to 62 points in 2019. A convergence in mean incomes across countries was an important contributor to the decline in inequality. China played a large role in this decline (similar to the decline in poverty) since its rapid economic growth during this period lifted many people out of poverty. This reduction in inequality also reflects the strong income growth of the global middle class during this period. Other measures of inequality, such as income shares and the mean log deviation, tell a similar story as the Gini index.

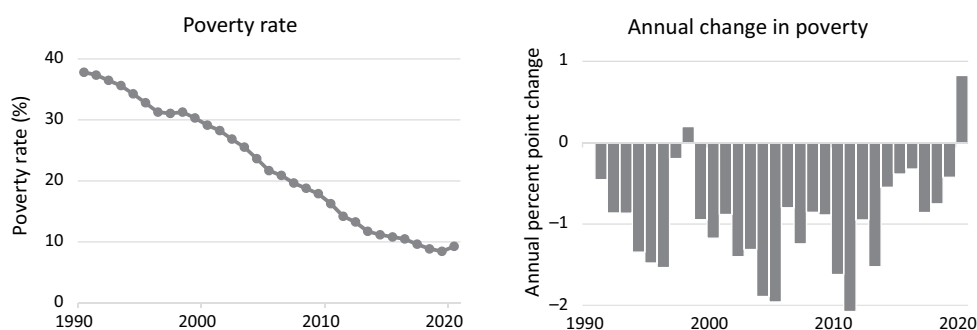
How Did the Pandemic Affect Global Poverty and Inequality?

The COVID-19 pandemic dealt the biggest setback to global poverty in decades. Estimates of the impact of the pandemic on global poverty and inequality are only suggestive at the time of writing this chapter in 2023 since many countries have yet to conduct household surveys that collect the appropriate information to estimate poverty rates.

World Bank (2022b) estimated, based on existing surveys and projections, that the pandemic increased the global extreme poverty rate from 8.4 per cent in 2019 to 9.3 per cent in 2020. This is the largest annual increase in global poverty at least since 1990 (Mahler, Yonzan and Lakner 2022). Figure 27.1 plots the global extreme poverty rate during 1990–2020. That implies that more than 70 million people were pushed into poverty by the end of 2020 compared to a year earlier. World Bank (2022b) projected that 7 per cent of the world’s population—roughly 574 million people—will remain in extreme poverty in 2030, far short of the SDG goal of 3 per cent.

The impact of the pandemic has been multidimensional and especially pronounced in education and health. The costs of the pandemic go beyond the increase in monetary poverty (World Bank 2022b). The broader costs include lost learning due to the closure of educational institutions, declines in health-care use, increases in mortality rates, and a general disruption to social and economic activity. Moreover, these losses appear to have been more pronounced for women than for men, along with a sharp increase in domestic violence against women and children (Miguel and Mobarak 2022). Human capital losses were incurred not only due to lost education but also due to lost work experience (Samaniego *et al.* 2022). Vos, McDermott and Swinnen (2022) describe the increase in food insecurity and adverse impact on livelihoods due to the severe disruptions in supply chains and income shocks during the pandemic. Reliable estimates of the magnitude of the impact on these various non-monetary aspects of well-being may be a few years away since data on them is still being collected, but indications are that the non-monetary impacts may ultimately prove to be more costly in the long run than the monetary impact that the global extreme poverty rate measures.

The pandemic resulted in the largest increase in global inequality in decades. Despite a steady decline in global inequality since around 2000, Mahler, Yonzan and Lakner (2022) estimate that global inequality (measured by the Gini index over time) increased from 62.0 points to 62.6 points, the largest annual increase at least since 1990 (Figure 27.2). This increase in inequality is broadly similar to the cumulative increase in inequality during the Asian financial crisis from 1996 to 1999. World Bank (2022b) suggests that the increase in global inequality in 2020 stems less from within-country inequality than it does from between-country inequality. In other words, the increase in global inequality has been driven by declines in average incomes across countries. This pattern of higher



Note. Source: Mahler *et al.* (2022).

Figure 27.1 Global extreme poverty between 1990 and 2020.

Source: Mahler *et al.* (2022).

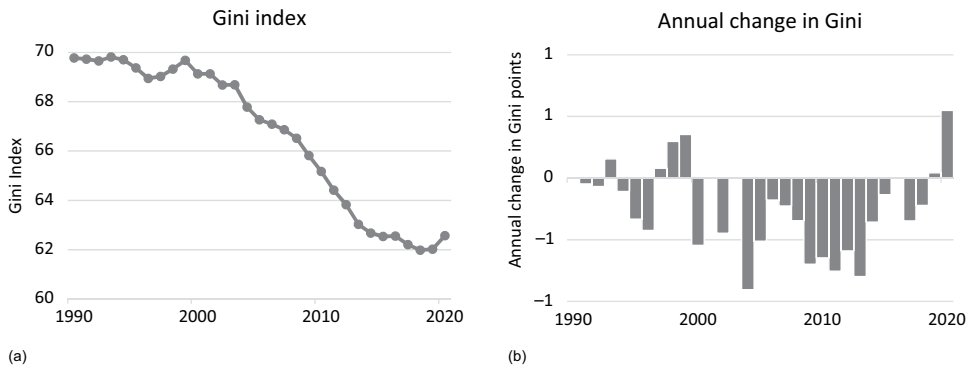


Figure 27.2 Global inequality between 1990 and 2020.

Source: Mahler *et al.* (2022).

inequality holds true even if other measures of inequality, such as the income share of different percentiles of the population, are examined. Mahler, Yonzan and Lakner (2022) find that the income share of people in the top 10 per cent of the global income distribution increased by more than one percentage point, whereas the middle 40 per cent and the bottom 50 per cent both saw decreases in their share of total income. Analysis by Deaton (2021) conducted early in the pandemic suggests that an increase in global inequality may not have happened in 2020 like the one described by Mahler, Yonzan and Lakner (2022). Ferreira (2021) warns us that inequality is a challenging concept on which to make definitive statements. Although indications are that the pandemic increased global inequality, it may take another few years of data collection to make reliable statements on this topic.

The recovery from the COVID crisis in developing countries is lagging the high-income countries. The richest economies have recovered from the pandemic at a much faster pace than low- and middle-income economies. Rising food and energy prices—fuelled by climate shocks and conflict among the world’s biggest food producers—have hindered a swift recovery. By the end of 2022, as many as 685 million people could still be living in extreme poverty. This would make 2022 the second-worst year for poverty reduction in the past two decades (after 2020). The uneven recovery from the pandemic is likely to be compounded by emerging macroeconomic trends. New fiscal constraints and tighter liquidity in high-income countries have serious implications for the availability of international bond refinancing and for foreign direct investments and capital flows to developing countries. Rising inflation will also have important ramifications for global monetary conditions. U.S. consumer price inflation hit a 40-year high of 7 per cent in December 2021, leading to multiple interest rate increases in 2022 and 2023. The rise in global interest rates is already compounding the fiscal constraints facing slow-growing low- and middle-income countries, many of which saw their debt levels soar as they borrowed to cope with the pandemic.

How the Pandemic Manifested Itself through Jobs to Affect Poverty and Inequality

The pandemic caused severe labour market disruptions in developing countries, bringing hardship especially for the self-employed, the uninsured and those least resilient to income shocks (Khamis et al. 2021). It is important to note that the contribution of work experience to human capital accumulation and economic development might be as important

as the contribution of education itself (Jedwab *et al.* 2021a). Much of what is known about the impact of the pandemic on jobs is from high-frequency phone surveys that were implemented by World Bank in collaboration with national statistical agencies in developing countries. Findings from these surveys suggest that the decline in labour income during the pandemic pushed an estimated 108 million workers into extreme or moderate poverty, erasing over 10 years of per capita income gains in more than a quarter of developing countries (World Bank 2021). Youth, low-skilled workers and women have also been hit hardest by the pandemic, which threatens to roll back gains in economic opportunities and further widening gender gaps.

The pandemic also deteriorated the quality of jobs among those who remained employed. This finding is again based largely on phone surveys conducted during the pandemic. Survey respondents reported a high rate of employment transitions, including moving from the non-agriculture to agriculture sector and changing employment type from wage employment to self-employment (World Bank 2022b). These transitions were more common among the less educated and among rural than urban households, which may have been a result of low-skilled urban workers migrating back to rural areas to take up farming.

The pandemic triggered a large shift to work from home. In a study of full-time workers from 27 countries, Aksoy *et al.* (2022) describe the pattern of work from home during the pandemic. They found that work from home averaged 1.5 days per week in their sample and ranged widely across countries. It is notable that after the pandemic ends, employers plan an average of 0.7 days per week of work from home, but workers want 1.7 days. Employees were also favourably surprised by their productivity when they worked from home, which was valued the most by women, people with children and those with longer commutes. However, findings from the United States suggest that the direct benefits flow much more to the better-educated and those with better health (Marshall, Burd and Burrows 2021). Similar findings from the United Kingdom suggest that workers in the highest income band and those in professional occupations were most likely to report home or hybrid working (Office of National Statistics 2023). All of these findings suggest that work from home may not only persist after the pandemic ends but also that its benefits may not be received by the least well-off.

Automation increased during the pandemic, but its long-term impact remains to be determined. Another prominent trend that was observed during the pandemic was the rise in automation in the form of replacement of human labour with emerging technologies to accomplish tasks with less human labour. This included telepresence, replacing store workers with self-checkout counters, more automation in warehouses, and fewer security guards in favour of cameras. Despite the accelerated adoption of automation, labour markets in the United States and other countries around the world have recovered reasonably well, admittedly, with variation across countries. Improving the economic security of workers most affected by automation is the challenge governments face. The remarkable actions taken by many governments during the pandemic to protect the economy and workers suggest that similar actions are possible in the future too. Although automation is likely to be more widespread in the future, its impact on jobs and the long-term consequences to workers remain to be seen.

Consequences of Persistent Poverty and Inequality

Poverty and inequality are long-standing, complex global issues that require concerted and long-term engagements to address. Poverty denies individuals basic freedoms to

attain a fulfilling life. Inequality can weaken the social fabric of society. It can discourage social mobility, increase political instability, create a political environment that misallocates resources, and potentially harm growth by decreasing human capital investments under the presence of credit market imperfection. This section highlights the negative effects of low-quality jobs, which remain a widespread problem among developing countries, on poverty and inequality, which have been exacerbated by the COVID-19 pandemic. The research also highlights how poverty facilitates violence—global insecurity at the macro-level, domestic violence at the micro-level. However, it is worth noting that the early economics literature found that moderate inequality can be positively correlated with growth outcomes, and the literature has highlighted a lot of room for heterogeneous effects, especially depending on the context of the country (Berg *et al.* 2018; Ferreira *et al.* 2018). Inequality can foster innovation and entrepreneurship (Lazear and Rosen 1981). The earlier literature argued that savings could be higher in the context of higher inequality, leading to a faster rate of economic growth (Kaldor, 1957) and that inequality can foster innovation and entrepreneurship (Lazear and Rosen 1981). As the literature advanced, the findings have been more nuanced—a model by Galor and Moav (2004) argues that the effects of inequality in growth depend on the returns to physical capital and human capital. More recent literature has found negative impacts of inequality (Berg *et al.* 2018). Lakner *et al.* (2022) show that reducing each country's Gini index by 1 per cent per year has a larger impact on global poverty than increasing each country's annual growth 1 percentage point above forecasts.

Poverty and Inequality Are Often Manifested through Jobs

Labour is the largest asset of the poor, and labour incomes account for over 70 per cent of the incomes of poor families across the developing world. Across the developing world, labour incomes account for over 70 per cent of the incomes of poor families, potentially being overwhelmingly the main driver of poverty reduction in low-income countries (LIC) and lower middle-income countries (LMIC) settings. Yet too many people in developing countries are still working in low-productivity, low-paid, insecure jobs, which limits the possibilities of reducing poverty through increased labour earnings. As such, increasing private labour incomes is key to reducing poverty. The poverty reduction successes of the last 30–40 years are all to be found in countries that have transformed their economies to create more jobs while raising labour productivity. In China, where World Bank estimates that around 400 million rural people were lifted out of poverty between 1988 and 2007, about two-thirds of that globally unprecedented reduction in rural poverty was found to have come from higher labour incomes: first in agriculture and then subsequently through structural transformation and off-farm economic growth as hundreds of millions of better jobs were created in cities through industrialisation and growth in urban services.¹ Simulating poverty reduction for 16 mostly middle-income countries, Azevedo *et al.* (2013) found that increased labour incomes were the key factor behind poverty reduction over the preceding decade. The International Development Goal to halve global poverty by 2015 was achieved through the creation of better jobs for more people. Millions of people worked their way out of poverty (World Bank 2012).

There are also powerful spillovers from better jobs into increased social cohesion, especially in LIC, LMIC and fragility, conflict and violence (FCV) settings. Examples of the positive social impacts of better jobs include spillovers from better jobs for young women into delayed family formation, smaller family sizes and increased household

investments in the health and education of each child. Another example is the reduced propensity of young men in FCV settings to get involved in armed groups or criminal activities when they have access to better jobs, as well as the greater resilience of communities to destabilisation. In societies that want to reduce poverty and promote social cohesion, better jobs for poor people generate ‘jobs-linked externalities’ (Robalino and Walker 2017), which can justify using public policies and resources to support their creation.

Better jobs can help reduce global income gaps. Despite these success stories of increased labour earnings reducing poverty, too many people in developing countries are still working in low-productivity, insecure jobs. Over half of jobs in South Asia are still in low-productivity agriculture and services. For sub-Saharan Africa, the share is two-thirds. Even in the middle-income regions of Latin America and the Middle East and North Africa, over a third still work in agriculture and low-productivity services.² Formal waged employment is a small fraction of jobs in developing countries. The share of informal, own-account workers and contributing family workers in LICs is 78 per cent, compared to 37 and 9 per cent in upper-middle and high-income countries (UMICs and HICs), respectively.³ The prevalence of informality typically leaves workers uninsured against loss of earnings and health shocks and without old-age pension coverage.⁴ Gender differences in job outcomes remain large, including large pay gaps and resilient patterns of occupational and sectoral segregation. The care burden (for children and the elderly) also continues to fall disproportionately on women, limiting their labour market involvement (Folbre 2018; Juhn and McCue 2017; World Bank 2022c). The COVID-19 crisis has brought long-standing job challenges facing developing countries back to the forefront of policy discussions while also creating new challenges.

Most of the growth in the world’s working-age population in the coming decades will be in South Asia and Africa, but most of the world’s production, capital and good jobs are elsewhere. Today, South Asia and Africa account for one-third of the world’s employment, one-eighth of global production and only one-tenth of the global capital stock.⁵ UN population projections suggest that the world’s working-age population will increase by just under 390 million from 2025 to 2035 and by another 306 million in the decade after 2035. Over 90 per cent of the increase between 2025 and 2035 will be in South Asia and sub-Saharan Africa. And between 2035 and 2045 (as population decline accelerates in many OECD countries), the increase in South Asia and sub-Saharan Africa will *exceed* the total growth in the global population of working age. Only a small part of this global imbalance between labour supply and capital allocation is likely to be offset by labour migration. So, unless capital and technology flow towards South Asia and sub-Saharan Africa and create better, higher-productivity, more secure jobs for their workers, global income inequality will worsen.

Poverty and Inequality Can Lead to Social and Political Unrest

Inequality can hurt investments in human capital, especially in developing economies, leading to lower growth. Credit market failures, which tend to be dominant in developing economies, can hamper the ability of the poor to invest in human capital and thereby hurt aggregate output (Galor and Zeira 1993). Further credit market failures may lead to differences in entrepreneurship between rich and poor (Aghion and Bolton, 1997). There is some evidence that inequality reduces education and life expectancy and increases fertility, thereby hurting growth (Berg *et al.* 2018). Inequality in landownership has also been found to adversely affect human capital-promoting institutions (public schools),

threatening the pace and nature of transitions from agriculture and industrial economy, explaining the large differences in per capital income across economies (Galor, Moav and Vollrath, 2009).

Economic inequality weakens social mobility. Inequality may reduce people's belief in socio-economic opportunity. The theoretical underpinnings and empirical validation are discussed in Browman *et al.* (2019). The consequence of a lack of belief is that low-SES (socio-economic status) young people may not engage in behaviours that would improve their chances of upward mobility—e.g., persisting in school, averting teenage pregnancy. This relationship is not theoretically obvious. In economics, the 'human capital' model implies that inequality raises the return to investment for low-SES individuals, thereby increasing the likelihood that they will invest in human capital. Other frameworks propose alternative predictions. The 'economic despair' model predicts that low-SES youth are likely to perceive a lower rate of conditional success due to contextual factors and thus may be discouraged from making human capital investments. Similarly, the theory of 'socially determined aspirations' suggests that an individual's aspirations are determined by experience and the income distribution around them. Therefore, aspirations that are moderately above an individual's standard of living may encourage investment, while much higher aspirations may lead to frustration. Similarly, 'identity economics' indicate that appropriateness of behaviour is determined by an individual's relevant social category, and any attempt to leave a social group can be perceived as threatening. High levels of inequality in a society may calcify young people's sense of where they are in the social and economic hierarchy, making such identities more salient, thereby reducing investments that would increase upward mobility. Fields of anthropology and sociology have also highlighted that it's not necessarily a lack of resources and opportunities that result in low-SES youth remaining in poverty, but how disparities affect aspirations, worldview and character. Social psychology also highlights that individuals are motivated to persist if they feel difficult tasks are likely to help them reach the successful futures they envision. Contextual and environmental factors play a large role in shaping beliefs and expectations.

Higher inequality reduces behaviours that lead to economic success, further deteriorating social mobility. The empirical evidence in the United States shows that higher inequality reduces behaviours that lead to economic success. In state and metro areas, inequality increases the likelihood of high school dropout for low-SES youth, as well as increases the probability of becoming young unmarried mothers. Furthermore, income inequality affects aspirations. One lab experiment manipulated participant's perceptions of economic inequality in their society by randomly assigning some participants to read articles about rising inequality. Such individuals were sceptical about how much the prospect of upward mobility was in their control. Furthermore, beliefs about mobility drive certain behaviours related to success. Studies have found that participants completed more years of schooling when led to believe that their society was becoming a fairer and more meritocratic place. Thus, individuals from low-SES backgrounds might adjust behaviours based on their perceptions of how achievable socio-economic mobility may be.

Inequality increases political instability that may in turn hurt prosperity. Many notable studies in the economics literature have highlighted the negative effects of inequality on social and political instability. More unequal societies tend to be politically unstable (Alesina and Perotti 1996). A large group of impoverished individuals facing a small group of well-off individuals are likely to be highly dissatisfied. The large group of impoverished people is likely to demand radical change, increasing the likelihood of mass

violence or illegal seizure of power. Those unequal societies are more likely to experience political instability. Political instability can hurt investment and thereby the economic prosperity of societies. Social unrest can disrupt productive activities. Such instability can also increase uncertainty. Both are likely to decrease investment. Political instability can also lead to policy volatility that further discourages investment (Dutt and Mitra 2008). Furthermore, countries with higher inequality may be characterised with higher ethnic tensions and social polarisation. This in turn decreases the security or property and contract rights (Keefer and Knack 2002). Furthermore, unequal societies with weak institutions find it more challenging to respond to external shocks (Rodrik 1999).

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Inequality can hurt investments in human capital, especially in developing economies. Credit market failures, which tend to be dominant in developing economies, can hamper the ability of the poor to invest in human capital and thereby hurt aggregate output under the assumption of indivisibility of the production function of human capital (Galor and Zeira 1993). Further credit market failures may lead to differences in entrepreneurship between rich and poor (Aghion and Bolton 1997). There is some evidence that inequality reduces education and life expectancy and increases fertility, thereby hurting growth (Berg *et al.* 2018). Inequality in landownership has also been found to adversely affect human capital-promoting institutions (public schools), threatening the pace and nature of transitions from agriculture and industrial economy, explaining the large differences in per capital income across economies (Galor, Moav and Vollrath 2009).

Income inequality distorts political economy incentives. Furthermore, inequality can lead to institutional channels through which rich elites will engage in political actions to maintain their positions of power (Bourguignon and Verdier 2000). Esteban and Ray (2006) argue that it may be easier for the rich to lobby governments, which in turn distorts the allocation of activities towards wasteful activities. The outcome of lobbying activities may benefit richer or poorer groups at the cost of society (Campante and Ferreira 2007). Acemoglu (2005) presents a model where oligarchies preserve their status by blocking democracies. Other authors theoretically show how the elite may prevent education of the poor to prevent large-scale reforms and the rents accrued to the already educated. Easterly (2007) empirically finds that institutions and schooling are the pathways through which inequality causes underdevelopment.

Redistributive policies to address inequality can hurt economic growth. Under certain situations, inequality can increase the need for distributive policies. Studies show that large gaps between median and mean incomes would result in societies choosing redistributive policies (Alesina and Rodrik 1994; Persson and Tabellini 1994). However, many studies have argued that inequality allows better-off agents the power to block redistribution (Benabou 2000; Galor, Moav and Vollrath 2009). Berg *et al.* (2018) empirically show that redistribution has benign effects on growth, while the effects of inequality through a reduction in investment in human capital and increased fertility among the poor hurts growth.

Inequality persists and can be intergenerational. The challenge of inequality is compounded by the fact that it can be intergenerational. Income inequality can have long-term consequences by affecting the human capital and income of the next generation (Aizer and Currie 2014). These play out through the channel of maternal circumstances that determine the health of newborns and end up having long-term consequences. Health behaviours during pregnancy tend to be worse for disadvantaged mothers—for example, they are more likely to smoke during pregnancy. Furthermore, disadvantaged mothers are more likely to live in areas with greater exposure to pollution, have less access to medical care and also more likely to have pre-existing conditions. This then reduces the health at birth of their children, who then have worse human capital outcomes throughout their lifetimes in terms of education and health, and lower incomes into adulthood. Thus, inequality can perpetuate itself across generations.

Poverty and Inequality Can Lead to Conflict

Inequality can lead to conflict. Economic inequality can provide ample motivation for conflict, as there can be material gain for the victors. But as highlighted by Blattman and Miguel (2010), it is not just the material motivations but the frustrations generated by inequality. The literature on the agrarian revolutions of the 1960s and 1970s shows that frustration over inequality motivated participation in rebellion as opposed to private gain. Thus, inequality, unmet expectations and poverty can lead to conflict. Inequality can generate conflict through material concerns ('greed') or through 'grievances'. Historical accounts have shown that public outrage over inequality (grievances), as opposed to material concerns, can motivate engagement in conflict (Collier and Hoeffler 2004). Cederman, Weidmann and Gleditsch (2011) find that rich and poor groups tend to fight more often in unequal societies than in more equal societies. A major concern in this literature is that inequality data tends to be unreliable. Using anthropometric measures of inequality from 1816 to 1999, Baten and Mumme (2013) find that inequality (or relative deprivation) is a key driver of civil war. But more importantly, perceptions of inequality matter. Perceived inequality has been found to be strongly correlated with conflict, even if actual inequality does not (Gimpelson and Treisman, 2018).

Inequality can encourage conflict at the local level as well. Thus far, most of the studies have explored the effects of inequality on a global scale. A recent study by Nandwani (2019) illustrates an interesting example of how local inequality can perpetuate violence. Political decentralisation is likely to improve access to local public services. Decentralisation leading to local government institutions in Adviasi districts in India in 1996 had heterogeneous effects on the Maoist insurgency. The aim of the local councils was to address Adivasi grievances by recognising their traditional lifestyle and land, forests and water rights, thereby reducing their incentive to participate in an insurgency. The study finds that weak state capacity and unequal local power structure led the local elites in appropriating benefits, increasing the grievances of the Adviasi and thus likelihood of participating in the insurgency.

Poverty Can Escalate Domestic Violence

Poverty can perpetuate domestic violence. Women from disadvantaged backgrounds are at greater risk of intimate partner violence. Women with income below \$10,000 annually report rates of domestic violence that are five times greater than those with annual income

greater than \$30,000 (Aizer 2011). Furthermore, female unemployment increases the likelihood of domestic violence (Anderberg *et al.* 2016). A randomised control trial in Ecuador that provided cash and food transfers to alleviate poverty reduced controlling behaviours and physical and/or sexual violence by 6 to 7 percentage points (Hidrobo and Fernald 2013; Hidrobo, Peterman and Heise 2016). Disadvantaged women are more proportionately likely to be domestic violence victims when pregnant. In utero exposure to violence leads to far worse outcomes for children well into adulthood, creating an avenue through which inequality transmits across generations.

Poverty Is Also Tied to Global Security

Poverty and inequality can endanger international security. Poverty and inequality can endanger international security by generating transnational threats. Brainard and Chollet (2007) assert provocatively that ‘extreme poverty literally kills’. They claim this is true directly, through hunger, malnutrition and disease, but also indirectly by leaving poor countries vulnerable to domestic upheaval and war that can generate transnational threats to regional and international security. Rice (2007) examines the negative implications of developing-country poverty for global security. The study makes a case that poverty breeds insecurity by undermining the capacity of states to deliver critical goods such as economic growth, social welfare and basic physical security. Such poverty-induced capacity gaps can produce negative spillovers for regional and global security in the form of cross-border terrorism, crime, disease, and environmental degradation.

The nexus between poverty and insecurity is not always straightforward but instead often resembles a tangled web with intervening variables and reverse causality. Poverty and violence reinforce one another, but their specific relationship is mediated by context-specific drivers ranging from resource scarcity to weak institutions to malignant political leadership to demographic trends. Moreover, the world is full of weak states, but not all generate large enough negative spillovers that cross borders. And perhaps the linkage between weak states and transnational spillovers may be stronger than that between poverty and inequality with state weakness. But it remains that in an age of global threats, such as terrorism and pandemics, the global community cannot afford to be indifferent to poverty that weakens state capacity. Alleviating poverty is not only a moral but also a security imperative.

Conclusion

The COVID-19 pandemic was a reckoning for the global economy. Changes have manifested in a manner that it is hard to say for certain how far the course of human history has been altered. A few facts about the damages thus far have been uncovered—and they are consequential. World Bank’s Share Prosperity report of 2022 makes for grim reading (World Bank 2022b). The pandemic and the ensuing war in Ukraine have reversed significant gains. In the three decades prior to the pandemic, one billion people escaped poverty as poorer economies—particularly India and China—grew at a fast pace, improving the livelihoods of their inhabitants. As the pandemic emerged in 2020, 70 million more people fell below the poverty line that year—the largest increase in poverty since 1990. The goal of ending poverty by 2030 is far out of reach—7 per cent of the global population will be living below USD\$2.15 per day in 2030. Over three billion people—nearly half the world’s population—live below USD\$6.85 per day—the average poverty line for

upper-middle-income economies. Inequality has also been exacerbated by the pandemic—losses of the global poorest 40 per cent were twice as high as those of the richest 20 per cent.

The SDGs explicitly acknowledge the importance of ending poverty in all its forms everywhere (SDG 1) and reducing inequality within and among countries (SDG 10). Meeting these goals was challenging to begin with, and the pandemic has only made these goals more difficult to achieve. Meeting these goals will now require not only higher growth but greater reductions in inequality than before the pandemic. The need to correct the course of reduction in global poverty and inequality is more urgent than ever. This can only be done with greater international cooperation by pooling our resources and ingenuity to address these challenges.

These challenges are not just of the immediate future. When poverty and the resulting food insecurity lead to malnutrition in babies, this can lead to long-term effects—quite possibly intergenerational. The link between an immediate episode of food insecurity leading to intergenerational consequences is the ‘fetal origins’ hypothesis (Almond and Currie 2011). The early traces of the fetal origins hypothesis stemmed from the medical profession in the 1950s and 1960s. The British physician and epidemiologist David J. Barker was one of the leading proponents of the hypothesis. He argued that the intrauterine environment, especially with regard to nutrition, can result in certain metabolic features that lead to future health consequences. For instance, individuals who lack nutrition in utero are more likely to suffer from obesity, diabetes and cardiovascular issues. The nine months in utero are considered a critical period that can shape the destiny of an individual. Thus, the effects can be persistent, and the health outcomes can be latent for several years (Almond and Currie, 2011; Almond, Currie and Duque 2018). The early empirical work in the medical profession on the fetal origins hypothesis was largely correlational. The economics profession produced several empirical studies that made the case for a causal relationship over a broader set of outcomes. The period of vulnerability to food insecurity may extend beyond in utero. Research has pointed to the first 1,000 days as crucial for childhood development, given that deprivation in this period is likely to affect a child’s physical and brain development. Thus, malnutrition can lead to lower education, health and income outcomes well into adulthood. Indeed, children who live in extreme poverty may lose 25 per cent of their income-generating potential as adults (Richter *et al.* 2017). In fact, the children of these adults may be affected too. Rising food prices are a key factor in increasing hunger and food insecurity. Such increases in food prices may even result in conflict (Bruckner and Ciccone 2010; de Winne and Peersman 2021; Martin-Shields and Stojetz 2019; Ubilava, Hastings and Atalay 2022). Recent work by World Bank (Gatti *et al.* 2023) has shown that in the Middle East and North Africa, rising food prices due to the war in Ukraine may have increased the risk of stunting by age 5 for 200,000–285,000 newborns. The destinies of these children may be forever altered, perpetuating inequality and poverty.

What can policymakers do? First, cash and in-kind transfers can be particularly effective in a crisis. Cash transfers are costly, but if well targeted, they tend to help the worse off. More than 60 per cent of spending on cash transfers goes to the bottom 40 per cent while more than one-half of all spending on energy subsidies in developing economies goes to the richest 20 per cent of the population (World Bank 2022b). Gentilini (2022) notes the benefits of cash transfers, including the increase in the propensity to spend more on food, as well as improvements in dietary diversity.

The contrast between the effects of cash transfers that largely go to the poor and energy subsidies that largely benefit the rich can be reflected in the spending priorities of governments. Prioritising spending that addresses market failures or provides public goods can have the greatest benefit in pushing for long-term growth that is pro-poor and thus may reduce poverty and inequality. For instance, investments in human capital, such as early childhood development, can set a path towards greater prosperity. Examples of such investments include health, education, roads, electricity, and R&D (World Bank 2022b; Thomas *et al.* 2000). In fact, the reallocation of spending away from private subsidies to public goods has far-reaching benefits that encompass various aspects of society. Prioritising public good spending can increase growth (Thomas *et al.* 2000), make the environment cleaner (Galinato and Islam, 2017; Islam and López, 2015; López, Galinato and Islam, 2011), encourage entrepreneurship (Islam 2015), and boosts revenues for small- and medium-sized enterprises (Islam, Galinato and Zhang 2021). Investments in human capital tend to be environmentally friendly and thus cleaner. Their benefits also accrue to the whole private sector, unlike private subsidies that tend to be captured by established large firms. Public good spending also tends to complement private investment, and thus they boost the private sector while also encouraging entrepreneurship. However, simply reallocating budgets from private subsidies to public goods may not be sufficient given the rising debt faced by many developing nations. International coordination to address the fiscal challenges may be necessary.

Mothers play a crucial role, and the well-being of children, or how well societies protect them, will play a huge role in the crucial period of early childhood. When one thinks of the long-term effects of poverty and how inequality can be perpetuated, a large part of the story is how it affects children and what comes of them as adults. These are indeed the long-term effects. Thus, a wider range of gender-related policies comes into focus. The availability, affordability and quality of childcare are crucial, and recent work by World Bank's Women Business and the Law team goes into the details of childcare policies around the world (World Bank 2022c). Furthermore, policies related to maternity leave can afford women the flexibility of empowerment through jobs while also investing time with their children at a crucial stage. Recent evidence shows that paid maternity leave has positive effects on women's employment (Amin and Islam, 2022). Education has also been found to help women climb up the career ladder (Islam and Amin, 2016). More importantly, ample evidence has shown that laws and regulations that discriminate on the basis of gender tend to hurt women's labour market prospects and beyond (Amin and Islam, 2015; Hyland, Djankov and Goldberg 2020; Islam, Muzi and Amin 2019). Reforming such laws is indeed a priority across the world. These encompass a wide range, including mandating non-discrimination in hiring practices (Amin and Islam, 2014), as well as domestic violence legislation (Amin, Islam and Lopez-Claros, 2021). Intimate partner violence, through both injury and stress, has negative effects on birth outcomes (Aizer, 2011).

In line with the argument made in this chapter that in the poorest economies, more productive, better-paid jobs are people's surest way out of poverty, a policy focus on jobs as economies grow ensures that poverty reduction and the human side of development stay firmly in focus. The limited availability of quality jobs remains the most pressing problem in developing countries. Demographic changes that have affected the growth and composition of the working-age population around the world in recent decades are expected to add over one billion people to the working-age population of the world between 2020 and 2050. Applying a jobs-focused approach to development which puts the creation of more productive and better-paid jobs at the centre of countries' growth

strategies is fundamental to escaping poverty in a sustainable and durable way (Walker, Saliola and Merotto 2022).

There has been some debate about whether discriminatory laws matter, and there is evidence that many businesses do not enforce discriminatory laws (Hyland, Islam and Muzi 2023). However, for those firms that do discriminate, women have far worse outcomes. Similarly, there is some debate about whether reforming laws has any impact given overriding social norms. Indeed, corrective misperceived social norms have been found to have positive effects on women's employment (Bursztyn, Gonzalez and Yanagisaea-Drott 2020). Recent experimental evidence does show that laws have a causal effect on social norms (Lane, Nosenzo and Sonderegger 2023).

Finally, the enormous challenge of obtaining accurate estimates of poverty and income inequality cannot be understated. Investments in data systems are necessary; otherwise, policymakers will be in the dark. More recent developments in big data, as well as administration data provide opportunities but also come with substantial risks. The 2021 World Development Report on Data for Better Lives lays out a foundation for how to harness the power of data for development while minimising and accounting for the risks (World Bank, 2021). The report calls for a new social contract for data that enables use and reuse of data to create value, ensure equitable access and foster trust.

Notes

- 1 Only as the poverty rate approached 10 per cent of the population (between 2013 and 2018) did transfers become the main driver of further rural poverty reduction. Transfers include both social insurance and private transfers from urban waged workers back to their families.
- 2 Jobs Group calculations for this study used the ETD database of GCGD/UNU-WIDER.
- 3 Data are per World Bank DataBank, which uses data retrieved from the International Labour Organization (ILOSTAT) database, January 29, 2021.
- 4 World Bank (2023b) and the WDR 2019 make the distinction that social insurance is increasingly not linked to waged work and that alternative forms of protection are needed.
- 5 World Bank (forthcoming) Jobs Flagship Report. Authors' calculations using Penn World Tables 10.0 output-side real GDP at current PPPs (in 2017 mil. US\$).

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