GLOBAL TRENDS ANALYSIS

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Let's speak law! A call for a legally embedded multilateralism

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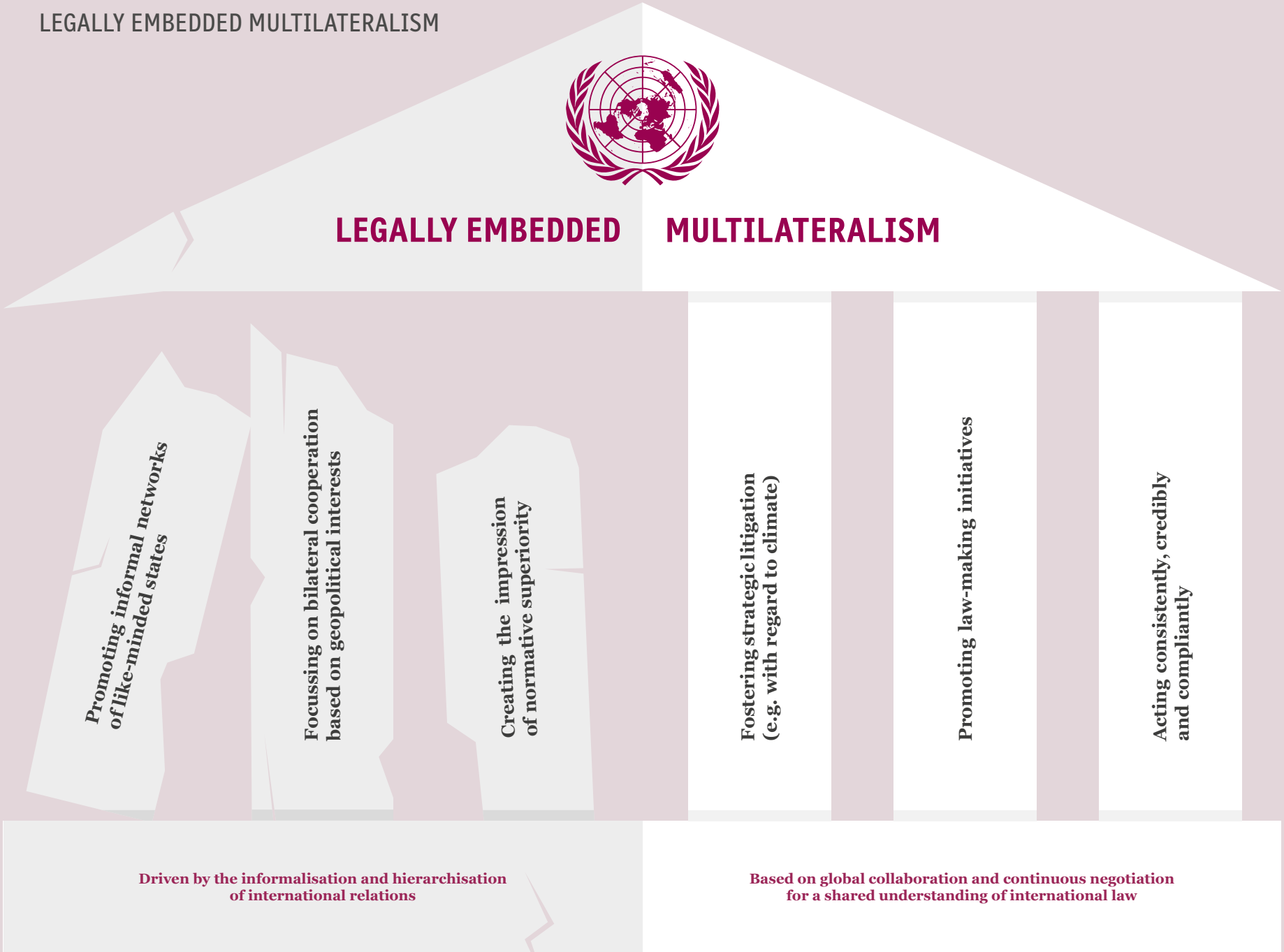
INTRODUCTION

Since the end of World War II, international law has been characterised by a legally embedded multilateralism based on the United Nations Charter. These characteristics apparently further solidified in the 1990s with their widespread processes of legalisation and institutionalisation. For some years now, the legally embedded way to organise international relations has come under pressure in a form that is described by many as part of a broader crisis of the international order. However, from the perspective of international law, the current situation is more appropriately understood as a period of protracted turbulences and ambivalences which sometimes point in diametrically opposed directions and thereby create space for political actors to promote favourable trends for stabilising the international order. If EU member states want to promote such trends, they should prefer a legally embedded type of multilateralism over informal network structures of the like-minded. Strengthening such a type of multilateralism will require these states to act consistently, credibly and compliantly and to continuously negotiate for shared understandings of international law, in particular with the Global South, even at the expense of other policy preferences.

FIGURE 1

HOW TO SUPPORT AND HOW TO UNDERMINE A LEGALLY EMBEDDED MULTILATERALISM



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1. THE POST-COLD WAR TURN TO INFORMAL AD HOC COOPERATION

Current academic discourses have identified numerous drivers for far-reaching contestations or rejections of a legally embedded type of multilateralism. Some attribute the current state of the international order to geopolitical power shifts (e.g. Maull 2018). Others stress that a diffusion of agency among state and non-state actors with hugely diverging political and cultural identities has rendered consensus and agreement harder to reach on the international level (Scott 2018, p. 640; Hurrell 2020, p. 118). However, the challenges a legally institutionalised multilateralism faces are insufficiently explained if one does not take into account the role that Western states have themselves played in this development. In particular, the use of informal networks in making as well as in enforcing international law has played a decisive role in this respect.

The end of the Cold War did not only see a rise in institutionalised multilateralism; in parallel, US foreign policy fostered informal networks through coalitions of the willing and other forms of multilateralism à la carte which, under the lead of the United States, circumvented formal structures. The 1999 military intervention in Kosovo, the 2003 Iraq war, the Proliferation Security Initiative and the Global Counterterrorism Forum are important examples of this trend in the realm of international security (cf. Ní Aoláin 2021). Further examples extend to informal networks in the field of global finance (e.g. the Financial Action Task Force and the Basel Committee on Banking Supervision) and also affect processes of law-making. The turn to informalism was based on the twofold claim that in the interests of efficiency and for the protection of universally conceived substantive values, fluid and flexible forms of cooperation are preferable to the slow and cumbersome formal requirements of a legal embedded multilateralism (Rodiles 2018, pp. 38-43). With the waning of the unipolar moment, the promises of informality have also attracted states from the Global South. The Chinese Belt and Road Initiative is the most prominent case in point where informality and bilateralism are used in lieu of an institutionalised multilateral framework (Rodiles 2018, pp. 44, 84 ff., 252f.).

These informal forms of cooperation are useful instruments for hegemonic actors because they work outside procedural or substantive legal frameworks. The actor at the centre of the network, often initiating it, may unilaterally set the initial rules, establish the objectives and values to be pursued, and define who is in and who is out. Such structures may aggravate power asymmetries by promoting a "divide and rule" approach that fortifies the power and influence of the central actor and facilitates the way in which the network's goals can be attained. Informal networks often work to exclude, establish or maintain hierarchies openly or in a covert manner and, by operating outside the law, sidestep formalised accountability mechanisms also in respect of domestic constitutional law (Bernstorff 2003, pp. 513, 523; Koagne Zouapet 2021, pp. 22f.; Rodiles 2018, p. 257). Correspondingly, in law-making, informal processes of standard-setting are seen as an instrument to bypass the requirement of consent, allowing for quicker forms of regulation in the interests of the power at the centre of a hub (Talmon 2019). Even though such mechanisms may also be at play in international organisations, their effects are heightened in informal network structures.

THIRD WORLD APPROACHES TO INTERNATIONAL LAW (TWAIL)

TWAIL refers to a political-intellectual movement of scholars and practitioners in international politics and law and has its roots in the anti-colonial movement. Under the TWAIL approach, international law is examined for repressive colonial aspects and the Global South's subordination to the West. The criticism refers to the fact that international law as it exists today is based on Western values (e.g. capitalism, individualism or even Christianity). Values from the Global South were not considered during its creation. This inequality is still visible today, e.g. in the composition of the UN Security Council. Therefore, the central question that preoccupies the TWAIL approach is how the existing international law could be freed from these inequalities of power. In doing so, TWAIL focuses on the equal value of different peoples and cultures and attempts to deconstruct existing international law and consider the Global South's values in a redefinition of it.

See also: https://twailr.com/about/founding-statement/, 13.10.2021

Their hegemonic characteristics have strongly overshadowed the instrumentalisation of informal network structures for realising substantive global values and have thereby discredited Western efforts to promote such values. These approaches have created the impression of a normative superiority in the international legal order and aggravated normative asymmetries (Anghie 2009, p. 303; Daase/Deitelhoff 2021, p. 184). In particular, TWAIL scholars [see Infobox p. 7] highlight that these policies reinforce the "imperialistic" traits of the international legal order in order to further "the material interests of imperialist centers" and scorn international law for its "repeated failures to live up to its universalist promise" (Tzouvala 2020, pp. 418, 422). Instead, the pertinent discourses were entangled with and reproduced colonial metaphors and served to justify the interventionism of the post-Cold War period (Orford 2011). While TWAIL criticism reaches beyond informal structures to the legally embedded forms of multilateralism, it demonstrates to what extent informalisation and hierachisation in the name of global values and of efficiency have contributed to the current state of affairs.

2. TOWARDS A MULTILATERALISM OF THE LIKE-MINDED?

At this point in time, legally embedded multilateral structures do not seem promising for very different actors. Against rising resistance to its hegemonic rule, the retreat of the US from multilateral institutions and its turn to informality may be seen as a rational rebalancing of costs and profits (Daase/Deitelhoff 2021, p.185). China seems not fully prepared to take up the lead, not least because it is encountering increasing scepticism around the globe, while states from the Global South are still confronted with a lack of inclusiveness and transparency of the international order as well as high obstacles to seeing their interests integrated within the existing structures (Narlikar 2021, p. 20). Against this background, Amrita Narlikar has identified two narratives that currently dominate the debate: one that aims to "resuscitate and reinforce existing multilateral institutions" and one that "pushes for a fundamental restructuring" (Narlikar 2021, p. 15).

Actors favouring such a fundamental restructuring apparently intend to turn their backs on a universalist type of legally embedded multilateralism and instead aim at "alliances and partnerships of the like-minded, based on values that work hand-in-hand with interests" (Narlikar 2021, p. 18). At the same time, there "is the idea of (gradual) strategic decoupling [from] competitors and rivals" which may even imply "shatter[ing] the dream of all humanity working together as one towards shared visions and goals" (Narlikar 2021, pp. 18, 21). Prima facie, the restructuring narrative implies a continuation of a type of multilateralism built around informal network structures with the like-minded. It continues the trajectory of placing substance above form in the interests of efficiency and values. If this is the way forward, it will also imply turning away from many of the existing legally embedded multilateral institutions which are characterised by different principles. Since these institutions are based on the principle of sovereign equality, they do not require their members to share certain common ideological values. Their universal membership allows a blind eye to be turned to the internal form of government that brings democracies and authoritarian systems to one table irrespective of geopolitical rivalry.

Forging alliances and working together with like-minded partners is, of course, an essential tool in diplomatic efforts for bringing about both political and legal change. But a restructuring of the international order through a value-based deeper integration, which excludes geopolitical rivals and operates outside legally embedded institutions, entails a number of risks which democratic states around the globe should be hesitant to take. Actively pursuing this path would push for a disaggregation of the international order into separated ideological networks which would either shun legal institutionalisation or decouple intensified forms of legal institutionalisation from global developments. Both developments contravene some of the decisive functions a legally embedded multilateralism on the global level has to offer: a vision of law as an instrument "distinct from politics" and a vision of law as a universal aspiration for all actors. The former function assumes that conflicts can be solved by applying the law and that law limits policy choices. The latter stresses that law offers formalised processes and fora for negotiating about which values should be protected globally and in what way and in principle allows all actors to be included on an equal basis (Hurrell 2007, pp. 312f.; Koskenniemi 2004, p. 253; Scott 2018, pp. 630f.).

The Alliance for Multilateralism [see Infobox p. 11] brought about by France and Germany aims to reconcile both narratives described by Narlikar: According to its 2020 Declaration of Principles (AfM 2020), the Alliance aims "to reform and to modernise existing international institutions" in the interests of inclusiveness, representativeness, transparency and effectiveness, as well as to "protect, preserve and advance international law". These efforts reflect the Alliance's awareness that middle powers in particular profit from international law as a stabilising factor in international relations.

ALLIANCE FOR MULTILATERALISM

The Alliance for Multilateralism, launched on 2 April 2019 by France and Germany, is an informal network of countries that are convinced 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" (AfM 2021a). The Alliance pursues a multi-stakeholder approach in order to renew and strengthen the commitment to multilateralism and to the United Nations.

The network is organised around three goals:

1

"To protect, preserve and advance international law, including international humanitarian and human rights law and internationally agreed norms, agreements and institutions, including through political initiatives, budget contributions, the provision of capabilities and expertise;

2

To drive strong initiatives where there is the need to further develop and thereby strengthen the multilateral system, in particular where governance is absent or insufficient;

3

To reform and to modernise existing international institutions, in order to make them more inclusive, representative, democratic, transparent, accountable and more effective in their functioning as well as capacity to deliver tangible results to citizens." (AfM 2020, p. 1)

The Alliance is particularly involved in founding initiatives in the following areas: Human Rights, International Law/Accountability, Disarmament and Arms Control, Cyberspace, Global Public Goods, Climate and Strengthening Institutions (AfM 2021b).

The Alliance for Multilateralism represents itself not as a formal institution, but "a network allowing for the constitution of flexible issue-based coalitions formed around specific projects and policy outcomes" (AfM 2021a). There is no formal membership and participation is open to like-minded state and non-state actors. Being engaged in a specific initiative does not entail automatic participation in the other initiatives pursued by the Alliance.

For the most recent hybrid ministerial meeting on the margins of the High-Level Week of the 76th Session of the United Nations General Assembly some 70 states registered.

3. POLICY OPTIONS

If the members of the Alliance for Multilateralism want to protect, preserve and advance international law, the following policy options may contribute to this endeavour.

3.1 WEAVING A WEB OF LEGAL STRUCTURES – STRATEGIC CLIMATE LITIGATION AS A CASE IN POINT

Members of the Alliance should support efforts to contain the impact of the turn to informalism on the international level. Such efforts may profit from the diffusion of agency among state and non-state actors because such actors may use alternative instruments to weave a web of legal structures that bolster international law. A case in point is strategic climate litigation before national or regional courts.

While the 2015 Paris Agreement has been hailed by many as an important step forward, some international lawyers have stressed that it represents a move away from binding international obligations for addressing collective action problems. The voluntary mechanism of the Nationally Determined Contributions (NDCs) where states have not bound themselves to specific reduction measures embraces informal governance techniques, albeit in the form of an international treaty (Rodiles 2018, pp. 201f., 251). The strategy realised in the Paris Agreement seemed a promising way to overcome resistance against such a treaty but suffers from the conundrum that states may only be willing to determine low contributions, thus not reaching the treaty's overall goal. Here, strategic climate litigation and the ensuing pronouncements of national courts offer the lever to use more strictly enforceable legal obligations on the domestic level so that national law contributes to strengthening international cooperation if problems arise with collective action.

In numerous states, including Germany, India and the Netherlands, and before the European Court of Human Rights, NGOs and individuals have instituted proceedings in which they claim that inaction or insufficient action by the legislative and executive branches infringes their rights to life, property or their general freedom of action under pertinent constitutional law and under the European Convention on Human Rights respectively. In its 2021 decision, the German Constitutional Court (BVerfG) found a violation of the general freedom of action because the legislation enacted was considered to be insufficient for reaching climate neutrality. In its reasoning, the Court, inter alia, blends the informal governance techniques of the NDCs into stricter legal structures of national constitutional law. The reliance of the Paris Agreement on the willingness of individual states to take reduction measures is a starting-point for the Court to concretise the obligation under the constitution (BVerfG 2021, para. 204). The Court emphasises that:

"Due to the genuinely global dimension of climate change, the state can ultimately achieve the objective of slowing down climate change enshrined in Art. 20a GG only through international cooperation. It has taken action to this end by ratifying the Paris Agreement, which provides the framework within which it is now also fulfilling its more extensive climate action obligations arising from Art. 20a GG (...) the legislator has set the fundamental course of national climate change law in a direction that gives the German state an opportunity to effectively fulfil its constitutional mandate to take climate action through its own efforts embedded within an international framework (BVerfG 2021, para. 210). (...) If the temperature target agreed in Art. 2(1)(a) PA proves inadequate to sufficiently prevent climate change, (...) attempts would have to be made to reach more stringent international agreements" (BVerfG 2021, para. 212).

Such an approach may be seen as an attempt to tackle the negative side-effects of informal global governance by tying it back to reviewable constitutional obligations.

Of course, such an approach might seem to be an over-idealised perspective on the way in which multilateral treaties work and interact with national legal systems. Such types of strategic litigation may only seem an option for individuals and NGOs from the Global North as long as the material preconditions for a more substantive kind of equality on the global level are not fulfilled. However, democratic states that aim to contribute to weaving a web of legal structures can undertake to ameliorate these preconditions. A step forward may lie in efforts to enhance effective legal options for individuals affected by climate change in the Global South to start transborder proceedings before national courts. The German Constitutional Court has opened, in principle, the option for transborder climate litigation. Although the court rejected standing in the specific case, the Court held that "[i]t is true that by reducing the greenhouse gas emissions produced in Germany, the German state could protect people living abroad against the consequences of climate change. (...) The fact that the German state cannot prevent climate change on its own but can do so only in the context of international involvement would not, in principle, rule out a duty of protection arising from fundamental rights here" (BVerfG 2021, para. 178).

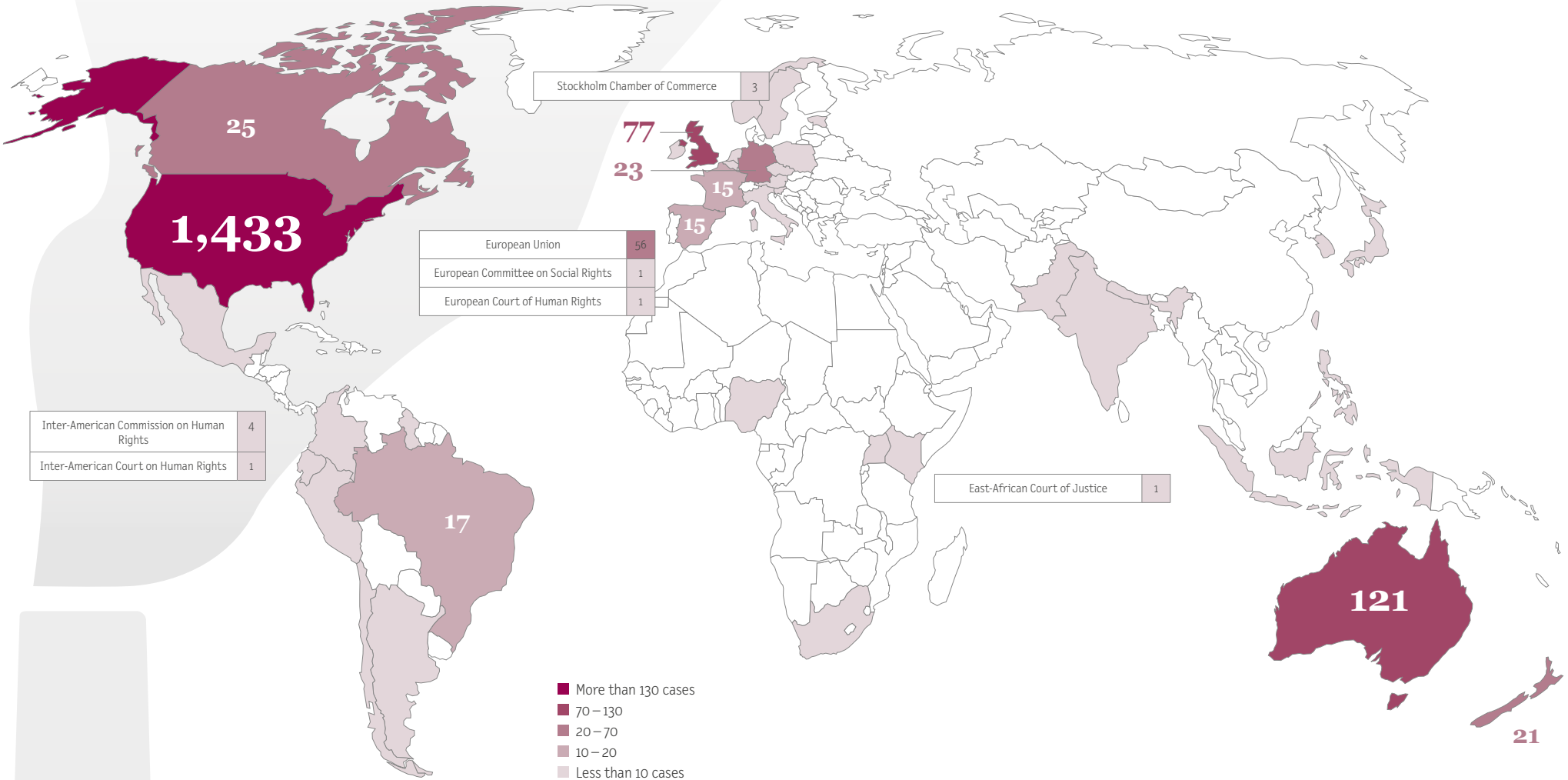
Against this background, recommendations that aim to support affected individuals worldwide in bringing transnational cases before national or regional courts gain importance. The German Advisory Council on Global Change (2018) and the German Commission on the Root Causes of Displacement (The author has been a member of this Commission. Author's note) (2021, p. 110) have recommended establishing a fund for granting legal aid to particularly vulnerable people and communities in order to reduce the risk of litigation costs. As stated by the Commission, such an initiative would have an important symbolic effect by empowering individuals affected by climate change and acknowledging the willingness to address material inequalities. At the same time, it signals a commitment to international legal obligations as a limit to policy choices and thereby supports an order in which national, transnational and international law are mutually reinforcing.

FIGURE 2

NUMBER OF CLIMATE LITIGATION CASES WORLDWIDE, AS OF 26 OCTOBER 2021

UN Committee on the Right of the Child	1
UN Framework Convention on Climate Change	10
UN Human Rights Committee	2
UN Special Rapporteurs	1

Permanent Court of Arbitration	1
International Centre for Settlement of Investment Disputes	9
International Court of Justice	1



Source: http://blogs2.law.columbia.edu/climate-change-litigation/search/(US cases), for all other countries/jurisdictions: https://climate-laws.org/litigation_cases

3.2 NEGOTIATING GLOBAL VALUES BY PROMOTING LAW-MAKING INITIATIVES

Another option for bolstering a legally embedded multilateralism may aim to widen the public space for transparent and inclusive negotiations on global values though law-making initiatives. The unipolar position of the US in the 1990s seems to have concealed that value conflicts and contestations have always played a significant role and, more importantly, have not hindered the development of international law. Many of the international treaties that either entered into force or became more relevant in the 1990s were drafted during the Cold War, including both 1966 Covenants on human rights and the 1982 UN Convention on the Law of the Sea. In particular, in periods marked by tensions between great powers, legally embedded multilateral structures offer a forum for exchange and negotiation. Often operating on the basis of one state, one vote, they ensure a broad level of participation for all states and the decision to include new members is not a decision of political appropriateness but of legal obligation (cf. Koskenniemi 2004, p. 253). Thus, states do not need to share common values from the outset or to form coalitions with the hegemon but can find a public space where diverging voices are heard and opposing claims can be raised. Such processes may be more cumbersome and may seem to be less effective but they offer to the less powerful a space to continuously renegotiate agreements without slipping into ad hocism. Rules on the interpretation of international treaties give room for constantly adapting legal norms to changing circumstance. Many voices in the Global South continue to favour such law-based approaches (e.g. Rodiles 2018, p. 40; Koagne Zouapet 2021).

Accordingly, European states should reinvest efforts in the conclusion or future development of major multilateral treaties in order to broaden the space for negotiating on global values publicly and transparently. An important initiative concerns a possible Convention on the Prevention and Punishment of Crimes against Humanity. Between 2014 and 2019, the UN's International Law Commission (ILC) worked on draft articles on Prevention and Punishment of Crimes against Humanity. In contrast to its other important projects, the ILC has in this instance deliberately decided against preparing more informal interpretative guidelines but opted to recommend the conclusion of a legally binding treaty (UN ILC 2019, p. 10). The articles are drafted to complement pertinent international treaties. There is a regulatory gap for certain crimes committed in peacetime since the existing treaties either relate to crimes committed during an armed conflict or require the intent to commit genocide. Unlike the Statute of the International Criminal Court (ICC), the draft articles focus on horizontal cooperation between states and aim to strengthen and harmonise national regulations and mutual legal assistance. They would "contribute to the implementation of the principle of complementarity under the Rome Statute" while creating legal obligations independent of that Statute (UN ILC 2019, p. 23). A convention would hence offer a way for those states sceptical about the ICC Statute to nonetheless support the fight against impunity. Since 2019, more than 50 states have explicitly indicated, in their statements in the Sixth Committee – the Legal Committee of the UN General Assembly – that they favour the conclusion of a convention. These states encompass not only EU member states but also states from other regions, including Africa and Asia, e.g. Argentina, Armenia, Bangladesh, Belarus, Brazil, Chile, Costa Rica, Ecuador, El Salvador, Gambia, Haiti, Honduras, Republic of Korea, Lebanon, Malaysia, Mexico, Myanmar, New Zealand, Norway, Palestine, Paraguay, Senegal, Sierra Leone, South Africa, Switzerland, Ukraine and Uruguay. States opposing such a convention for the time being include Cameroon, China, Cuba, Egypt, India, Indonesia, Iran, Israel, Morocco, Philippines, Russian Federation, Saudi Arabia, Sudan, Turkey, United States and Viet Nam (Whitney R. Harris World Law Institute 2021, pp. 45ff.). In 2021, the EU and other states suggested establishing an ad hoc committee within the General Assembly to enable a transparent debate (https://www.un.org/press/en/2021/gal3638.doc.htm, 19.11.2021). While states with hegemonic aspirations are apparently unwilling to reinvest in such processes, one should not underestimate the pull effect that convening a treaty conference may entail.

The options that a legally embedded type of multilateralism offers for less powerful states, including the most vulnerable ones, are also demonstrated by Vanuatu's climate litigation initiative. Vanuatu aims to build a coalition of states within the UN General Assembly to request an Advisory Opinion of the International Court of Justice (ICJ) on international legal obligations in relation to climate change. However, such initiatives need to overcome certain hurdles. Requesting such an Advisory Opinion requires very diligent drafting of the pertinent legal questions so that the ICJ is not put in a position where it has to turn down progressive legal interpretations on methodological grounds for the sake of its own legitimacy. Moreover, Vanuatu will have to convince a majority of states to support such a request and is likely to meet resistance from industrial states (cf. Pacific Islands

Forum 2019, para. 16; Nedeski et al. 2020). Moreover, scepticism remains as to whether "more law" would indeed foster political change. Still, the principle of sovereign equality opens the required space for all UN member states – through written statements in the court proceedings – to find an audience for their concerns and to raise their claims in generalisable legal terms which extend beyond the specific case. If members of the Alliance for Multilateralism are serious about protecting and promoting international law, they should support such moves irrespective of other political or economic considerations.

3.3 NURTURING LAW BY ACTING CONSISTENTLY, CREDIBLY AND COMPLIANTLY

The loss of international law's legitimacy that resulted from policies of the Global North as a consequence of exceptionalism and exemptionalism via informal network structures (Koagne Zouapet 2021, pp. 22-26) should be addressed. International law, like all law, needs to meet certain characteristics if it is to be perceived as legitimate. These characteristics include generality, constancy and congruence between rules and state actions. Fulfilling these prerequisites is essential if law is to create a "sense of commitment". Law depends "on reciprocity between all participants in the enterprise. (…) It can exist only when actors collaborate to build shared understandings and uphold a practice of legality" (Brunnée/Toope 2010, pp. 6f.). In that sense, law needs nurturing. As a consequence, any call from the Alliance for Multilateralism to protect international law can only reach as far as the members of the Alliance are themselves willing to invest in international law even if such a decision may negatively impact other policy preferences.

A practice of legality is endangered where state actors from the Global North remain silent in the face of substantial violations of international law by their allies. A case in point is the lack of a clear and unequivocal condemnation of the US 2017 air strikes in response to an alleged launch of chemical weapons by Syrian armed forces. While most legal observers agreed that such a use of force would constitute a violation of the UN Charter, the German and French governments did not condemn this act and refrained from voicing a precise legal position. In 2018, the German government did not condemn the air strikes by France, the UK and the US but instead offered political support using legal language which remained unconcise and ambiguous (Aust/Payandeh 2019, pp. 640ff.). Even if in such situations loyalty to an alliance may be

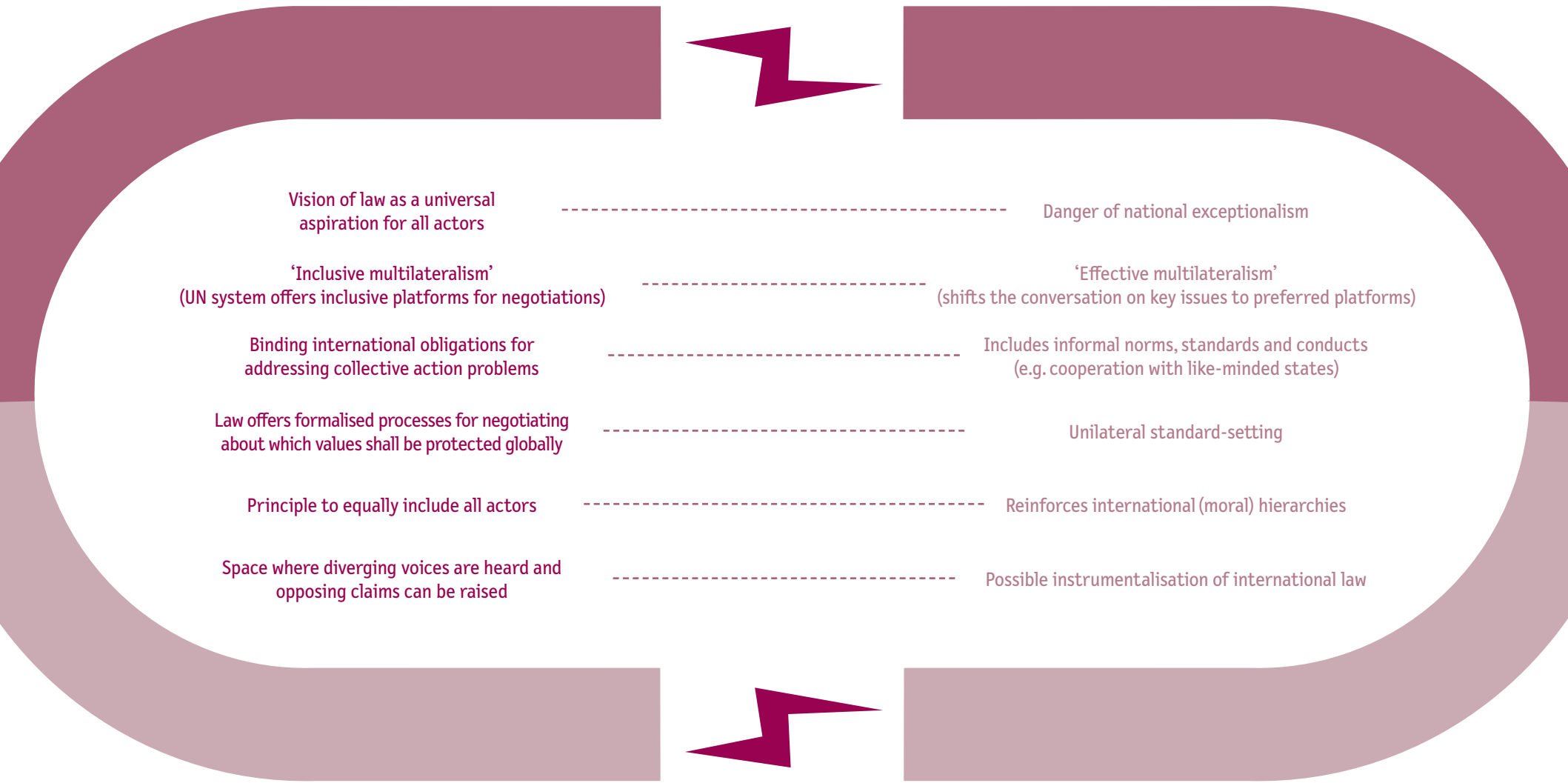
a valid interest to protect, the harm that is done to a consistent and unbiased application of the law, its legitimacy and compliance pull should not be underestimated. The accusation of double standards features prominently in current contestations about international law (e.g. Russia-China Declaration 2016). In view of the practices described here, the accusation cannot simply be brushed aside as a cheap political tactic. For other audiences outside Europe, there is something very convincing in this accusation.

The same holds true where states from the Global North tend to call for state and non-state actors from the Global South to respect international law but are not prepared to accept international control themselves. Such a reluctance is often justified by the argument that their own accountability mechanisms are more effective or less biased than international ones. However, simply turning to others is not sufficient for creating strong legal practices that foster a commitment to law. A case in point is the Geneva-based International Humanitarian Fact-Finding Commission under Additional Protocol I of the Geneva Conventions. In its 30 years of existence and despite 76 states recognising its jurisdiction, the Commission has only once been deployed, namely in Ukraine to investigate alleged grave violations of international humanitarian law in 2017. For example, Germany could have considered involving the Fact-Finding Commission in the examination of the 2010 Kunduz air strike. In 2015, the US and Afghanistan did not agree to an inquiry by the Commission into an air strike hitting a hospital in Kunduz that was requested by Médecins Sans Frontières. Accepting such forms of international supervision creates policy risks since the outcome may be less foreseeable than procedures before national institutions. However, the risks stemming from underestimating the negative externalities of an unwillingness to do what one asks from others may have already crystallised.

An even worse effect endangering a sense of commitment to the law is created where EU member states violate or tolerate violations by others of international law within their own jurisdiction, in particular towards vulnerable persons from the Global South. In its 2021 report, the German Commission on the Root Causes of Displacement (2021, p. 125) has stressed that migration policies "may not go hand in hand with accepting the most serious human rights violations at the EU's external borders for years" because "the current situation tolerated at the external borders considerably undermines the credibility and legitimacy of the EU, which is committed to the rule of law [and] demands the observance of human rights worldwide". There are numerous

FIGURE 3

AN INTERNATIONAL ORDER BASED ON RULES VS. INTERNATIONAL LAW



Source: Author

decisions of the European Court of Human Rights determining a violation of the Convention because refugees and irregular migrants have to live under unacceptable living conditions. In summer 2021, the Court requested Latvia and Poland in interim measures to provide individuals left at their borders with essentials to meet their very basic needs, such as food and water (European Court of Human Rights 2021). Likewise, member states violated the Convention because requests for international protection were not processed (European Court of Human Rights 2020). Allegations of illegal pushbacks are also voiced against Frontex and participating states. Such instances of non-compliance erode trust in the credibility of EU member states' sense of legal commitment in the eyes of third states and civil society.

4. A RULES-BASED INTERNATIONAL ORDER OR AN INTERNATIONAL ORDER BASED ON INTERNATIONAL LAW?

On a concluding note, if members of the Alliance for Multilateralism are indeed resolved to protect and to promote international law, they should be more careful with their conceptual framing. States from the Global North have increasingly adopted the terminology of a rules-based international order instead of referring to international law – a practice that stems from US foreign policy (Scott 2018, p. 637f.). According to the German government's understanding, "the rules-based order is not confined to international law but includes informal norms, standards and conducts, such as (...) informal cooperation with like-minded states (...) [or] informal fora with their decision-making and negotiating processes" (Bundestag 2019, p. 15288). The use of the term is oblivious to the negative impacts that the turn to informalism has exerted on the international order. The Alliance for Multilateralism thereby aligns itself with practices that were explicitly conceived to circumvent legally embedded multilateral institutions and thus creates frictions with its purported commitment to international law. Moreover, the term "rules-based order" is devoid of any legally fixed content and could be replenished with any kind of order or value system (Scott 2018, p. 641f.). Thus, it does not even serve the purposes of furthering values otherwise promoted by the Alliance.

Even worse, by adopting the US approach, many states of the Global North have left the rhetorical reliance on international law as the decisive frame for international relations to Russian and Chinese policies. The Russian Foreign Minister Sergey Lavrov has accused members of the Alliance for Multilateralism of promoting "effective multilateralism" instead of "the UN's inclusive multilateralism" (Lavrov 2021):

"By imposing the concept of a rules-based order, the West seeks to shift the conversation on key issues to the platforms of its liking, where no dissident voices can be heard. This is how like-minded groups and various 'appeals' emerge. (...) Each of these platforms brings together only several dozen countries, which is far from a majority, as far as the international community is concerned. The UN system offers inclusive negotiations platforms on all of the abovementioned subjects. Understandably, this gives rise to alternative points of view that have to be taken into consideration in search of a compromise, but all the West wants is to impose its own rules."

Members of the Alliance cannot simply deny these allegations by pointing to the bad faith in which they may have been voiced. The mere content of the argument corresponds to comments made by more impartial observers (e.g. Koagne Zouapet 2021; Rodiles 2018; Scott 2018; Talmon 2019). In law and in diplomacy, language matters. Speaking law in a precise, consistent and credible way promotes the stability and legitimacy of multilateralism inasmuch as the stability and legitimacy of international law benefit from credible and consistent multilateral practices.

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