White Paper 13

global governance and multilateralism

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Global governance, which is rooted in multilateralism and was re-founded in the aftermath of WW II, has served as the prevailing cooperative paradigm since the 1990s. However, given its complex structure, it currently faces several challenges (including existential ones) and its future is highly uncertain. Starting with an analysis of the current state of play, this White Paper sketches out the main open questions and options for global governance by 2050. Section 1 identifies the main features of global governance and multilateralism as they currently exist. Section 2 emphasizes that global governance is at a crossroads and explores the stark choice between deglobalization and renewed global governance. Section 3 delineates options for the future of global governance, including possible scenarios and alternatives for a renewed multilateralism and for improved normative processes.

‘We are at an inflection point in history. In our biggest shared test since the Second World War, humanity faces a stark and urgent choice: a breakdown or a breakthrough

UN Secretary General,
Our Common Agenda, 2021

1.

state of the art
current state
of global governance:
a complex picture

While multilateral cooperation based on international regimes and involving a variety of actors has blossomed across almost all sectors, contemporary global governance (GG) involves processes of continuity and change. As was previously true, states remain major players within the international system and retain substantial power to act unilaterally. At the same time, global governance faces structural changes in the fundamental parameters that played a major role for decades. Ever more dramatically put under stress, it proves to be resilient but ill-suited for dealing with many present and future global risks and challenges. This section clarifies the concepts of multilateralism and global governance (1), outlines the main factors of complexity of the current state of global governance (2), and situates global governance within the context of contemporary challenges and uncertainties (3).

1. The relative indeterminacy of usual concepts

Cooperation among more than two states is a major trend in international relations since the end of the 19th century. Described as plurilateral or multilateral cooperation, it is based on state consent, in opposition to unilateralism understood either as the independent conduct of a state pursuing its own policies or as actions or pressures exerted by one state or a group of states on other(s) without their consent. The term multilateralism and some of its variations (1.1), as well as global governance (1.2.), deserve preliminary examination.

1.1 Multilateralism

Defined positively, multilateralism is an organizing principle of international relations which involves generalized practices and principles of conduct (duty to cooperate, negotiation, diffuse reciprocity, trust-building processes, etc.).

Whatever definition is retained, multilateralism

- does not imply per se any renunciation of state sovereignty, even if its real impact on the state's authority remains debated and variable;
- does not erase asymmetries and hierarchies of power;
- serves differentiated interests for small states (with a greater need for cooperation and security and better chances to be heard in multilateral fora), intermediate states and large states (inclined to shape and use multilateral institutions for their own purposes);
- and is the result of historical developments that raise doubts about its legitimacy.

"What can be done by many within an accepted framework will produce results that are better shared and therefore more sustainable than isolated, ad hoc arrangements.

Multilateralism
is an uncertainty reducer.

| *Devin: 2020*

Contemporary multilateralism is multifaceted:

→ Multilateral institutions

Multilateralism commonly gives birth to institutions ("the institutions of multilateralism"), typically hard or soft intergovernmental organizations (IOs). Despite a secular tendency to create IOs, multilateralism can be IOs-driven (examples include the intergovernmental conferences on Marine Biodiversity of Areas Beyond National Jurisdiction and a global agreement on plastic pollution) or blossom outside IOs, sometimes even circumventing them (as shown, e.g., by some international peace conferences). It can also combine states' diplomatic undertakings and IO instruments and resources (e.g., the 2015 *Joint Comprehensive Plan of Action* on Iran).

Multilateralism can take several forms: it can eventually result in political agreements, gentlemen's agreements, or legal instruments, typically international conventions, which can be placed under the supervision of existing IOs and may be endowed with a hard or soft institutional framework.

However, the function of multilateral fora can also merely be to keep some open channels for exchanges of views at different levels, including bilateral diplomacy facilitated by multilateral settings.

Functionally, multilateral institutions and processes cover collective security issues as well as cooperation to solve problems of an economic, social, cultural or humanitarian character (see UN Charter art. 1.3) and flourished since 1945 against the backdrop of basic principles of the UN and *jus contra bellum*. In the meanwhile, the very concept of peace evolved from the absence of war to a more complex concept that includes friendly relations, human security, and progress. As a consequence, collective security organizations (both universal and regional), as well as *ad hoc* or institutional defence alliances, are part of multilateral institutions and global governance, even though they may be rooted in criteria of inclusion (hence, also, of exclusion).

→ Levels of multilateralism

Multilateralism includes both universal frameworks (conferences open to all states and, potentially, universal IOs such as the UN system, the World Trade Organization (WTO), and the International Criminal Court (ICC)) and regionalism. Regionalism implies some form of multilateral cooperation or integration at the sub-universal level ("regional multilateralism"). It is generally defined not only geographically, but also as co-operation between states sharing common policy interests, including on matters concerning collective security or collective self-defence,

provided that this association is not open to all states and that it possesses a minimum regional anchoring (Forteau 2006: para. 2). Interregional frameworks also exist in several substantive fields (e.g., trade, investment, and development agreements); others are based on common values or interests, such as the Organization of Islamic Cooperation and the Organisation de la francophonie).

→ Multi-stakeholderism

Multilateralism is a method of cooperation focused on *interstate* cooperation and at least initially sets aside non-state actors. The concept of multi-stakeholderism describes the emergence and the increasing role of non-state actors in multilateral institutions ranging from multinational corporations (MNCs) to non-governmental organizations (NGOs) and civil society organizations (CSOs), grassroots communities, indigenous peoples, world leaders and city mayors, private foundations, consumers, and industry lobbies. Multi-stakeholderism is a trend embedded in contemporary multilateralism rather than a self-standing analytical model.

In this White Paper, multilateralism is understood as an aspect and a precondition of global governance. As such, global governance encompasses multilateralism – as a spirit, a set of diplomatic practices, a matrix for IOs – and the vast number of soft or hard governance regimes involving actors other than states and IOs.

1.2. Global governance

Global governance can be defined as "the exercise of authority across national borders as well as consented norms and rules beyond the nation-state, both of them justified with reference to common goods or transnational problems" (Zürn 2018: 4–5). Diverse actors, including some non-state actors, are likely to take part in global governance frameworks.

Since the 1990s, the concept of global governance is commonly used to refer to the reactivation and expansion of post-World War II international institutions and processes to new actors and sectors.

The factual backdrop of global governance includes five essential features:

- growing interdependency, based on globalized markets and supply chains,

- (awareness of) interwoven crisis or threats to security or stability (in particular: war, weapons of mass destruction, environmental issues, terrorism, pandemics, corruption and organized crime, erosion of tax basis, etc.),
- transnational movements of persons,
- new technologies and digital transformation, including the growing role of data and artificial intelligence in decision-making processes by both private and public actors on a global scale and
- the emergence of a global civil society or at least ever more interconnected civil societies.

Global governance can be driven by:

- common values, by converging if not identical interests, or at least the shared belief that benefits of cooperation exceed costs. The theoretical and political premise is that some advantages can be expected from global governance processes and institutions:
    - lower transaction costs for cooperation, which makes it more likely
    - mechanisms for monitoring performance and inducing compliance (preferentially without any sanction), which also increase the value of cooperation
    - empowerment rather than constraint on the relevant actors
- expectations regarding mutually beneficial results and their distribution.

However, global governance is not exclusively about enhancing cooperation. Since the 1990s, it has had a particular normative valence, contributing to the liberalization of state policies within hard or loose regulatory frameworks, which necessarily means some constraints for states and other actors. The liberal underpinnings of global governance imply the liberalization of economic and financial flows, deregulation or alternative regulations, the promotion of good governance and (at least implicitly) democracy.

While global governance is not a synonym for international politics, it cannot be reduced to smooth consensus either. One of its defining features is the overall agreement on the global relevance of the framework, its goals, and the underlying values. There is a tendency to build the largest possible consensus. Still, a given regime can encompass some disagreement: go-

vernance regimes can be classified as like-minded and open-to-diversity regimes. When challengers create a new concurrent regime, it remains to be assessed whether this is intended to bring some change in the existing governance regime or is a secessionist enterprise.

Legally, the essential foundations of global governance are:

- undamental principles of international law (most notably, the sovereign equality of States, the prohibition of the recourse to force, the obligation of pacific settlement of disputes, human rights promotion and protection, and the 1945 UN Charter)
- functionalism and solidarism, or at least the will (and duty) to cooperate, and
- an increasingly blurred line between international and internal affairs and policies.

On these bases, global governance functions both at the universal and the regional level (for instance with regional organizations of security or defence, which are required to act in accordance with the UN Charter and decisions).

Outcomes combine soft law and hard law, sanctions and incentives. Participation of stakeholders (or some of them) and relative deformalization are common features of global governance regimes and structures, which are often competing.

Global governance is a relatively vague concept, potentially obfuscating disagreements and rivalries between actors. While the object of criticism, notably from TWAIL (Third World Approaches to International Law) perspectives, the notions of global governance and of governance regimes will be used in the White Paper in the absence of alternatives. Our use of these terms should not be read to suggest that anything like "a" (in the sense of "single") or even a "global" (in the sense of "all-encompassing") system of governance exists, be it dominated by the UN or multi-level, but well ordered. Rather, there is an array of systems of global (i.e., international and sometimes worldwide) governance.

2. Global governance today: its geology and its current structural complexity

Today, global governance involves a sometimes uneasy coexistence among overlapping historical models:

- Westphalian states' coexistence resulting in competition or loose cooperation;
- IOs according to the 1945 and pre-1945 prevalent scheme, with an attempt to set up a system of international institutions in 1945;
- global governance structures in the most recent meaning of the term, involving IOs, hybrid organizations, soft organizations, networks, public-private partnerships (PPPs), non-governmental organizations (NGOs), civil society organizations (CSOs) or foundations as global players and, more marginally for the moment, other stakeholders, such as big cities or indigenous peoples.

Multilateralism and global governance rely on a division of labour (or, in legal terms for IOs, functionalism) between and within different sectors of cooperation, such as peace and security, disarmament, economic, social, cultural, and environmental issues. Sectoral differences also impact the level of cooperation; the need for universal cooperation is more felt in respect of certain issues (peace and security) than others (priority of universal over regional in respect of certain issues and conversely). Thus, IOs have asymmetric means and powers. Moreover, the functional differentiation among IOs results in both IO coordination and IO competition. Consequences include possible loss of or rivalry for resources, limited efficiency, and a failure to adequately react to the most serious violations of international law (as shown by the International Monetary Fund (IMF) and World Bank resisting the UN General Assembly policy against apartheid).

Global governance regimes are also characterized by structural differences, which include:

- multilateralism organized on a permanent basis v. *à la carte*, with possible intermediate options, such as the Alliance for Multilateralism;
- under-regulated or under-controlled fields v. sectors covered by hard self-contained regimes;
- integrated v. polycentric governance systems (e.g. for the latter, internet or the environment, in the absence of an

international organization for the environment, apt to counterbalance other specialized IOs, such as the WTO);

- consistent v. fragmented regimes;
- regimes overproducing norms (e.g., fight against terrorism) v. regimes with a limited output.

Last but not least, global governance is characterized by structural polyarchy. Hierarchy is exceptional (e.g., the role of the UN Security Council regarding peace and security). "Messy multilateralism" is a common feature of global governance, resulting from the lack of solid linkage between governance regimes (e.g., trade law and human rights *lato sensu*), the predominance of the most highly judicialized regimes, and the difficulties in connecting the universal and the regional levels.

Multiplicity is also reflected in the legal sources of global law, which include international law but are not limited to it. The legal framework of global governance is characterized both by a duty to cooperate and by the free choice of means of cooperation and regulatory tools (soft law, (technical) standards, common objectives, binding law, etc.)

3. Times of uncertainty

3.1. Persistent global risks and challenges

Major events of the last two decades – such as 9/11, the 2008 financial crisis, the COVID 19 epidemic, and armed conflicts – and risks (climate change and the fact that most planetary boundaries have already been crossed) epitomize the persistence of global challenges, some being perceived as threats to global and national security. The consequences of these risks and challenges are global in character and effectively addressing their consequences requires cooperation and multilateral governance. In particular, one may observe:

- The persistence and evolution of long-existing global risks (including resort to force and risks of expansion to the outer space, economic inequalities and the divide between winners and losers of globalization, mass atrocities and large-scale human rights violations including systemic violations affecting women and phenomena of racial discrimination, non-ordered and unsafe migrations, arms race including nuclear and autonomous weapons, etc.)

- The emergence and aggravation of new global risks and challenges (from climate change induced transformations to pandemics, health issues and digital conflicts)
- A high level of interconnectedness among global challenges and risks, as epitomised by climate change, where financial and economic imbalances combined with climate change lead to aggravated inequalities; inequalities and resources competition fuel armed conflicts; and armed conflicts destroy basic resources and delay the fight against climate change
- Different perceptions of these global risks and challenges (including the need for intergenerational solidarity that the Anthropocene implies), and different priorities in addressing them, depending on various factors, including exposure and level of vulnerability to them. Increasing competition between different actors, particularly great powers, is a factor that may complicate cooperation in identifying priorities

3.2. Power-shifts of all kinds shaking the basis of current global governance

The current landscape of global governance is shaken by, and has to adapt to, the emergence of new dynamics and tensions among the global actors, be they states, international organizations or non-state actors.

→ *Changes affecting states' balance of power*

After two decades of debate on the 'waning' or the 'decline' of the sovereign state at the turn of the century, events in the last decade seem to point to what has been referred to as a (necessary) 'return to the state'. Yet, several changes affecting states may impact the methods and institutions of global governance.

Some of these changes are geopolitical and concern the current dynamics of interstate relations:

- The decline in relative terms of the United States or Western hegemony (hard and soft power) and the progressive disappearance of the unipolar word order established after 1990, accompanied by the declining investment of Western nations in multilateral institutions that they traditionally supported.
- The emergence of a multipolar world order, possibly challenged by the rivalry between the USA and the People's Republic of China, but also characterized by the raise of major regional powers (BRICS for Brazil, Russia, India, China,

South Africa) and new frameworks for collective global leadership (G20).

- The role of (other) states from "the Global South", which, despite internal divisions, advance a number of cross-cutting claims (better representativeness in the international institutional system, common but differentiated responsibilities, increase in financial solidarity and financial as well as technological transfers from the North to the South, more south-south solidarity and cooperation).
- The appearance of elements of an 'internal split' within the Western bloc (particularly between the US and European states) and the growing role of the European Union not only as a model of regional integration and in its support of multilateralism and multilateral institutions but also as a major power.
- The existence of internal divisions among the non-aligned countries and possibly divergent interests and priorities among BRICS countries (for instance the Russian Federation and the People's Republic of China).
- Other changes are internal to the state but are likely to have an impact on foreign policy and global balances:
- The growing number of authoritarian governments and the corresponding decline in the number of democratic states, which may have implications for the future shape, powers and functions of global governance institutions and for the normative content of international law.
- The rise of populism in many states, notably Western nations, which is frequently accompanied by a vocal discontent with multilateralism and multilateral institutions, and which may lead to changes in the interpretation of established international legal rules.
- Popular contestation of governments in place in some states on all continents, notably since the 2000s.
- Secessionist movements in several states.
- The widespread conviction that states still have a crucial role to play in policy-making and are not deprived of tools of (unilateral) intervention.

→ *Changes affecting international organizations*

While states appear generally committed to the main existing institutions of multilateralism, notably the UN system, and no serious attempt has been made to replace them with new or-

ganizations, the morphology of international institutions with (quasi) universal membership has shifted in recent years. Important developments include:

- Soft organizations like CoPs (Conference of Parties) tend to be preferred to traditional intergovernmental organizations (while their institutional framework can extend over time).
- Public-private partnerships are praised.
- Coalitions of the willing are built either to support IOs, compensate their failure or circumvent them.
- States are reluctant to fund existing IOs adequately for their original mandate and proportionally to their growing missions.
- Some states are defying IOs authority without bothering even to pay lip service to a serious legal justification.

All these trends contribute to aggravate competition and overlaps between international institutions.

What is more, the existing universal organizations are the object of extended criticisms concerning their effectiveness, representativeness, accountability and overall legitimacy (see 1.3.4.), which have become more vocal in light of their revitalization since the early 1990s. For diverse reasons some states withdraw from IOs or threaten to do so.

In contrast, we are witnessing a relative strengthening of regional organizations. The latter phenomenon is far from being homogeneous: regional organizations may serve the purpose of progressive integration of states and potentially develop into a new kind of world power (the EU), or be established by like-minded states seeking more leeway and support rather than more constraints (ASEAN (Association of Southeast Asian Nations) or the Eurasian Economic Union); some regional IOs too face withdrawal, internal divides and criticism.

The enhanced role of regional organizations raises questions regarding coordination between universal and regional institutions of multilateralism.

→ *The growing autonomy and importance of non-state actors*

While states remain key players in global governance, non-state actors have assumed increasingly significant roles. Non-state actors comprise a wide range of subjects, whose objectives and

methods of action, as well as capacity to have an impact on global governance, may vary considerably. They include the following:

- Multinational corporations and other private actors that assume significant roles on the global stage, sometimes holding oligopolistic positions in key sectors (like GAFAM in digital technology), and other times developing new institutions of global governance outside traditional domestic/international legal frameworks (like the Oversight Board created by Meta).
- Foundations and other entities which anticipate or complement states and intergovernmental organizations in the protection of important public interests (e.g., the Global Fund for Survivors of Conflict-related Sexual Violence, the groups collecting evidence of war crimes or crimes against humanity in armed conflicts), but also act as potential competitors/alternatives to current global governance institutions (like the relationship between the Bill and Melinda Gates Foundation and the World Health Organization (WHO)).
- NGOs are increasingly the driving force behind global law-making initiatives (see the Ottawa Convention Banning Landmines, September 18, 1997, or the UN Treaty on the Prohibition of Nuclear Weapons, July 7, 2017) and play an important role in ensuring the implementation of treaties (for instance through the process of monitoring and reporting to the human rights treaty bodies).
- Religious and cultural actors strive to influence multilateral processes.
- Opinion leaders and individuals have substantial influence due to their wealth and audience.

This changing landscape raises the question of the capacity of these global actors to be up to current or future risks and challenges, as well as the adequacy of the current multilateral methods.

3.3. Renewed tensions between unilateralism and multilateralism

Despite much advocacy for a "return to the state", there are many reasons to doubt that states are individually capable of addressing persistent or new risks and challenges either in their own interest or to allegedly preserve common interests. Nonetheless, goals, foundations, and methods of multilateralism and global governance are heavily debated.

3.3.1. Capacity of states to face risks and challenges through unilateral actions

While some states risk disappearing (due to climate change), are failed or fragile, large and powerful states themselves retain only a dwindling control over key issues. The loss of control of states over some territories or persons or activities, resources, and even prerogatives and capabilities, is generalized, due to the

- evolving boundaries between the public and the private sphere: Some traditionally public prerogatives tend to be privatized according to liberal policies (e.g. in immigration: carrier sanction, privatization of visa processes; in security: PMC, increasing privatization of intelligence analysis) or captured by private actors (cryptocurrency);
- uncontrolled development of private activities caused by deregulation, complexification, and autonomization of transnational exchanges of all kinds, encouraged by some/most global governance institutions;
- accumulation of public debt or shrinking financial capacity to fund state intervention to mitigate the accumulation of contemporaneous crisis and prepare a sustainable future for next generations;
- sub-optimal assessment of (extraterritorial) externalities of national policies and boomerang effects.

Nonetheless, unilateral attempts to regain control are numerous:

- The temptation to regain control on a territorial basis (including as to the production of goods deemed essential or critical) and to intensify border controls and barriers is widespread and can lead to withdrawals from treaties and IOs in some cases; powerful states are inclined to rely on extraterritorial effects of their own legislation.
- Some states and the EU tend to be more involved in private activities (state-owned enterprises, financial flows, incipient regulation of global value chains) or cyber activities (Digital Market Act, Digital Service Act) and to regain control over these actors in terms of taxation for instance.
- Some public entities tend to use private global players in the public interest (fight against heinous speech (Digital Service Act), collection of evidence abroad (Cloud Act)); these activities have come under public scrutiny.

While uncoordinated unilateral initiatives might result in an increased risk of fragmentation of the global consciousness (through state control over flows of information), economic

deglobalization and circumvention of multilateral processes, the benefits of disentangling societies and economies and of favouring loose cooperation are difficult to assess. However, neither collective attempts to re-establish states' control and resources (e.g. Organization for Economic Cooperation and Development (OECD) tax initiatives for instance) nor the positive impact of a return to the state on the effectiveness of multilateral decisions and processes should be underestimated.

3.3.2. Viability and benefits of multilateralism under stress

Structural limits of multilateralism and global governance methods have long been identified:

- Voluntarism, typical of multilateral law-making, creates structural difficulties, including multiple veto players, lack of tools to induce cooperation from reluctant states, difficulty penalizing wrongdoers or making them effectively compensate injured parties, difficulty furthering redistributive ends, etc.
- Conversely, attempts to circumvent these limits by resorting to soft law, participation of diverse stakeholders, etc. as well as trade-offs among competing values in the pursuit of global governance (e.g., among enlarged participation and more superficial forms of international cooperation) cast doubts on efficiency, capacity not to align on lowest-common-denominator outcomes, and risks of capture (especially by MNC or NGOs from the North).
- Trade-offs among reduced participation and deeper forms of cooperation aiming at higher levels of compliance entail the risk of institutional and legal fragmentation, and perhaps "collective unilateralism".
- The benefits of multilateral cooperation are not equally distributed and vary over time (long term / short term).

Multilateralism and global governance now face renewed criticism from states:

Criticisms are inspired by divergent attempts to re-theorize and reshape multilateralism and global governance:

- the claim of greater reliance on the principle of non-interference in supposedly "internal affairs" by some major powers;
- disillusionment of those committed to the basic principles of global governance while witnessing serious violations of principles, departures from international institutions, lack of transparency, representativeness, and respect for the rule of law;

- radical criticism from those who are less concerned with the fate of a rules-based system than with its outcomes. Cornerstones of the liberal policies of the 1990s are debated: For example, are deregulation and the dismantlement of state controls root causes of some crises (for instance: the 2008 subprime crisis), the aggravation of inequalities or mis-development, the religion of the GDP (Gross domestic product)? Did global governance fail to provide acceptable responses to the most important or urgent needs of populations? Did global governance, based as it is on the priority given to economic liberalization, exacerbate human suffering?

3.3.3. Dialectical bonds between unilateralism and multilateralism

Not all criticisms of multilateralism and global governance should be read as an apology for unilateralism; unilateral measures should not be systematically equated with free-riding. It is worth recalling that unilateralism and multilateralism exhibit complex relationships:

- Unilateralism can be seen as a legitimate last resort to achieve political aims (some unilateral powers remain in the hands of states in times of emergency according to safeguard clauses in multilateral agreements). It can also challenge multilateralism and solidarity – even in times of crisis (e.g. Covax failure; vaccine nationalism and bilateralism). But unilateralism can be an expression of "solidarity" while multilateralism is not always synonymous with greater solidarity (the win-win model depends on structural features).
- Unilateralism can also precede and trigger the adoption of common rules within multilateral fora, as shown by extra-territorial anti-corruption laws and conventions, as well as several modalities of political conditionality related to democracy and good governance.
- Unilateralism can be seen as a last resort instrument for defending common values and legal principles. However, unilateral "sanctions" in reaction to a breach of fundamental obligations are controversial (as attested by the uncertainties surrounding the legal regime of "countermeasures in the general interest" under the International Law Commission Articles on state responsibility of 2001): Some states condemn and label them as "unilateral coercive measures"; others praise and use them to compensate institutional failure to react.

- Multilateralism is sometimes praised and envisaged as the best way to postpone or impede any decision or collective reaction (for instance, by insisting on the powers of the UN Security Council at the exclusion of unilateral reactions to threats to peace and security or international law gross violations). For some, embedding unilateralism within multilateral decision-making process is the condition sine qua non for warranting the participation of major powers; for others, it is the negation of multilateralism and a blank cheque for the most egregious violations of international law by major powers.
- Treaties can make the implementation of some of their provisions dependent upon political conditions or upon the respect for some specific rules deemed essential by one state party in such a way that the treaty basically serves as an instrument of dominance for that party.

A key question for the fate of multilateralism and global governance is whether unilateral initiatives and solutions receive plausible legal justifications or approval within multilateral frameworks.

3.4. Manifestations and reasons for crises of/in multilateral institutions

Existing universal organizations are the object of extended criticisms, which have become more vocal along with their revival since the early 1990s, concerning:

- Their effectiveness in pursuing the objectives for which they have been created: the UN is criticized for failing to safeguard international peace and security; the WTO for failing to address the damages produced by globalization. This prompted reactions by member states, ranging from substantial disengagement, reduction in financial contributions, or even withdrawal from membership.
- Their representativeness: problems of fair representation are increasingly raised, be it in the form of requests of "de-westernization" of international organizations or demands for shifts in nomination and redistribution of seats that take into account the role of new emerging regional powers or that of states from the Global South. A central conceptual and practical challenge of global governance is the identification of underlying constituencies: the peoples, the governments, or complex or composite communities of stakeholders?

- Their overall legitimacy, which includes recurrent calls for greater accountability, better decision-making processes and participation, gender equality in multilevel governance, and the need for an increasing role of civil society organizations (also as a means for compensating international organizations' democratic deficit).
- The legacy of Western democratic states that heavily shaped post-1945 multilateral institutions.

It is not clear against which yardstick an IO can be said to undergo a crisis: inability to completely discharge their functions or to prevent or react to violations of fundamental norms? failure to prioritize and address global challenges? distrust of states and parts of the public opinion? difficulty to preserve a relative autonomy towards hegemons? It is also difficult to measure the efficacy and efficiency of global governance regimes (notably due to complex interactions) and the degree of compliance of states and other actors with global policies and rules, as to assess what would have happened had IOs not been acting at all. Evaluating efficacy is all the more difficult as not all IOs have been designed to concretely realize their goals.

Nonetheless, it is beyond doubt that some IOs have been (very) successful in expanding their role and achieving their goals (e.g. OECD) – even when deprived of the power to constrain states – and that some improvements in the functioning of IOs have taken place over the last decades.

The manifestations of crisis are manifold and result from structural and contextual factors:

- *Factors lying in the very pattern of IOs*: outdated institutional frameworks, rigidity of constitutive treaties, disputed representativeness and legitimacy, decision-making processes, limited participation, and bureaucracy condemning IOs to be "status-quo oriented", counter-productive search for consensus, *de jure* or *de facto* vetoes benefiting some member states; disproportionate power or influence of declining powers (in relative terms), difficulty to manage the heterogeneity of state regimes and levels of development; dependence on state contributions and on a handful of major contributors, difficulty to attract private funding or develop proper resources; insufficient processes for review and settlement of disputes; dependence on states to implement most policies and inefficient monitoring mechanisms, ineffective or possibly counter-productive mechanisms to sanction member states failing to fulfill their obligations, insufficient inter-institutional coordination; mar-

ginalization of stakeholders (especially civil society organizations and vulnerable populations).

- *Growth crisis*: overstretched IOs (ever more members and/or attributions, implied powers and programs); dramatically insufficient budgets compared to the missions; overlaps, contradictory mandates (the achievement of the mandate of one IO might negatively interfere with the achievement of the mandate of another – e.g. World Bank and WHO, WTO and environmental agreements, etc.); lack of coordination and competition for resources between IOs.

- *Fragility or crisis induced by the political environment*: latent or overt disagreement on fundamental principles enshrined in IO charters; irreducible disputes over secondary rules of IOs; uncertain effectiveness of legal norms and regimes (depending on the domain); reluctance of member states to increase or even pay their assessed contributions; recurrent attempts to introduce (financial) conditionality and political control on the IO (notably through voluntary contributions); withdrawal of states undermining both budget and legitimacy of IOs; (partial) paralysis of IOs due to blocking powers activated by some major powers; incapacity of member states to agree on decades-long negotiated fundamental reforms; exposure to contradictory reform attempts: "regime shifting" v. "competitive regime creation" (Morse, Keohane: 2014); preference for bilateralism; hesitation between on-going integration and economic and normative decoupling; doubts on the future of continental projects of integration (like the African Union) and questioning of appropriate regional architectures in unstable political contexts.

- *Fragility or crisis resulting from the evolving institutional environment*: unilateral state initiatives (also as a reaction against the blockage or inefficiency of IOs); the ambivalent impact of alternative institutions operating in the context of a devitalized organizations (for instance mega-regional agreements and WTO); the ambivalent impact of coalitions of the willing (support or challenge for hard organizations?); unclear division of work and means at the regional or sub-regional level (esp. South-America, Africa); the dependence of (sub-) regional IOs on external actors in some parts of the world (esp. Africa vis-à-vis Europe); the loss of control over disaggregated structures bringing together IOs, public-private partnerships, powerful private foundations.

- *Fragility or crisis induced by defiance*: disrespect for the rules of the game by major players in IOs; harsh criticism against double standards practised by IOs; growing internal and

external unease with their lack of accountability and relatively poor record in terms of proper respect for human rights; damaged reputation (due to sexual abuses or corruption or mismanagement); "politicization" of their functioning; instrumentalization to ends foreign to their purpose by some major players, etc.

The reactions of IOs to remedy their fragility are real but insufficient:

- *Adaptive strategies:* illustrative of the requirements of global administrative law or constitutionalist approaches to international institutions: increased transparency in recruitment processes; (quasi) (judicial) review of (some) acts of IOs, gender equality and human rights main-streaming, more substantial motivation of secondary norms.
- *Managerial reform attempts:* development of new and more efficient technologies of governance (e.g. governance by indicators: the Sustainable development goals; the use of technologies and artificial intelligence (AI) tools by IOs, such as the UNHCR Iris verification program or the UNITAD – Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD)), reform of budgetary processes.
- *Resilience in times of crisis* threatening the very *raison d'être* of the IO or usual multilateral processes: states withdrawals are not massive; some states demonstrate a will to reinvest in and refund IOs; the UN managed to come back despite its being several times circumvented and humiliated by member states, many IOs managed to keep working during the Covid-19 crisis thanks to on-line meetings and procedures.

While adaptations preserved IOs from collapse or obsolescence, these appear to be insufficient to successfully address growing and changing expectations and rising threats to the stability of the existing global governance system and post-1945 faith in multilateralism.

4. A dramatic rise in threats to multilateralism and global governance over the last years?

Globalization has been largely but not exclusively an economic phenomenon. It is generally admitted that "slowbalization" (the tendency of trade and foreign investment to slow-down) started as early as 2008. Despite institutional crises here and there, this new trend did not profoundly affect global governance. The same holds true for major political crises (like the US aggression on Iraq in 2003) which were overcome but left some traces.

By contrast, 2020-2022 seems to be a period marked by an intensification of pre-existing trends and tensions critically affecting institutions if one considers

- the enduring global health crisis started in December 2019 and its social and economic aftermath;
- the acceleration of climate change and its immediate effects documented by successive IPCC (Intergovernmental Panel on Climate Change) reports as well as the collapse of biodiversity;
- the resurgence of power politics, expansionism and resort to force outside the framework of the UN (esp. the aggression of the Russian Federation on Ukraine on February 24, 2022, and the inability of the UNSC to react);
- the recurrent resort to large-scale unilateral sanctions and countermeasures;
- the subsequent risk of economic fragmentation and accelerated deglobalization, massive food shortages or sky-rocketing prices making food and energy unavailable for some parts of humanity and the risk of widespread social crisis and unrest;
- the threat of shrinking membership for IOs or blocking decision-making processes.

Considering structural evolutions and most recent events, is the world entering a period of permanent, interwoven and unprecedented crises threatening the future of multilateralism and global governance?

4.1. Weakening of the bed-rock the multilateralism and global governance

Both multilateralism as a principle of organization and institutions of global governance seem to be structurally undermined by institutional fatigue and political distrust rooted in three phenomena:

- Exacerbated competition between political regimes (dictatorships, liberal democracies, authoritarian states, socialist states, traditional forms of governance etc.), associated with the internal crises of democracy, generating disagreement over political values or concepts that underpinned global governance since at least the 1990s: multilateral cooperation as a positive-sum game, "good governance" requirements, "democracy" with growing claims at the existence of different versions of "democratic governments". Words remain unchanged but they clearly appear not to be given the same meaning by all players. These fierce debates can be construed differently, as symptomatic either of a need to better recognize cultural and civilizational diversity or as of attempts to drain terms such as "democracy" or "human rights" of their substance as defined until now both politically and legally.

- Divergent views on the role and functions of international law (IL) in global governance: Without prejudice to states' ambivalent position or alternative use of one conception of IL or the other, depending on the circumstances or domains, a principled IL (with explicit references to *erga omnes* obligations) challenges an instrumental approach to IL (including lawfare) and vice versa; the preference for the protection of the sovereign power of the state is opposed to the limitation of state's discretion under the supervision of international institutions; major powers set a poor example for the respect of IL rules (also *jus ad bellum* and *jus in bello*) and international institutions' authority (including international courts); the motives, purpose and limits of counter-measures and economic coercion are disputed; the development of international regimes or principles aimed at safeguarding human rights or implementing policies is criticized for encouraging disputes between states.

- Loss of the indispensable trust in international institutions, making them unworkable or less apt to meet expectations. International institutions as they stand face enduring discussions on whether their actions are excessively or, to the contrary, insufficiently politicized; criticism for their lack of legitimacy (including democratic deficit), transparency and

efficiency; distrust from some groups of states for historical reasons (the colonial inheritance of international institutions); competition between large states or groups of states for hegemony or influence over IOs; contestations of immunities and threats to their agents and premises' security as additional signals that they have lost their status of "saviours of mankind".

4.2. Undetermined impact of structural weaknesses and current crisis on the future of multilateralism and global governance

While there is a wide consensus on the seriousness of current threats to peace, multilateralism and global governance, the evolution, length and impact of current crisis on the future of GG and multilateralism remain disputed. It cannot be excluded that the current state of crisis culminates in a large-scale conflict or the uncontrolled multiplication of conflicts, if not a third world war. By contrast, it might also be that conflict will remain relatively contained.

Having these possibilities in mind:

- For some, most acute crises are likely to heighten calls for radical changes and reforms of international institutions and rules. Just as major crisis and 20th century wars prompted substantial progress in multilateral frameworks and IL, the global health crisis and the war in Ukraine could trigger fundamental reforms.
- For others, the productivity of crises is nothing but a myth, reforms instead depend upon political factors and all the aforementioned political trends obviously push towards the collapse of global governance. Most pessimistic observers fear that regional integrative projects themselves could not survive a trend towards deglobalization.
- Others assume that what could come after the 'turning point' allegedly reached in Spring 2022 at the latest is unpredictable. Interdependencies could push for more cooperation and convergence, incentivize the "weaponization of interdependence" or accelerate the quest for (illusory) national independence. The same holds true for "sanctions" that could push for more respect for international law or for deglobalization and more protectionism (at the national or regional level). Similarly, the aggression against Ukraine

could be an opportunity to rethink the peace and security architecture and advance (nuclear) disarmament, power plant security, food security, international criminal law, or alternatively put an end to secular efforts for more security for all. Last but not least, the awareness of trade law shortcomings and the risk of disruptions in global trade could mean the end of global trade at a low cost, or be an opportunity to rethink trade law, to better incorporate the need for stability and a rebalanced sharing of benefits, and to better articulate trade law with social and environmental law as well as with international peace and security. The ultimate choice is a matter of political awareness and will.

Conclusion of Section 1: It can be said without exaggeration that multilateralism and global governance are at a crossroad: The risk should not be minimized that they could collapse in the absence of political will both to support and reform them (Louis M., Abbas M., Moatti S.: 2020).

Still, there are some indicia of resilience and reform capacity of the institutions of global governance. At a minimum, they prove apt to point out threats and risks of deglobalization, to efficiently advocate for continued or increased search for multilateral solutions and – for some – to try to bend the curve of globalization to better address long-term issues.

It is worth underlining that the fate of global governance is not linked to economic globalization only. Nor is it related to peace and security issues only. It is fundamentally dependent on the perception of common assets (like global public goods and global commons) and common threats of different kinds that lie undeniably beyond any state's capacity to manage unilaterally.

2.

challenges
for tomorrow :
collapse, decay
or revival
of global governance

In the decades to come, the world can pursue one of two broad strategies. The first option moves toward deglobalization that undermines multilateralism, or at least deeply reframes global governance in the absence of a coherent global roadmap (1). The second path involves a collective endeavour not only to save multilateral practices but also to reimagine methods to redefine the foundations and institutions of global governance in the light of a renewed balance of power, new social demands, and unprecedented and pressing common risks and threats (2).

1. Moving away from globalization and global governance?

The first option is a return to mere coexistence, sovereignist approaches to (allegedly) national challenges (or national manifestations of global challenges), and unilateralism (if not protectionism and expansionism). This path would entail the significant costs of dismantling current global governance frameworks and reintroducing protectionism.

It is, however, possible to imagine several alternative patterns to that of pure power politics:

- Will a post-liberal order emerge under the aegis of the Russian Federation, the People's Republic of China, and perhaps India? Would it be accompanied by a radical reorientation of international law towards protection against interference in internal affairs and protection of internal security, enlisting institutions of multilateralism to serve that purpose?
- Is a relatively liberal order to be maintained due to a Western revival and re-engagement of the United States of America with multilateralism and global governance backed by the preference of the People's Republic of China for stability as a propitious factor for trade and growth, while other states would defy these institutions, if not withdraw from them?
- Could one imagine that two or more trends coexist and expand between like-minded states? According to T. Ginsburg (2020), international law would not simply go back to Westphalian law that insulates states from foreign or international interventions, because *a)* "authoritarian states" use and repurpose current international institutions and norms "to

their own ends", as others do; they do not turn their back to international cooperation but favour "thinner models of cooperation", so as to facilitate cooperation rather than to tighten commitments; *b)* "international law functions differently among different kinds of states", depending on their internal regime and their preferences; multilateral approaches and trade can base on "friend-shoring" (cooperation and interdependence between like-minded states).

2. Improving the methods for providing cooperative answers to global risks and challenges?

Considering past experiences, the reform of institutions of multilateralism and global governance as they currently exist or the building-up of a new global governance could be steered either by a coalition of major powers convinced that multilateralism still best serves their own interests despite some fundamental disagreements between them or by one or two major powers affirming their leadership after acute crises or (world) war episodes.

However, the search for up-to-date cooperative answers to global risks and challenges might result from a more inclusive process involving all kinds of actors of the international community.

In either case, it would be useful to address systematically a series of key questions.

2.1. How to agree on topics and/or methods of negotiation or deliberation?

The identification of actors involved in the preliminary discussions should be considered carefully, especially regarding non-state actors. The number and nature of relevant actors may differ across sectors. The challenge of inclusiveness is particularly important at a time of diversification of relevant actors and growing contestation over the ineffectiveness of universal fora, which could encourage claims for a more decentralized system of global governance. Given that multilateralism is of vital importance to small/vulnerable countries, their participation in the process should be up-graded.

2.2. How to agree on reforming/preserving global governance in times of growing diversity or conflict?

The challenge of hammering out an agreement on fundamental/basic principles of global governance is of paramount significance, as it will determine the social contract/global compact on which the international community will be, at least implicitly, based in 2050. This implies an assessment of the need to review (or not) the basic principles dating back to 1945 and a determination of whether conditions are propitious for a new 'constitutional' pact.

There can be difficult trade-offs between the risk inherent in efforts to revise the existing multilateral system (risk of counter-productive results) and the risk of preserving an unworkable status quo in a new world order. The following issues need to be addressed to determine the content of an overall agreement on the future of global governance:

a) How to prioritize major (re)emerging substantive / structuring issues for global governance while there seem to be so many crises and needs for better cooperation at once?

In particular, it must be determined how the interests of future generations can be taken into consideration and advanced.

b) How to define relevant schemes, levels, and technologies of governance?

→ *Functions of governance regimes*

Governance regimes could have different functions: They could function as agora or agencies, creating a level-playing field between states in terms of information, changing mindsets or shaping a common future. These functions can be integrated or distributed and are not mutually exclusive, depending on the issues and the timing.

Where appropriate, governance regimes could:

- Establish and manage early alert systems and systems of crisis management and/or crisis prevention.
- Define which relevant controls (levels, means, purposes) are to be exercised at, beneath or beyond the borders.
- Produce common (and/or differentiated) norms and mechanisms of monitoring, control or follow-up. Depending on the context, norms can be hard or soft, standards, detailed sets of rules and/or regimes of transnational law.
- Share knowledge, information and expertise.
- Perform peacekeeping.
- Ensure that basic needs are covered for all.
- Help to restore states' capacity to govern within their borders, participate in global governance frameworks and deliver appropriate and sufficient public goods to their whole population.
- Deliver global public goods, i.e. non-rivalrous and non-excludable goods available worldwide, such as knowledge, the prevention of climate change, or the eradication of diseases.
- Ensure the protection of global commons, i.e. non-excludable but rivalrous goods of planetary significance, such as oceans, the atmosphere, or the outer space.

→ *Decision-making processes*

Who should decide on what and how? A satisfactory answer to this question implies the need to address overlaps of governance regimes, possible tensions between rationalization and fragmentation, and the interplay of universal and regional levels.

Other relevant factors include:

- The impacts, for better or for worse, of digitalization on diplomatic and institutional practices and of algorithmic forms of decision-making and governance by international actors.
- The interplay between political and scientific expertise and between political / governmental power and bureaucratic expertise.
- The choice of the appropriate combination of top-down and bottom-up approaches: is there a need for greater proximity to the people in GG? How would this impact the interplay between the universal and the regional? Should bottom-up multilateralism be prioritized, building consensus at a regional level and as a second step forging consensus at the interregional level? Should subsidiarity be preferred irrespective of the field of cooperation (including e.g. peace and security matters)?

→ *Instruments and methods of global governance*

The choice of future techniques of global governance should be based on a multi-dimensional assessment:

- It is possible to choose between or to combine elements of opposite options: coordination/cooperation vs integration, international law vs diplomacy, positive vs negative retributions?
- What should be the role of international courts and more generally mechanisms of control/follow-up/settlement of disputes?
- In terms of decision-making power, follow-up and control, project funding and supervision, and dispute settlement, should IOs have more teeth? When should respectively peer-review and expert-review be preferred?
- Should "counter-measures in the general interest" be institutionalized and centralized? How to ensure both the efficiency and legitimacy of such a mechanism (including the option of dismantling or neutralizing veto powers)?
- Should multilateralism and global governance be made more compatible with populist or sovereignist expectations? If so, how (e.g., through enlarged margins of appreciation)?

- How to improve the political and social acceptability of the processes and outputs of global governance frameworks? Which role for media and social sciences?
- How to improve the capacity of global governance structures to anticipate global issues rather than try to catch up with unilateral initiatives and private initiatives?

Conclusion of Section 2: Today's global actors face a choice between deglobalization, probably at a high cost, and renewed global governance. Different approaches to multilateralism and global governance for times to come have been recently publicized (see box 4). There are more than nuances between them, actors having different scenarios in mind. It is worth exploring – beyond official reports and statements – all possible scenarios and accordingly, the potential fate and shape of global governance in 2050.

‘Only a multilateral policy leaves room for unilateral action.

Beck, 2002

3.

questions :
sketching out the future
of global governance
in a context
of uncertainty

An overview of selected recent proposals on multilateralism and global governance in the near future

UN Secretary General, Our Common Agenda, 2021

Humanity faces a stark and urgent choice: breakdown or breakthrough. The international community is manifestly failing to protect global commons. A new focus is needed on the world's young people, and future generation, to rebuild trust and social cohesion through a renewed social contract, anchored in human rights. Relying on a huge need for solidarity, multilateralism should be more inclusive, more networked, more effective. The UN should play a leading role.

*

M. Telò (ed.), Reforming Multilateralism in Post-Covid Times. For a More Regionalised, Binding and Legitimate United Nations, Foundation for European Progressive Studies, 2020

While the current landscape is characterized by an unprecedented and heterogeneous multipolarity and by new emerging problems, the authors argue that the new global leadership can only be collective (and not hegemonic), multilateralism must be multilevel (fundamental role of regionalism), and more legitimate (gender equality and role of civil society organizations).

S.O. Cruz, (2015),"Alternative futures of global governance: scenarios and perspectives from the Global South", Foresight, vol. 17(2), pp. 125 – 142

The "Global South" has introduced new demands for multilateralism and regionalism. With the establishment of informal networks and partnerships, the South was able to address significantly to the deficits on trade, seeing self-reliance and flexible multilateral arrangements as the future of their regions and global governance.

*

The Alliance for Multilateralism (https://multilateralism.org/the-alliance/):

This informal network was initiated by Germany alongside with France in order to strengthen cooperation between states "united in their conviction that a rules-based multilateral order is the only reliable guarantee for international stability and peace and that our common challenges can only be solved through cooperation ».

G7 Economic Resilience Panel, Global Economic Resilience. Building Forward Better ("Cornwall Consensus"), 2021

The 2021 Cornwall consensus was developed by the independent G7 Economic Resilience Panel as an agenda for economic resilience. It is conceived as a post-financial crisis and post-Covid alternative to the Washington consensus, to restore public trust in a rules-based, free, fair and open economic system based on collective democratic values. Five principles are put forward: solidarity, better risk management, sustainable and purposeful supply, better governance, inclusion.

T20, Global Governance and the Future of International Institutions, 2020

This Recommendations Report summarises policy briefs by members of the T20, the official think tank network advising the G20. Policy briefs tackle miscellaneous issues selected among several proposed research topics, which referred to selected IOs (UN, Bretton Woods institutions, UNCTAD, WTO), sectoral issues (global tax agenda, fight against corruption, the G20 and a potential World Environmental Organization), and cross-cutting issues (e.g., multilateral regionalism, the role of civil society, cities, and of sub-states entities in global/inductive governance, the crisis of the legal approach, inclusive participatory democracy, top-down and bottom-up policy initiatives).

"Joint Statement of the Russian Federation and the People's Republic of China on the International Relations Entering a New Era and the Global Sustainable Development", 4 February 2022

The joint Russian-Chinese statement of February 2022 provides a wide-ranging overview of the two countries vision of multilateralism. Criticising the current perceived dominance and instrumentalization of multilateral institutions and processes by some States, specifically the United States and NATO members, the joint statement calls for a multipolar and polycentric world order. This, the two countries argue, requires better diversity in the decision-making of existing global structures such as the UN, the WHO, and the WTO, as well as the development of alternative forums and initiatives, especially at the regional level, such as the ASEAN, the Shanghai Cooperation Organisation, and Russia-India China, G20, and BRICS formats.

In the next decades, all components of the international community will face critical issues. A tentative selection of most urgent challenges includes:

- peacekeeping,
- adaptation to climate change and other environmental changes,
- inequalities between and within states (including with regard to the protection of human rights, when dealing with the Anthropocene and induced social and economic adaptations or when considering data collection and use by both public and private persons)
- intergenerational solidarity
- global health
- development, use and control of new technologies.

‘Security is not the only issue for world economy and world society. Who gets rich and who stays poor, who has access to doctors, medicines and hospitals and who has not, whether rain forests, or tigers, are protected, (...) are also important problématiques.

S. Strange,
The Retreat of the State, 1996

These challenges cannot be met without ensuring crisis management, resilience and long-term policies through well-ordered interdependencies, restoring the authority of international law and institutions, and regulating private undertakings (especially given persisting regulatory gaps, e.g. in cyberspace, commodities production and markets, and applications of some technologies, especially biogenetics).

Not all options contemplated under point 2 (supra) and detailed under point 1. (below) entail promises of a common, manageable, and peaceful future on a liveable planet. Very different futures are hence possible, ranging from the return to the Westphalian logic to radical changes in global governance (1). New or renewed frameworks for multilateral cooperation in the future can be imagined and deserve immediate scrutiny (2); some kinds of normative processes and norms seem preferable to others (3).

1. Prospective outcomes: from the return to Westphalian schemes to radical changes

Possible scenarios include a return to the predominant logic of pre-1990 or even pre-1945 international relations (1.1), a limited reform of global governance (1.2) or more radical changes (1.3). These changes may also occur selectively and differentially depending on actors and issues (1.4).

1.1. Regression to pre-1945 or pre-1990 predominant logic in international relations?

The crises of multilateralism and global governance may result in a return to schemes already tried and tested. This scenario is not necessarily a return to the past. It coincides with the valorization of the traditional Westphalian logic, which is already present in the "archaeology" of global governance. However, the possible return to this logic must be assessed in the wake of the current conditions of a globalized and interdependent international society.

→ *Back to spheres of influence?*

Between 1945 and 1990, multilateralism was characterised by the division of the world into political and economic blocs. De-globalization and the crisis of current global governance could mean the return to international relations organized according to a similar model, around blocs or spheres of influence centred on leading powers. However, the composition of these blocs would not necessarily be the same as during the Cold War. Their composition and leadership could be different, and evolve over time. The nature of the spheres of influence is also uncertain, as they could be more or less steady or loose. In any case, this scenario implies

- some degree of disconnection of governance frameworks from spheres of influence;
- the disconnection of economies and societies, which would induce the reduction of interdependencies at the global level, at the factual level even before the institutional and normative level:
- This scenario does not necessarily imply a generalized weakening of multilateralism, especially at the regional level. Some spheres of influence could be structured, probably in an asymmetric way, by regional multilateral institutions. Some of them could be significantly strengthened, in the framework of integration processes already started or to come. Although this trend would necessarily increase fragmentation from a global perspective, this could also lead – in the long term – to a certain political recomposition at the universal level between a limited number of blocs already structured around equivalent regional multilateral institutions. However,
- universal multilateral institutions would be permanently weakened by political opposition between states belonging to different spheres of influence;
- the institutions structuring the spheres of influence would risk having little complementarity with universal institutions:
- Last but not least, beyond the negative consequences of inward-looking attitudes, deglobalization would not be conducive to the management and protection of global commons and would not remove challenges that are global in nature, e.g. climate change. The likelihood of collective action to address global challenges would be low.

→ *Back to power politics within a formally unaltered framework?*

Even in this scenario, it is unlikely that multilateralism as an organizing principle of international relations would disappear completely. However, unilateralism would become a systematic option. Similarly, the outright disappearance of most current international organizations is highly unlikely. However, their role would be greatly reduced and most of their powers would not be exercised effectively, even if constituent agreements remained unaltered. IOs surviving this scenario would have to find their place in a governance system totally focused on other actors. Most universal IOs would be reduced to subordinate functions in facing key global challenges. By contrast, like the international unions before the League of Nations or several international organizations during the Cold War, some of them could probably perform technical functions in an effective way, or settle disputes that do not affect the core interests of the major powers.

Universal fora would remain available for the expression of systematic differences of opinion and/or for bilateral negotiations and cooperation. At most, they could ensure some, probably weak, mutual prohibition rules in the framework of an international law of coexistence. International cooperation *stricto sensu* would be very weak or absent at the universal level. It is unlikely that global challenges could be properly addressed.

→ *Collapse of IOs and fundamental rules of IL: Back to anarchy?*

In the absence of supportive multilateral institutions, this scenario implies a reduced role for international law:

- reduction of normative production to *ad hoc* bilateral agreements and to the "natural" evolution of customary norms, which would nevertheless be difficult to identify in a heterogeneous and conflictual international society characterised by divergent practices;
- conclusion of new multilateral agreements facing strong resistance or used to challenge existing agreements and institutions;
- surge in disputes of interpretation, not only with regard to specific norms, but also with regard to the values or meaning of fundamental norms, such as the self-determination of peoples, the prohibition of the use of force, human rights and democracy.

The effectiveness of international norms would also be limited, which in the long run would weaken the legal certainty and the binding nature of law. Several achievements of the inter-war period, inherited from the League of Nations and the Kel-

logg-Briand Pact (1928), could be called into question, *de facto* if not *de jure*. Ultimately, regulation by law would be almost totally replaced by power politics, including the extraterritorial use of national law as an instrument of coercion.

These trends would lead to reduced predictability of actors, the disappearance of benchmarks for assessing their behaviour and the generalized paralysis of peaceful methods of dispute resolution. In other words, a collapse of the international legal system as it stands today would expose all actors, including large states, to unmanageable transboundary risks and challenges.

1.2. Soft adaptations of the existing global governance system?

The scenario that most directly extends the current situation consists of a series of gradual adjustments without a radical break. These adjustments would aim to address existing tensions, while confirming the main trends of global governance as it is.

→ *International organizations' reforms?*

IOs could undergo a series of relatively slow reforms, to adapt gradually to the power shift between members and to the evolution of the general context. These reforms would be in line with the procedures provided for the adoption of the acts of each organization, for the amendment of the constituent treaties, or in any case with an institutional practice comparable to that of the last decades. However, not all reforms would be equal:

- Some reforms could be incremental, on relatively marginal issues, and therefore likely to allow for political agreement;
- Some reforms could be bottom-up, rooted in practice and fed by diffuse demands from stakeholders and members of each organization.

So far, the method of incremental reforms has been at least partially successful in some cases (such as the governance of the Bretton Woods institutions) but not in others (such as the WTO). Similarly, future IO reform efforts would be an unpredictable mix of failures and successes, which would continue to create frustration but not a full-fledged rejection of multilateral institutions.

Other reforms could be more ambitious and comprehensive or even based on the coordination of reforms in several IOs. To succeed where attempts at structural high impact reforms have failed so far, political momentum would be crucial.

However, IO reforms can also be a source of risk even when carried out successfully. Apart from the risk of unforeseen consequences, some of them may not have the effect of making IOs more legitimate, effective and efficient, but of weakening one or several of these criteria. Some changes could also be "counter-reforms" deliberately aiming to reduce the competences, powers and means of action of IOs, without calling into question their very existence.

→ *More informal state-centred governance?*

The weakening of IOs would not necessarily lead to a weakening of multilateralism as a whole but may result in the further development of other informal institutions with (some) states as the main actors. Without disappearing, IOs could therefore have a reduced role in favour of other more flexible fora based on voluntary and selective participation.

Depending on the success of this kind of forum, informal institutions may become adequate fora for political decision-making. It can be expected that IOs would further focus on study, preparation and implementation functions while retaining a legitimacy linked to their greater representativeness at the state level. Should no change in membership be conceivable, their legitimacy and record regarding present and long-term challenges would remain as debated as, for example, the G20 is today.

→ *More private or hybrid governance?*

Following the trends in global governance since the 1990s, public actors could experience a readjustment of their role, at least in some areas and partly due to increasing reliance on technologies. This would be accompanied by a strengthening of current forms of participation of private actors in global governance: public-private partnerships, private funding, and participation in decision-making bodies.

Full-fledged private governance could also develop, either because of the weakness of public governance in certain areas, such as the internet, or because of an organized division of the respective functions of public and private governance, e.g. in labour regulation, where trade unions and employers' federations can play an important role. Strengthening these trends would make some of the current difficulties even clearer. The

participation of non-state actors in global governance implies some biases, for example depending on their origin in authoritarian or in liberal states; their selection and accreditation also raise questions that a more widespread and consolidated practice could help to resolve; their levers are not commensurate (MNCs, international NGOs, local NGOs, etc.). In addition, the stage at which private actors intervene (norm-setting, follow-up and/or implementation of international norms), which currently varies greatly depending on the context, should be clarified, for example through a generalization of the participation of private actors at all stages of the governance processes. This should allow both enhanced participation and more accountability.

→ *More international law-based governance?*

If the production of international norms and their effectiveness were to be maintained at levels comparable to the average since the 1990s or even to increase, the place of international law in global governance would be consolidated. In such a scenario, the consolidation would probably be gradual (or even slow) and punctuated by setbacks. However, the general outcome would be a steady increase in the scope of international agreements and dispute settlement mechanisms. Although lingering tension between a rule-based international system and power politics would be unavoidable, this scenario would tend to strengthen the place of the rule of law in global governance. In turn, this would strengthen multilateral institutions and their ability to deal with the challenges that they face.

1.3. Towards radical changes?

Contextual changes, especially if traumatic, could create the political momentum for radical change. Although these changes are difficult to envisage concretely today outside a theoretical framework, they could nevertheless build on possible models conceived to compensate the shortcomings of current global governance.

→ *Towards a multipolar world structured as a federation of regional organizations?*

Strengthened regional institutions could become an essential bridge between universal institutions and states, even more than they currently are in part. They could

- allow for stronger international or supranational integration, while ensuring the international representation of interests and values that are not necessarily universal;

- contribute to stronger universal institutions with greater legitimacy through participation in decision-making processes and effectiveness in implementation.

There would be a certain homogeneity both in the conception of regional institutions and in the organization of relations between regional and universal institutions, which would be based on the principle of subsidiarity. Contrary to the division of the world into spheres of influence, in this case, universal institutions would be able to produce effective results, not only because of the temporary convergence of the political will of the relevant actors but also because of institutional and legal mechanisms to allow the expression of diversity to be reconciled with unity in decision and implementation.

→ *International organizations' refoundation?*

The impossibility of reforming IOs despite the existence of strong and widespread demand for it could lead to a break-up with existing multilateral institutions. This could happen

- in the event of a generalized crisis of global governance;
- regarding crucial issues, such as the veto power at the UN Security Council or dispute settlement at the WTO;
- through the creation of new IOs as a response to the legal or political impossibility of expelling one or more members from existing institutions.

Contrasting with the scenario of a return to spheres of influence, this scenario implies the (re)foundation of multilateral institutions with a universal vocation. How radical this scenario would be depends on the degree of novelty of the relevant IOs:

- they should not only be newly created, but also based on a new institutional and/or substantive logics (for example, a global trade body could be designed to advance the imperative of sustainable development, to complement the WTO, which is based on the logic of comparative advantage);
- however, this scenario could also imply some degree of continuity (for example, if a "new UN" were to be created, it could integrate without insurmountable difficulty most institutions of the current UN system, both in institutional terms and in terms of means (personnel, expertise, resources), no doubt with some adjustments and streamlining).

→ *Peace through law: another attempt?*

The idea that law can be the main instrument for securing peace, and more generally for regulating international relations, has been implemented with mixed success since WW I. Despite past setbacks, it could become a guiding principle of future global governance. This requires effective decision-making processes leading to binding acts, effectively implemented and complemented by effective controls.

In this scenario, global governance would be characterised by essential differences from past experiences. E.g., a significant extension of the compulsory jurisdiction of (some) courts and tribunals would be a crucial feature (notably in the fields of human rights, criminal, and environmental law), which could be achieved by clauses in treaties (re)founding a new form of global governance. This result seems to be achievable only on a voluntarist basis, which recognises the importance of state sovereignty.

However, significant components of this new global governance mode could result from the accumulation of distinct institutions and instruments, whose combined effect would tend to put the rule of law at the core of international relations. Some sectoral institutions and instruments, e.g. strengthened international criminal justice, could provide a very significant contribution to global governance in general.

→ *Towards global commons regimes?*

Some global challenges could produce original responses based on relatively centralized systems for the distribution of scarce resources and for the management of the negative externalities of certain practices. This phenomenon is conceivable for specific global commons (oceans, atmosphere, outer space, polar regions, etc.), but could also allow for the emergence of a more general approach, built with some coherence around the concept of global commons and the development of international and/or transnational solidarity, based on the quest for genuinely global solutions to global problems. This potential new approach would necessarily imply new mechanisms, different from existing solutions for the delivery of global public goods, such as the WHO's attempts to eradicate diseases or the collective effort for the prevention of climate change. For example, the financing of certain institutions and regulatory regimes could be linked to direct levies, in the general interest, on activities related to the global commons to be regulated. As the ultimate beneficiaries and contributors to these new governance regimes, users and private persons in general could also be directly represented in decision-making processes.

→ *A cosmopolitan turn?*

In a structurally globalized international society, global governance could increasingly be based on substantive universal principles concerning the internal organization of societies, in particular human rights and democracy in addition to principles applicable to interstate relationships. Global governance would then be based on the promotion of rights and duties of private actors, which would become increasingly important stakeholders in global governance.

This perspective seems to imply necessarily also

- the creation of transnational spaces based on the interaction of civic associations, and perhaps even some forms of transnational democracy based on citizens' representation;
- increased forms of participation by civil society and the emergence, in the long term, of a genuine transnational civil society that could be directly associated with the development and implementation of international policies;
- going well beyond the inclusion of (some) enterprises, to focus on individuals and communities that NGOs can represent adequately under certain conditions.

This scenario implies a profound change in multilateral institutions, which would have to adapt to increased participation of private actors at all stages of their activity. Arguably, a cosmopolitan turn would encourage democratisation at all levels (including within states), stimulate better representation of the global South, and incentivize new perspectives in identifying and tackling global challenges.

1.4. Differential patterns of governance

The three previous scenarios could also be realized only partially, so that the overall evolution of GG would result from their combination, depending on the relevant issues and activities. Regional cooperation, interaction between a relatively limited number of like-minded states, and coalitions of the willing could be combined to allow for the multiplication of institutional and legal solutions.

The determining factor will be the interest of the actors concerned, which may be variable over time. Cooperation would then be the result of a choice made selectively on a case-by-case basis. E.g., it cannot be excluded that, due to irreversible interdependencies, economic cooperation would prove to be enduring at the universal level, despite political differences. This

would not prevent competition without cooperation in other areas, such as the promotion of different conceptions of democracy and human rights.

However, even in this case, it is difficult to determine whether

- cooperation or competition would prevail in a given field, such as climate change;
- diffuse reciprocity (a willingness to make concessions without demanding precisely equivalent benefits for each action, albeit because others in the community do so as well) rather than specific reciprocity could inspire new forms of governance, especially for South-South cooperation, which could strengthen the place of the Global South in a multipolar world.

Conclusion of point 3.1.: Multilateralism is deeply rooted in contemporary international relations, but its future is uncertain. The *status quo* would not provide satisfactory responses to all current and future global challenges. Neither would differential patterns of global governance, considering the universality and interconnectedness of global challenges.

Consequently, legitimate, effective and efficient global governance requires a concerted evolution of existing institutions and norms. It remains to be seen whether this can be achieved and through what new model(s) of global governance.

2. Which frameworks for multilateral cooperation in the future?

A radical and immediate institutional breakthrough would probably be desirable considering the pressing challenges represented by armed conflicts, global inequalities or the crossing of planetary boundaries.

However, given the undetermined outcome of current crises and the level of disagreements among states over priorities and fundamental principles, the authors decided to focus on a reformist path for multilateralism and global governance (see points 3.2.1 and 3.2.2.) and the reform of the UN which should remain the cornerstone for global governance (see point 3.2.3.). Nevertheless, they find it useful to hint at some possible further steps.

Needless to say, not all reforms can be implemented within prevailing legal instruments (constituent treaties, etc.). The adoption of some formal instruments might be required. It is doubtful that the proper method for reforming IOs is to rely on high-level panels delivering reports. More inclusive processes should probably be privileged.

2.1. How to refresh and strengthen the architecture of global governance?

Three major structural issues should be addressed so that as many actors as possible remain committed to multilateralism and global governance.

→ *Improving the incentives for and sharing the benefits of multilateral cooperation within and beyond international organizations*

Not only major powers should be involved in multilateral frameworks and solutions: institutions of multilateralism and GG should be fairly and effectively open to all states and designed so as to take into consideration a wide array of converging and competing interests. To prevent these institutions from being structured for and instrumentalized mainly by hegemonic or major powers, blocking powers should be rethought or rebalanced. To improve the participation of small or intermediate states and other stakeholders with limited resources to international institutions, greater financial support and pros and cons of resort to online tools should be envisaged.

The mandate of some IOs should be updated through either formal or informal processes, the distribution of powers among IOs should be rationalized and the nature of tasks should be clarified for each IO (crisis management/long-term issues…).

The role of informal frameworks or soft organizations should be clarified. It is not self-evident that they should have the power to set the agenda of universal organizations when their membership is limited.

Beyond bestowing on IOs sanction powers to ensure better compliance with common rules, incentives and rewards for member states abiding by the rules should be explored.

> *Going one more step forward*: ensuring that a small or vulnerable state is systematically designed to play a leading role or be a penholder on issues involving challenges to which small or vulnerable states are particularly exposed.

→ *Better articulating the global/the local, the regional/the universal levels*

Despite sometimes poor records, double standards, dependence on external funds and declining legitimacy, many actors still trust regional organizations to address crucial challenges. It should be ascertained in which cases

- economy or security issues or values, etc. are the best drivers for regional or universal cooperation or integration and when integration can realistically be pursued – according to regional needs and specificities;
- regionalism could become a vector of fragmentation.

The role of (sub-)regional organizations towards universal ones should be clarified. Depending on domains of activity, it might consist of: shielding regions from universal trends when variance is reasonably conceivable; implementing universal decisions or policies; providing a stronger voice (and legitimacy?) at the universal level, and initiating regional policies under the aegis of universal organizations acting according to the principle of subsidiarity…

The intermediate level (multiregionalism, interregionalism, transregionalism…) should be better articulated with regional and universal organizations in order to both promote cooperation and avoid fragmentation.

> *Going one more step forward*: Regional and universal institutional schemes should be rationalized so as to redirect resources towards and intensify participation in the most relevant and efficient fora and agencies.

→ *Better articulating institutions competent in different sectors (peace and security, sustainable development, financial stability, economic, social, environmental, issues), so as to eliminate asymmetries, contradictions and blind spots.*

While holistic approaches might be desirable (for instance to effectively and constantly reconnect trade law, labour law, human rights and environmental law), they are not always institutionally feasible. With due consideration for attributed powers, alternative solutions to siloed regimes could be considered:

- to fight compartmentalization, a leading international organization for each sector could be designed, the other ones undertaking the unambiguous obligation to refer to its law and procedures when touching on its domain of competence;

- or in an heterogeneous world marked by rapid technological and social change, the fluidity of the institutional framework should be preserved but deadlocks should be remedied.

> *Going one more step forward*: Consultative organs composed of stakeholders could be set up as organs common to IOs with overlapping or neighbouring or interrelated spheres of competence.

2.2. How to restructure and re-legitimate international organizations?

Despite recurrent crises and growing criticism (see points 1.3 to 1.4), IOs are likely to remain the backbones of multilateralism and global governance. Seven major issues should be addressed to make IOs more inclusive, representative, accountable on the one hand and more efficient and apt to tackle long-term issues on the other:

- Improving the representativeness of political organs through taking into account differences between states in terms not only of power or history but also needs and contribution to the achievement of the goals of the organization on a regularly updated basis; the transposition of the model of the ILO (tripartism) in other domains could be explored.
- Better articulating (scientific, technic and bureaucratic) expertise with political legitimacy through
  - *a)* assessing the pros and cons of the IPCC or IPBES (Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services) model and disseminating hybrid processes where necessary,
  - *b)* assessing how artificial intelligence and other technological developments can best be deployed in diverse international governance regimes, and
  - *c)* rebalancing international secretariats and intergovernmental bodies.
- Developing and better defining the role of different actors within IOs, so as to gain support, expertise, inputs and challenges from non-state actors while avoiding capture and conflicts of interest.
- Better involve national and subnational parliaments or parliamentarians in the work of IOs and consider the creation of "international parliaments" with consultative powers when relevant and feasible (with a special focus on the participa-

tion of future generations' representatives and otherwise voiceless components of the world population).

- Rethinking decision-making rules so as to limit the blocking-power of some (major) states or minorities with a view to

  a) making IOs capable of discharging their functions without deterring major powers from participating;

  b) avoiding the resort to unilateral initiatives by default;

  c) encouraging variable-geometry solutions with safeguards.

- Improving the rule of law within IOs and making them accountable for their actions and omissions through oversight bodies, grievance mechanisms, and alternative or judicial dispute settlement bodies.Giving IOs the means to discharge their functions and reach their goals through:

  a) refunding IOs: while recalculating and increasing obligatory state contributions is limited by the will and contributing capacity of many states (but see the funding reform adopted by the WHO on May 24, 2022) and the risk of tightening the control of major contributors on IOs, a more promising prospect would be to develop proper resources through

    i. exploring international taxation either of economic and financial flows or of the use of international spaces, and

    ii. lowering the cost of tax gathering by IOs or for their benefit (for instance by resorting to cost-effective technologies).

  b) endowing IOs with more binding powers on member states and other stakeholders either to implement their own policies or to monitor them.

2.3. How to reform and redefine the role of the United Nations?

Most projects of reform of the current architecture of global governance give central place to reform of the UN, on the assumption that the UN is destined to remain a fundamental component of a new multilateralism. While a wide range of proposals in all areas of activity of the UN have been advanced over the time, the following four changes in the current institutional architecture of the UN may be highlighted:

→ Reforming the Security Council: two reforms appear urgent.

a) Veto power: The elimination of the veto power of permanent members is generally regarded as indispensable for improving the functioning of the UNSC. Since this would require the amendment of the Charter, a number of solutions should be devised aimed at least at increasing the cost of the use of the veto (for a step in that direction, see the resolution adopted by the General Assembly on April 26, 2022 on a "Standing mandate for a General Assembly debate when a veto is cast in the Security Council").

> *Going one more step forward*: limiting the use of the veto in case of mass atrocities and/or prohibiting or limiting the use of its veto power by a permanent member of the UNSC on a resolution dealing with its own military actions. This could result from an amendment to the Charter or from collective or unilateral undertakings of permanent members.

b) Size and composition: An enlargement of the Security Council from the current 15 members to at least 25 members appears to be necessary for the Council to better reflect UN membership as a whole. This reform would enhance its legitimacy and representativeness without undermining its effectiveness.

→ Increasing the role of regional organizations: An enhanced role for regional organizations in UN decision-making would likely contribute to rendering the action of the universal organization more effective. Creating more or less formal channels for establishing a permanent dialogue between the UN and regional organizations does not require a formal amendment of the UN Charter.

> *Going one more step forward:* Recognizing the possibility of membership and even allocating a permanent seat on the Security Council (both reforms requiring amending the Charter) to regional organizations in charge of peace and security issues.

→ Enhancing governance of the global commons: Reference may be made here to the recent proposal of the Secretary-General to consider making the Trusteeship Council "available as a multi-stakeholder body to tackle emerging challenges and, especially, to serve as a deliberative forum to act on behalf of succeeding generations. Among other tasks, it could issue advice and guidance with respect to long-term governance of the global commons, delivery of global public goods and managing global public risks" (*Our Common Agenda*, § 125, p. 77).

> *Going one more step forward*: The Trusteeship Council could be granted initiative, co-decision or veto power, at least on selected issues.

→ Making the UN more inclusive and democratic: The proposal of the Secretary General to create an "Advisory Group on Local and Regional Governments" and his declared intention to explore options to enhance parliamentary inputs may be regarded as steps in this direction.

> *Going one more step forward:* Other proposals include the establishment, as a subsidiary organ of the General Assembly, of a "United Nations Parliamentary Assembly" composed of elected representatives from member states.

3. What kind of normative processes and norms are to be encouraged?

International law remains essential for ensuring orderly international cooperation and more effective responses to global risks and challenges. A reflection on the future of international law includes inquiring about the interaction between international law and other normative systems (3.1.), its normative content (3.2.), and the processes of international law-making and the outcomes of such processes (3.3.).

3.1. Relations among normative spheres

While the image of an ever-growing and ever-expanding international law may have weakened in the last decade, it is a fact that international law has dramatically expanded its scope of application over the time. At the same time, however, there has been an expansion of global regulation in general, with multiple normative layers/spheres coexisting and sometimes conflicting one with the other (not only international v. domestic law but also regional or sub-regional legal orders, forms of self-regulation created at the initiative of private actors, etc). This raises the question of the interactions between these different normative spheres. Two opposing scenarios may be envisaged:

- Accepting pluralism and attempting to go beyond classical divides by developing pragmatic processes of mutual accommodation. This would require an effort by all the actors involved (starting with domestic, regional, and international judges) to recognize and respect the existence of multiple legalities.
- Restoring clearly delimited spheres of normativity interacting on a hierarchical basis. This would require the development of more or less effective instruments for ensuring respect of the higher law (for instance, by imagining preliminary reference procedures by which national or international courts can seek guidance from the International Court of Justice).

3.2. Which international law?

As a means to advance particular ends, international law cannot be entirely disconnected from political values and objectives. At the same time, the authority of international law vis-à-vis power politics should be preserved and consolidated, which implies the non-recognition of situations created in breach of peremptory norms. Moreover, the ideological pluralism characterizing international society, as well as the different political priorities of its actors, inevitably affect international law's normative content and the functions assigned to it. In assessing "which international law", three scenarios may be envisaged, which closely reflect the different options of global governance contemplated supra (3.1).

> Politics is not only a power struggle
> but also a struggle to interpret
> and apply ideals in the actual conditions
> of a society. (...)
>
> International law may be seen
> to have the same function,
> with international politics being not only
> a global power struggle but also
> a struggle to apply ideals at the level
> of the society of all humanity.

Allott P., 2022

- International law as a set of "neutral" rules disconnected from political values and objectives: This option would reflect a minimalistic conception of the function of international law, as essentially composed of prohibitive inter-state rules and general principles open to different interpretations. This option does not appear adequate to the nature of the challenges which the international society confronts; it would entail the risk of abandoning global challenges to uncoordinated approaches or geopolitical calculations.
- A cosmopolitan turn where international law acts as an instrument of justice and democracy at the national, regional and international level: Under this perspective, international law would increasingly be concerned with matters pertaining to the internal organization of societies, as well as to the promotion of rights and duties of private actors. This perspective seems to imply the progressive emergence of a transnational, civic and democratic space.
- A multi-layered international law assuming some political functions: Under this option, international law should not be regarded as a monolithic block but rather as a complex legal system composed of different layers (regional, inter-regional and international levels, each reflecting different degrees of integration and commitment to the promotion of shared values) and addressing differently various global challenges (some norms warranting coexistence and minimizing risks of conflicts competition, some developing robust forms of cooperation to address well-identified common challenges, others resulting in technical standards promoting the interconnection of markets, etc.).

3.3. Normative processes and outcomes

The need for greater cooperation at the global level requires adequate international law-making processes. A number of major issues should be addressed in order to highlight possible shortcomings of the current processes and indicate potential improvements:

- Which role for general international law? Lacking real alternatives, the international community still needs non-strictly consensual processes for the creation of general binding rules based on customs and general principles. In this context, the importance of codification in a multilateral context, even when it takes the form of non-binding restatements of general rules, should be stressed.
- Which role for treaty-making processes? Despite the current "treaty fatigue" (i.e., the reluctance of states to engage in treaties, particularly multilateral treaties), treaty-making remains central among the processes of international law-making. It also represents the most egalitarian (because it requires the consent of each participant) and democratic (when ratification requires parliamentary approval) form of law-making. Greater participation of civil society in the negotiation of treaties should be encouraged. As for the out-

"If the terms of multilateral cooperation are to reflect the interests of broader democratic publics rather than just those of narrow elites, traditional patterns of delegation will have to be supplemented by other means of ensuring greater accountability to public opinion.

Keohane : 1998

comes, greater recourse to universal framework treaties, which could be complemented by regional or sub-regional treaties, should also be encouraged as a means of introducing a form of subsidiarity in the relation between the universal and regional levels. Regular assessment of the relevance of treaties could be envisaged so as to avoid excessive rigidity over time.

- Which role for secondary norms generated by IOs? With few exceptions (most notably the EU), IOs have not been able to develop real legislative powers. Law-making within international organizations may have a number of advantages, including the rapidity and the possibility of relying on institutional structure of the organization for its implementation. When secondary norms are adopted by organs which do not reflect the entire membership of the organization (as in the case of the UN Security Council), the exclusion of members from direct participation in decision-making should be mitigated through mechanisms of representation or consultation. Moreover, greater attention should be given to the role of national parliaments in the decision-making processes of international organizations. Finally, reflexive normative processes could be encouraged.

- Which role for intergovernmental or multistakeholders' soft-law? Considerations of effectiveness seem to be at the basis of the increasing recourse to informal law-making by group of states or multistakeholders' multilateral initiatives. While this move to informal law-making has facilitated international cooperation by developing generally recognized global standards, it has also its drawbacks in terms of egalitarian and democratic participation, as not all states are associated with this law-making activity and national parliaments remain generally outside these processes. Moreover, in an increasingly multipolar world, soft law processes may risk being used by a group of states in order to gain strategic advantages by presenting their standards as global in order to impose them on another group of states.
- Which role for self-regulation? Self-regulation, as practised by certain international organizations or by non-state actors, may be an effective instrument, which may prove particularly useful for filling normative gaps. Yet, it suffers from the same shortcomings as informal international law. Moreover, self-regulation should not be used as a means for establishing a sort of *lex specialis* which serves to exonerate the failure to observe international law obligations.

annex 01

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annex 02

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