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

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*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).

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[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").

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The general perception that multilateralism is in crisis seems to have been caused, in large part, by the dearth of new multilateral treaties and the apparent withdrawal or opposition in many Western States to models of international cooperation.[2]

There is an obvious cost to the international community if there is a crisis in multilateralism. One of the most obvious may be the loss of inclusiveness, a trend which would be inimical in particular to smaller states.

One of the areas in which multilateralism seems to be doing very well, is in the area of intellectual property (IP) law. Indeed, there is an impressive array of IP treaties that have been adopted in the last few years. To provide a few examples, the member states of WIPO adopted, in 2012, the Beijing Treaty on Audiovisual Performances.[3] They also adopted, in 2013, the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Otherwise Print Disabled.[4] And they again adopted, in 2015, the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.[5]

This is an impressive record, given the implication that, in the relevant period, treaty adoption at WIPO worked out to an average of one treaty per annum.

There is another reason why I suggest that the IP field is one area in which multilateralism is at its best, at least in the area of norm making. Looking at the multilateral trading system, it is recalled that since the World Trade Organization (WTO) was established and has been in operation, only one amendment to any of the multilateral trade agreements has been made. That one amendment is in the area of IP, specifically in Article 31 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs).

The future of multilateralism is perceived to be at risk for several reasons, most of which have been articulated by my fellow panelists. Among these reasons are two interrelated ones that I should like to focus on: the participation of non-state entities in the international system, and the specific role of non-governmental entities in international cooperation arrangements.

I believe these two risks or challenges to multilateralism could also be turned into opportunities. For example, the IP system is witnessing a broader range of instruments of international cooperation, thus confirming the perception that many practical advances can be achieved without a treaty. To be sure, while norm-setting may be one of the most obvious forms of multilateralism, there are rich opportunities for international cooperation that do not involve lawmaking or norm-setting. Examples of such cooperation are WIPO's global databases, practical services such as the WIPO Centralized Access to Search and Examination (WIPO CASE) and the WIPO Digital Access Service (WIPO DAS), which seek to improve the quality and efficiency of patent

[2] *See, e.g.*, Eric Posner, *Liberal Internationalism and the Populist Backlash* (University of Chicago, Public Law Working Paper No. 606, Jan. 14, 2017), *available at* http://www.papers.ssrn.com/so13/papers.cfm?abstract_id=2898357.

[3] The Beijing Treaty on Audiovisual Performances was adopted on June 24, 2012. It deals with the intellectual property rights of performers in audiovisual performances. *See* Beijing Treaty on Audiovisual Performances, WIPO Publ. No. 228E.

[4] The Marrakesh Treaty is the first treaty ever that is devoted exclusively to creating limitations and exceptions to copyright law. This could be seen as a deviation from the traditional tenets of copyright law. It is instructive to note, however, that the treaty entered into force only three years after its adoption. This makes it one of the IP treaties (indeed, one of the multilateral, not just IP) that has entered into force in the shortest amount of time. For the provisions of the Marrakesh Treaty, see Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, WIPO Publ. No. 218E.

[5] Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications, WIPO Publ. No. 239E. The Geneva Act of the Lisbon Agreement was adopted on May 21, 2015. However, it has yet to enter into force. Although it will enter into force after ratification or accession by five states, only one state (Cambodia) has accepted it so far. This may be attributable to the several hurdles that were faced in the run-up to the adoption of this Treaty.

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examination work, as well as a number of public-private partnerships, the most prominent of which are WIPO RE:Search[6] and the Accessible Books Consortium (ABC).[7] WIPO RE:Search catalyzes the development of medical products for neglected tropical diseases, malaria, and tuberculosis through innovative research partnerships and knowledge sharing. It was established by WIPO in 2011, in collaboration with BIO Ventures for Global Health (BVGH), and with the active participation of several of the world's leading pharmaceutical companies and other private and public sector organizations. The ABC aims to increase the number of books worldwide in accessible format—such as braille, audio, and large print—and to make them available to people who are blind, have low vision or are otherwise print disabled. It is a multi-stakeholder partnership, comprising WIPO, organizations that serve people with print disabilities, and organizations representing publishers and authors.

All these initiatives and platforms function extremely well, yet their establishment did not require a treaty. In other words, treaty-making need not be seen as a *sine qua non* for multilateralism. And more importantly, multilateralism could also be perceived in the form of international cooperation that involves states as well as non-state or private sector entities. It may be useful to think of multilateralism not just in terms of states, but also in terms of systems that enhance the global compact—systems that enhance multilateral cooperation. In so doing, it becomes evident that multilateral enterprises are best conceived of as partnerships, among states and non-state entities alike. Given the forms of some of the most prominent as well as successful forms of multilateral cooperation today, I dare to suggest that perceiving multilateralism only as coordination among states is now old-fashioned. Multilateralism also entails coordination of relations among non-state entities, as evidenced by the fact that recent modes of international cooperation, particularly in the areas of global issues such as public health, climate change, and food security, have embraced the active participation of private sector entities.

What, then, is the future of multilateralism? I conclude by suggesting that multilateralism may be at risk or may seem to be in its waning days. But the continued need for even greater multilateralism is manifested in the fact that newer and more innovative forms of multilateralism are increasingly replacing the hitherto state-centered forms of cooperation which symbolized multilateralism.

[6] *See generally* WIPO, *RE:Search*, *at* http://www.wipo.int/research/en.

[7] *See generally* Accessible Books Consortium, *at* https://www.accessiblebooksconsortium.org/portal/en/index.html.

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