

## Revitalizing International Law: Making the Multilateral System Fit for the Future

Maja Groff

As intersecting global (existential) risks and crises accelerate, the international community has yet to summon the necessary levels of collective ambition equal to the problems confronted. To date, international action on key global issues remains weak and insufficiently co-ordinated, and serious efforts at reinforcing current international governance architecture are lacking.

The international crisis landscape is indeed dramatic. The Earth is at its warmest temperature in 125,000 years, and scientists report that the consequences of the temperature increase already occurring (~1.1°C) are much fiercer and happening more quickly than predicted. The conflict in Ukraine, meanwhile, has created a record number of displaced persons, with higher numbers only last seen in Europe in World War II. This crisis comes on the heels of a once-in-a-century global pandemic, further adding to the fragility and testing the resilience of global health, financial and economic systems.

Against this backdrop of overlapping global risks, improvements in the international rule of law – interwoven with core global governance architectural enhancements – will likely be needed to preserve and stabilize the international system, geopolitically and ecologically.

Times of crisis can have a positive effect in catalysing a flight to key values. Core international values – such as those enshrined in the UN Charter and in other central international instruments like the Universal Declaration of Human Rights – should drive our global diplomatic efforts to ensure the requisite institutional capacities to realize these values. One such value, indeed, is respect for the law-based international order, which should be reflected in a concrete and bold reform agenda to

stabilize, buttress and “future proof” our current global governance.

### A Deteriorating Risk Landscape and Calls to Strengthen International Law

Analysing the broad suite of international risks, the Bulletin of the Atomic Scientists, in January 2022, retained its Doomsday Clock at 100 seconds to midnight citing, among others: tense relationships between the US and Russia and China, with all undertaking nuclear weapon modernization and expansion; continuing nuclear proliferation threats in North Korea and Iran; inadequate national climate policies and action to tackle catastrophic climate change; flawed global pandemic response; threats from biological weapons programs; and, substantial problems in information ecosystem integrity, undermining the ability of many governments to tackle key risks.

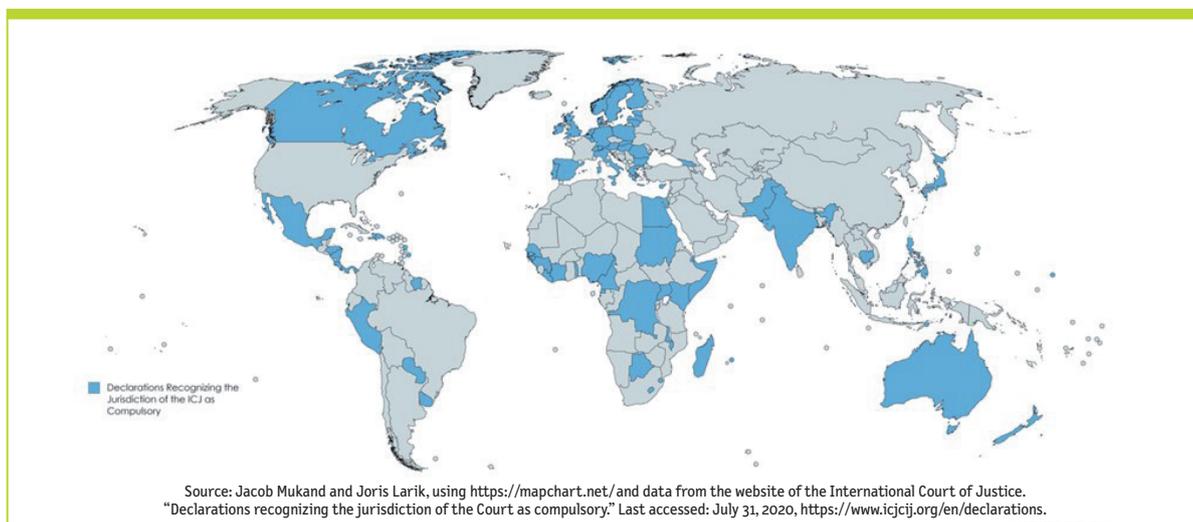
Particularly during the last US Administration (2016-2020), policy and diplomatic communities raised the alarm of rising authoritarian trends, a retreat from multilateralism, and claims of erosion of and a parallel need for bolstering the “rules-based” international order. Initiatives like **The Alliance for Multilateralism**, formed in 2019 by the French and German Foreign Ministers, were launched, to “renew the global commitment to stabilize the rules-based international order, uphold its principles and adapt it, where necessary.”

The 2020 Declaration of the **UN General Assembly on the occasion of the 75th Anniversary** of the UN called

for addressing global challenges through “reinvigorated multilateralism,” underlining a key commitment to “abide by international law and ensure justice,” stating: “The purposes and principles of the Charter and international law remain timeless, universal and an indispensable foundation for a more peaceful, prosperous and just world. ... We will continue ... to enhance democratic governance and the rule of law by strengthening transparent and accountable governance and independent

above, the Ukraine crisis puts in stark relief key weaknesses and “unfinished business” within the international system, as the global legal/institutional architecture struggles to find an adequate response.

On the one hand, recourse to a whole set of international legal institutions has been swift — illustrating how vital these institutions now are and affirming their legitimacy/value in a major international crisis. For example: the



Map highlighting countries that accept the ICJ’s compulsory jurisdiction under the “Optional Clause”

judicial institutions.” The UN Secretary-General’s 2021 **Our Common Agenda Report**, subsequently calls for a “New vision for the rule of law” and a “Global road map for the development and effective implementation of international law.”

The above statements, while laudable and important, remain diffuse and generally void of proposals for the institutional enhancements needed to make real progress on this core international value and governance norm.

### Life on the Precipice

The UN Secretary-General notes in *Our Common Agenda* report that humanity is at a “stark and urgent” decision-point, facing its greatest challenge since World War II: we can collectively respond to this test with a “breakdown or a breakthrough.” Philosopher Toby Ord has named this time in human history as “The Precipice,” where weapons of mass destruction, climate change, general ecological collapse, among others, represent interwoven existential risks: “[w]e see a species precariously close to self-destruction, with a future of immense promise hanging in the balance... safeguarding humanity’s future is the defining challenge of our time” (Ord, 2020, p. 3).

Generally, the 1945 UN Charter was meant to solve global “hard security” and geopolitical challenges; yet current trends and the most recent events underline that it is, as now implemented, an insufficient instrument. Illustrating the macro geopolitical trends mentioned

International Criminal Court (ICC) **opened an investigation**, with an unprecedented number of member states (41) referring the situation; Ukraine successfully **petitioned the International Court of Justice (ICJ)** for provisional measures demanding a suspension of the armed attack; there is a proposed **ad hoc mechanism to prosecute the crime of aggression**; and, the UN Human Rights Council voted to establish an **independent Commission of Inquiry** (with Russia also being expelled from that body by a 2/3rds majority vote in the General Assembly—the first permanent member of the Security Council to have its membership withdrawn from any UN body).

On the other hand, despite these vigorous approaches to international courts and other bodies related to the law-based order, implementation powers of these institutions remain weak, with few reliable enforcement mechanisms. The Security Council, for example, is the named enforcement body for ICJ decisions, as required. The incomplete and chronic deficits of the jurisdictional reach of the ICJ and the ICC linger: with fewer than 40% of UN members voluntarily accepting the compulsory jurisdiction of the ICJ, and the ICC being unable to prosecute the crime of aggression in this case.

The application of sanctions and asset seizure of persons linked to the Russian government have also highlighted the issue of unaddressed global corruption as a systemic threat to international security, with wealthy democracies with stable national rule of law systems often harbouring the ill-gotten gains of individuals linked to autocratic governments. This again illustrates the fundamental deficits in our current international rule of law system: international norms and obligations exist (e.g., with 189 parties to the UN Convention Against Corrup-

tion), but genuine implementation and enforcement around the world is woefully inadequate.

The Ukraine crisis has further shown the excruciating fragility of global weapons governance, with potentially cataclysmic nuclear exchange/“Mutually Assured Destruction” (MAD) scenarios still very much alive and well. Key international law applicable to weapons control and disarmament, such as the NPT (with an Art. 6 obligation for nuclear powers to pursue disarmament), and Article 26 of the UN Charter, have languished with no enforcement nor accountability venue(s) to ensure states are held to account for their obligations.

Similar chronic and structural weaknesses can be found in relation to global climate and environmental governance, as the international community confronts novel and unprecedented ecological security risks, where the whole “Earth System,” responsible for conditions facilitating life on Earth, is under threat. Citizen and youth groups have attempted, with mixed success, across countries, to hold their governments (partially) to account for their international climate obligations in national courts, absent workable international accountability mechanisms.

In both the Ukraine crisis response and to climate and ecological risk, the lack of legitimacy and efficacy of the Security Council as apex global executive and enforcement body has been further highlighted—including that its flaws are deeply intertwined with the lack of a credible international rule of law. The Council has been hamstrung on Ukraine and a range of other conflicts, as well as in relation to issuing more significant statements on the climate crisis, with the latter arguably falling outside its core mandate, crafted as it was in 1945. Relatedly, the UN Charter itself has remained “frozen in time,” with the entrenched prerogatives of Council permanent members likely blocking progressive Charter amendments desired by most states. The fact that only one of the “P5” has voluntarily accepted the compulsory jurisdiction of the ICJ further speaks of the position of this grouping of states “above the law.”

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## Stabilizing the International System

In the light of our position on “The Precipice,” a new pathway for the revitalization of international law and related core governance architecture is badly needed – one which is ambitious, meaningful, and where we might collectively seek to take the next evolutionary leap to ensure, in practice, institutional capacities to realize stated collective obligations and ideals, advancing the uneasy historical transition from a “might makes right” paradigm to a genuinely law-based order, where the law is applicable to all.

Several key high-potential and values-based reforms/enhancements to strengthen the international legal architecture around key governance system “pressure points” and urgent global risks are suggested below (which might then be followed, for example, with efforts

for the realization of Articles 26 and 43 of the Charter, on systematic weapons governance and on reliable UN standing forces under Chapter VII).

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## International Rule of Law Enhancements:

- **ICJ Modernization.** A targeted upgrade of the ICJ, the principal judicial organ of the UN, should be carefully planned to ensure, *inter alia*, that the court: is endowed with general, compulsory jurisdiction over all UN member states and any other appropriate international actors; includes a workable approach for the involvement of or recourse to the court by citizens and other groups, ensuring access to justice/accountability in the global public interest; employs modernized procedural approaches and appropriate enforcement powers (in cooperation with other bodies, as necessary); has expanded advisory opinion capacities; employs a reformed approach to ensure the impartiality of its judges and robust appointment procedures; is sufficiently funded and resourced with appropriate technical staff for its upgraded form and function; etc.
- **Next Evolutionary Step for the International Human Rights Architecture.** A last major reform of the UN human rights architecture was in 2006, with the transition from the Human Rights Commission to the Human Rights Council, and developments since then have failed to keep pace with the expectations of citizens around the world, also with significant backsliding in many countries with the erosion of civic space and widespread human rights violations. Like-minded states should convene an independent expert group to recommend the next generation of international human rights institutions (e.g., consolidating and improving existing mechanisms, consideration of the establishment of an international human rights court, possibly linked or complementary to regional bodies, etc.), which will concretely embody operational norms of the highest levels of expertise, independence, impartiality, and transparency.
- **Making the ICC a Universal Court.** The international community should consider the non-commission/prosecution of crimes of genocide, war crimes, crimes against humanity and the crime of aggression, as fundamental baseline norms for all members of the international community. As such, membership in the ICC and the acceptance of its compulsory (complementary) jurisdiction should be considered as a requirement for all UN members.
- **International Anticorruption Court (IACC).** Nations from every region should collaborate to strengthen existing international anti-corruption mechanisms, and to establish an IACC, among other measures, to ensure that national high-level public corruption, and associated transnational crime, is addressed. A key norm for the 21st century should be “good governance” at every level.

- **Establish an International Judicial Training Institute.** With enhanced international rule of law and strengthened international legal institutions, there will be a need for an increasingly well-informed, independent, and skilled international judiciary with the necessary training for the complexity, novelty and scale of many international cases. An International Judicial Training Institute should be established to ensure a well-trained and expert international judiciary, with clear and certain ethical and impartiality requirements, essential to upholding the legitimacy of international legal institutions, detached from political influence.
- **Institutional Supports/Supplementations for Global Ecological and other Non-Military Risks.** Planetary climate and ecological crises are of such gravity that they will require dedicated institutional supplementations to support a strengthened international rule of law. Scientists have underlined that we are in a state of planetary emergency, and there are, moreover, a range of intersecting non-military risks with which the international community will be grappling. Key proposals to address global environmental governance and emergency non-military security risks featured in the *Our Common Agenda* report should be taken forward/enhanced, including:
  1. A global Emergency Platform for complex global crises (an idea that can be supplemented by the proposal for a stronger “**Global Resilience Council**”).
  2. The repurposing of the Trusteeship Council, as “a multi-stakeholder body to tackle emerging challenges and, especially, to serve as a deliberative forum to act on behalf of succeeding generations... [which] 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.” Such a development could be considered in parallel with the establishment of a **Global Environment Agency** suited to manage 21st century ecological crises, with a legal enforcement facility, in the form of an **International Court for the Environment** (either as a specialist chamber of a reformed ICJ or as a stand-alone institution).

## Implementation Pathways and Supports

There are a range of possible mini- and multilateral vehicles for the implementation of the above, including, for example, initiatives such as the Alliance for Multilateralism, the G7 and G20, feeding into the UN 2023 “Summit of the Future” in furtherance of *Our Common Agenda* report recommendations.

Some of the proposals will require UN Charter amendment, with either targeted/precision amendments or a general review conference. A special Working Group of like-minded states could be convened to develop a set of possible political, legal and technical strategies (e.g., under Arts 108 or 109 of the Charter or otherwise) to seek to break the deadlock on meaningful Charter enhancement due to the powers of the permanent Council members. In parallel to this, a new Security Council paradigm in line with modern standards of governance legitimacy, including, fundamentally, its coherence with a genuine international rule of law system, should be fashioned (e.g., with all UN member states represented fairly at the Council and no veto powers; see proposals in Lopez-Claros et al, 2020).

Any states supporting such efforts in strengthening our global rule of law system, should simultaneously embark on “norm socialization,” policy dialogue, and idea diffusion as to the reforms and enhancements, as well as engaging in effective, principles-based public information strategies (e.g., sufficient to a condition of planetary climate/environmental emergency, employing crisis communications insight), together with prioritizing misinformation/information ecosystem integrity as a cross-cutting issue to be tackled by governments at the same time.

### Author

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### Further Reading

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