in Brussels this July include a training program in Iraq and defense capacity-building assistance for Tunisia. These show how NATO also works with many partners outside of our Alliance. We have also begun to deal with even more forward-looking challenges, like the implications of artificial intelligence and big data in the security and defense sector.

Much of multilateralism happens very much under the radar. My NATO colleagues and I spend most of our time on tending to the countless tasks—both ongoing work and innovations—that make our Alliance work better. One issue to which we have devoted considerable attention lately has been how do we coordinate with other international organizations to make sure that we complement each other. This is particularly the case with the European Union and its recent work in the security and defense area. In the end, it is very much in the day-to-day tending of the garden of multilateralism where multilateralism flourishes.

Multilateralism has many different formats. Multilateral approaches are often coordinated with bilateral efforts and complement them. NATO is a force multiplier for national efforts. For example, NATO has mounted the largest enhancement of collective defense in Europe since the end of the Cold War. We have four new multinational battle groups in the Baltic states. These multinational efforts are in parallel with the number of individual national efforts, most significantly the European Reassurance Initiative, which is the biggest expansion of U.S. military assistance to Europe since the Cold War. This example shows that multilateralism and bilateralism can overlap in a very effective way. Even if you have a considerable national commitment, it is much more effective from the perspective of deterrence and defense to have multinational presence stationed with or alongside you as is the case in the Baltic countries or in Poland, where there are now groups composed of a number of NATO Allies. In the end, despite the challenges, multilateralism will continue to be attractive as a force multiplier and as a source of burden-sharing.

Even if the benefits of multilateralism may be clear to us, in the same way that it is incumbent on us to show that multilateralism is a continuous commitment by Allies, it is also incumbent on us as leaders of multilateral institutions to constantly communicate. The NATO secretary general has been on the road in the United States this week, explaining to the American people how NATO is working here. We need to keep on communicating and keep on partnering, especially with those who see relevance of our joint values. We have to be adaptable and take advantage of the possibilities offered by the variable geometry of multilateralism to make sure we are always adding value. I am confident that this strategy will help keep multilateralism strong.

Multilateralism in Crisis

doi:10.1017/amp.2019.35

*Jutta Brunnée**

> [M]ultilateralism is an institutional form which coordinates relations among three or more states on the basis of "generalized" principles of conduct—that is, principles which specify appropriate conduct for a class of actions, without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific occurrence.[1]

Some twenty-five years ago, John Ruggie defined "multilateralism" in terms that remain apposite today. As an international lawyer, this definition prompts me to reflect on the connections between the international legal order and multilateralism. To be sure, international law has

* Professor of Law and Metcalf Chair in Environmental Law, Faculty of Law, University of Toronto.

[1] John Ruggie, *Multilateralism: The Anatomy of an Institution*, 46 Int'l Org. 562, 571 (1992).

https://doi.org/10.1017/amp.2019.35 Published online by Cambridge University Press

unilateral, bilateral, and multilateral features, for example in lawmaking or law enforcement.[2] Similarly, it can be wielded to unilateral, bilateral, or multilateral ends. Indeed, it is precisely because it transcends ends and issue areas, that international law, by providing "generalized" principles of conduct and interaction, is an important component of multilateralism.

International law's generalized principles include those that define what counts as "law," along with basic concepts such as sovereignty, non-intervention, or the prohibition on the use force. These precepts have served to accommodate diversity and pluralism, much as Ruggie's definition suggests multilateralism does. It stands to reason that it is precisely the trait of generality that has enabled international law to anchor the many multilateral institutions that have grown into and endured as forums for addressing a wide range of collective concerns. The importance of generality, and of a shared notion of legality, rests not only in providing a platform for the elaboration of common purposes, but perhaps most of all in enabling and guiding ordered interaction in their absence, or even in the event of conflict.

Over the last one hundred years or so, certainly since World War II, the basic features of a universal conception of law (as opposed to specific norms within the legal order) have remained largely unchallenged.[3] In turn, multilateralism has been the dominant *modus operandi* of the post-World War II international order. At the current juncture, however, both multilateralism and the international legal order seem to be under siege. The rising pressures on each are a result of an amalgam of long-standing and more recent factors.

To some extent, the current dynamics might be understood as a recalibration after the (perhaps inflated) optimism of the early 1990s. In that sense, we are witnessing a reckoning with undue assumptions about common purposes, common values, and shared norms. It may also be the case that the more forcefully that multilateralism was deployed in the name of liberal internationalism, the more tenuous it became over time. At any rate, history did not end with the fall of the Berlin Wall.[4] The upswing of multilateralism in the early 1990s may well have been the high point of what was achievable, because the shared ground on which to build was much more limited and more fragile than it seemed.[5] Historical grievances have continued to simmer in large parts of the world regarding the preferences and inequities baked into both multilateralism and international law.

These fractures and frailties may not have been apparent (or were overlooked) as long as Western states, and notably the United States, were able to shape and drive the international agenda, as they had done since the end of World War II. After all, in reconstructing the post-war international order, the United States actively promoted multilateralism as the governance principle: in international security through the United Nations and the North Atlantic Treaty Organization in trade through

[2] *See* André Nollkaemper, *Unilateralism/Multilateralism*, *in* MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 1682 (2011).

[3] *See* Jutta Brunnée, *Völkerrechtskritik: Gestern und Heute* (*Critiques of International Law: Then and Now*), 49 RÜCKBLICK NACH 100 JAHREN UND AUSBLICK – MIGRATIONSBEWEGUNGEN, BERICHTE DER DEUTSCHEN GESELLSCHAFT FÜR VÖLKERRECHT 167 (2018) (49 PROCEEDINGS OF THE GERMAN SOCIETY OF INTERNATIONAL LAW 167 (2018)) (arguing that "value critiques" were consistently mounted against international law, whereas questioning of its existence as "law" was relatively rare, confined to periods of challenge by the Soviet Union, and by political theorists in Nazi Germany, notably Carl Schmitt).

[4] *See* FRANCIS FUKUYAMA, THE END OF HISTORY AND THE LAST MAN (1992) (arguing that the end of the Cold War also brought an "end of history," in the sense of a universalization of Western liberal democracy).

[5] *See* Opening Statement and Global Update of Human Rights Concerns by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein at 38th Session of the Human Rights Council (June 18, 2018) (rejecting the notion that universal human rights were merely "picked from a Western imagination" and cautioning against "attack on the multilateral system and its rules, including most especially international human rights law"), *at* https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23206&LangID=E.

https://doi.org/10.1017/amp.2019.35 Published online by Cambridge University Press

the General Agreement on Tariffs and Trade (and later the adoption of World Trade Organization Agreements), and in countless other contexts, such as environment, health, or migration, seeking to build multilateral institutions around its preferred general organizing principles.[6]

The diversification of international society—both through the emergence of new states with vastly different needs, capacities, priorities, and outlooks, and through the rise of business and civil society actors and terrorist networks—posed a series of challenges to this agenda. Although the changes in the makeup of international society prompted efforts to adapt and develop international law in response, until recently, it nonetheless was business more or less as usual in international affairs.

So, what has changed? Why is the international order at a crossroads now? In my view, the current crisis—for that is what I believe it is—is fueled by the confluence of two major dynamics.[7]

First, we are witnessing the rise of major regional or even global powers outside of the West—China, India, Iran, Saudi Arabia, and Turkey among them, along with a resurgent (or at least increasingly aggressive) Russia. Some of these states, notably China and Russia, are explicitly championing a new global order. Russia is seeking to promote a "post-Western world order,"[8] while China prefers a more neutral label—a "new world order."[9] Labels aside, China and Russia agree on the core features of the desired order. In a 2016 joint declaration on the "promotion of international law,"[10] the two countries articulated a thin conception, focused on the UN Charter and emphasizing sovereignty-based principles like non-intervention or state immunity. In a sense, the goal is a return to a law of coexistence, stripped of liberal internationalism and its emphasis on human rights.

Ironically, however, the most potent challenges to multilateralism and international law do not come from increasingly assertive non-Western powers, but from within the West. Notwithstanding the fact that, by and large, Western countries have been beneficiaries, shapers and defenders of the existing international order, a backlash has erupted in many Western states against the perceived reach and intrusiveness of international law and institutions.[11] This backlash is driven in part by economic concerns, including the uneven distribution of the fruits of globalization, valid concerns that have boosted the political fortunes of self-styled "populist" leaders.[12]

By far the most destabilizing challenges to multilateralism come from the United States.[13] Since the inauguration of President Donald J. Trump, the U.S. government has adopted an increasingly

[6] *See generally* Ruggie, *supra* note 1, at 586–93.

[7] *But see* Harlan G. Cohen, *Multilateralism's Life Cycle*, 112 AJIL 47–66 (2018) (arguing that a range of factors help explain multilateralism's current decline).

[8] See Lizzie Dearden, *Russia's Foreign Minister Calls for "Post-West World Order" in Speech to Global Leaders*, INDEPENDENT (Feb. 18, 2017), *at* http://www.independent.co.uk/news/world/europe/russia-post-west-world-order-lavrov-munich-security-conference-nato-trump-putin-ukraine-syria-assad-a7587006.html.

[9] Zheping Huang, *Chinese President Xi JinPing Has Vowed to Lead the "New World Order,"* QUARTZ (Feb. 22, 2017), *at* https://qz.com/916382/chinese-president-xi-jinping-has-vowed-to-lead-the-new-world-order.

[10] The Ministry of Foreign Affairs of the Russian Federation, The Declaration of the Russian Federation and the People's Republic of China on the Promotion of International Law (June 25, 2016), *at* http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2331698.

[11] *See* Eric Posner, *Liberal Internationalism and the Populist Backlash* (University of Chicago, Public Law Working Paper No. 606, Jan. 14, 2017), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2898357.

[12] *See, e.g.*, Robert F. Inglehart & Pippa Norris, *Trump, Brexit, and the Rise of Populism: Economic Have-Nots and Cultural Backlash* (HKS Working Paper No. RWP16-026, July 29, 2016), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2818659; Robert F. Inglehart & Pippa Norris, *Trump and the Populist Authoritarian Parties: The Silent Revolution in Reverse*, 15 PERSP. POL. 443 (2017).

[13] *See* Andrew Hurrell, *Beyond the BRICS: Power, Pluralism, and the Future of Global Order*, 32 ETHICS & INT'L AFF. 89, 91 (2018).

https://doi.org/10.1017/amp.2019.35 Published online by Cambridge University Press

unilateralist, transactional posture.[14] Indeed, accumulating actions, including the administration's recent moves toward "trade wars" with other major economies,[15] the refusal to sign on to the traditional G7 Summit communiqué,[16] the withdrawal from the UN Human Rights Council,[17] and the promised withdrawal from the Paris climate agreement,[18] suggest that the United States has turned *against* multilateralism. Even more disconcerting is the growing string of instances in which the Trump administration appears to question fundamental precepts of international law, such as the rights of refugees from conflict zones, the prohibition on torture, the prohibition on the use of force, or the rules of the world trading system.[19]

If in fact the United States is wavering in its long-standing commitment to the international rule of law, as many observers fear,[20] this turn would be momentous. It would mean that, for the first time since World War II, a major state would challenge not only the content of specific legal norms and regimes, but the very foundations of an international rule of law—the aforementioned "generalized" principles that allow for a thin but universal conception of international law.[21] There would be bitter irony in the fact that the major state in question is the very state that led the world in building and maintaining the post-war multilateral order.

The historical significance and the future implications of these developments are not lost on other Western leaders. France's president signaled his intention to step into the global leadership gap,[22] notably on climate change.[23] The German foreign minister, shortly after the U.S. president's unprecedented refusal to endorse the June 2018 G7 Summit communiqué,[24] laid out a detailed vision for a "Europe United" as an answer to "America First."[25] On the same day, his Canadian

[14] *See* H.R. McMaster & Gary D. Cohn, *America First Doesn't Mean America Alone*, WALL STREET J. (May 30, 2017), *at* https://www.wsj.com/articles/america-first-doesnt-mean-america-alone-1496187426 (arguing that the world is "not a 'global community' but an arena where nations, nongovernmental actors and businesses engage and compete for advantage").

[15] Peter S. Goodman, Ian Austen & Elizabeth Malkin, *Just the Fear of a Trade War Is Straining the Global Economy*, N.Y. TIMES (June 16, 2018), *at* https://www.nytimes.com/2018/06/16/business/tariffs-trade-war.html.

[16] Michael D. Shear & Catherine Porter, *Trump Refuses to Sign G-7 Statement and Calls Trudeau "Weak,"* N.Y. Times (June 9, 2018), *at* https://www.nytimes.com/2018/06/09/world/americas/donald-trump-g7-nafta.html.

[17] Editorial, *Trump Walks Away from the UN Human Rights Council — and Rewards the Oppressors*, WASH. POST (June 20, 2018), *at* https://www.washingtonpost.com/opinions/trump-walks-away-from-the-un-human-rights-council–and-rewards-the-oppressors/2018/06/20/5da75d12-74b4-11e8-9780-b1dd6a09b549_story.html?utm_term=.895b07799427.

[18] Adam Vaughn, *Ban Ki-moon: US Has Caused Serious Damage to Paris Climate Efforts*, GUARDIAN (Mar. 5, 2018), *at* https://www.theguardian.com/world/2018/mar/05/ban-ki-moon-us-paris-climate-agreement-withdrawal.

[19] *See* Madeleine Albright, *Will We Stop Trump Before It's Too Late?*, N.Y. TIMES (Apr. 6, 2018), *at* https://www.nytimes.com/2018/04/06/opinion/sunday/trump-fascism-madeleine-albright.html; Jonathan Havercroft, Antje Wiener, Mattias Kumm & Jeffrey L. Dunoff, *Editorial: Donald Trump as Global Constitutional Breaching Experiment*, 7 GLOB. CONSTITUTIONALISM 1 (2018).

[20] *See* Albright, *supra* note 19; Havercroft, Wiener, Kumm & Dunoff, *supra* note 19; Jutta Brunnée & Stephen J. Toope, *Whither the Rule of Law?*, [TORONTO] GLOBE & MAIL (Apr. 14, 2017), *at* https://www.theglobeandmail.com/opinion/whither-the-rule-of-law/article33953502.

[21] *See* Brunnée, *supra* note 3.

[22] Josh Lowe, *Who Is More Powerful? France Can Take Leadership Role as America Retreats, Say Organizers of New Forum*, NEWSWEEK (Aug. 2, 2017), *at* http://www.newsweek.com/donald-trump-emmanuel-macron-french-power-645366.

[23] James McAuley, *France's Macron Takes Lead in Climate Change Battle, with the U.S. Absent*, WASH. POST (Dec. 12, 2017), *at* https://www.washingtonpost.com/world/frances-macron-takes-lead-in-climate-change-battle-with-the-us-absent/2017/12/12/2da019aa-de88-11e7-b2e9-8c636f076c76_story.html?utm_term=.92a4dc5d170c.

[24] Michael D. Shear & Catherine Porter, *Trump Refuses to Sign G-7 Statement and Calls Trudeau "Weak,"* N.Y. TIMES (June 9, 2018), *at* https://www.nytimes.com/2018/06/09/world/americas/donald-trump-g7-nafta.html.

[25] Germany – Federal Foreign Office, Speech by Foreign Minister Heiko Maas: Courage to Stand Up for Europe – #EuropeUnited (June 13, 2018), *available at* https://www.auswaertiges-amt.de/en/newsroom/news/maas-europeunited/2106528.

https://doi.org/10.1017/amp.2019.35 Published online by Cambridge University Press

counterpart delivered a major foreign policy speech to underscore the importance of the "rules-based international order and the postwar institutions built to maintain it."[26] It is as yet uncertain whether these efforts to rally support for multilateralism and international law will suffice to prevent the unravelling of the global order. Equally uncertain is to what extent non-Western states, notably China, will be partners in maintaining a "rules-based international order."

It seems that, one way or another, we are witnessing a transformation of the global order. If President Trump succeeds in promoting an America First, transactionalist order, post-World War II multilateralism might simply atrophy. Assuming that multilateralism prevails in some form, the world may be moving to a leaner multilateralism, increasingly anchored in norms that are promoted and shaped, or at least co-shaped, by leading non-Western states. As several colleagues have recently illustrated, international law does need to do better in reflecting globally shared norms.[27] If the current crisis prompts a shift to an international order built around such norms, it might end up strengthening both the reach and the influence of international law. Multilateralism might yet have a future.

The Future of Multilateralism

doi:10.1017/amp.2019.36

*By Edward Kwakwa**

Multilateralism can be seen as the greatest source of legitimacy and inclusiveness in the international system. In thinking of multilateralism, I am inspired by Harlan Grant Cohen's Editorial Comment in the January 2018 issue of the *American Journal of International Law*, in which he explains that multilateralism is a process that is more inclusive than unilateralism or bilateralism.[1] Following that definition, it would imply, for example, that cooperation activities at the United Nations (UN), with its membership of 193 States, are more a reflection of multilateralism than cooperation activities at the Organisation for Economic Co-operation and Development (OECD), with its membership of thirty-six states, or at the North Atlantic Treaty Organization (NATO), with its membership of twenty-nine states. But by the same token, efforts at multilateralism could be harder to achieve results, given that achieving consensus among 193 countries would be more challenging than doing so among a smaller number of countries. It would also stand to reason that regional or plurilateral arrangements are less reflective of multilateralism than are multilateral arrangements. But of course, multilateralism should not only be viewed against a yardstick of numbers, but also in terms of legitimacy, effectiveness and impact of activities and outputs.

[26] Government of Canada, Address by Minister Freeland When Receiving Foreign Policy's Diplomat of the Year Award (June 13, 2018), *available at* https://www.canada.ca/en/global-affairs/news/2018/06/address-by-minister-freeland-when-receiving-foreign-policys-diplomat-of-the-year-award.html.

[27] Yasuaki Onuma, International Law in a Transcivilizational World (2017); Anthea Roberts, Is International Law International? (2017); Lauri Mälksoo, Russian Approaches to International Law (2015).

* Senior Director, Department for Traditional Knowledge and Global Challenges, World Intellectual Property Organization (WIPO), Geneva. The views expressed here are my personal views and are not necessarily shared by WIPO or by the United Nations.

[1] Harlan G. Cohen, *Multilateralism's Life Cycle*, 112 AJIL 47, 50 (2018) (arguing that multilateralism describes "a preference—a belief that, all things being equal, broader more inclusive regimes would best solve the problems at hand, whether functionally or normatively").

https://doi.org/10.1017/amp.2019.35 Published online by Cambridge University Press