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MULTILATERALISM, PUSHBACK AND ADJUSTMENT: FROM THE UN CHARTER TO COVID-19*

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ABSTRACT

In this article the author draws on long engagement with multilateralism, both in domestic jurisdiction and international institutions. He describes the growth of postwar United Nations activities and the increasing impact of international law. He records international initiatives on global problems like HIV/AIDS and in individual countries, such as Cambodia and North Korea.

He then describes recent examples of “pushback” against multilateralism, especially on the part of the United States, the United Kingdom, some European countries and Australia. He adds a contemporary reflection on the COVID-19 pandemic which arose unexpectedly at the end of 2019 demonstrating the vital needs for multilateral cooperation; occasioning pushback from some quarters.

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He concludes with illustrations and reasons why the global community should remain optimistic about multilateralism despite certain recent setbacks.

This article is derived from public lectures delivered in late 2019 addressed to the phenomena of multilateralism in international relations and recent instances of pushback stemming from suggested failings in international institutions. As if to demonstrate the vital importance of multilateralism, in 2020 the world was suddenly and unexpectedly engulfed in a pandemic that infected millions of people and resulted in high levels of mortality and huge disruption to human lives, communities and economic activity. Once again the problem demanded multilateral and global solutions. Asserted defects in these responses occasioned pushbacks and criticisms that are continuing. COVID-19 is simply the latest challenge for humanity that calls forth globalism; occasions resistance; but demands a resolution that normally accommodates correction to the global response. It has been so since 1945. It is therefore necessary to explain the origins of the architecture of contemporary multilateralism. Next, to illustrate recent instances of pushback and resistance. The COVID-19 pandemic finally offers a paradigm instance of thrust and counter-thrust, in which the contesting forces must ultimately be reconciled, as they usually (but not always) are.

I. MULTILATERALISM

The Second World War had not yet concluded when the leaders of the Allied Powers began negotiations to address the post-war political, economic and legal arrangements. President F.D. Roosevelt and Prime Minister Winston Churchill began to delineate the Allied war aims. In his 1944 State of the Union Address, Roosevelt had envisaged a postwar world built on “four freedoms”. These were six fewer than the Almighty’s Ten Commandments and ten fewer than Woodrow Wilson’s Fourteen Points, proclaimed as a basis for ending of the First World War.¹

Roosevelt and Churchill recognized that the postwar legal order would require substantial economic underpinning if it were to succeed beyond the miserable attainments of the League of Nations. Thus, the Bretton Woods meeting was summoned on July, 1 1944 to reach agreement on the framework for the international economic order.

1. FREDERICK POLLOCK, THE LEAGUE OF NATIONS 237 (1920).

That agreement resulted in the creation of the International Bank for Reconstruction and Development (the World Bank) and the International Monetary Fund (the IMF). These institutions envisaged a growth in world trade that, they hoped, would prevent the recurrence of the Great Economic Depression that had contributed to the causes of the late War. The Bretton Woods agreement also contemplated the need for a World Trade Organization (WTO) to facilitate trade agreements between nations that would foster free markets and global trade. It is doubtful that even the most optimistic participants at Bretton Woods expected that the world economy would increase by an aggregate of 44 times in the ensuing 40 years.² The revision of global trading arrangements and the facilitation of enforceable multilateral trade agreements resulted in extraordinary changes which, accompanied by the end of colonial empires and other political developments, would unleash a prospect of prosperity for the world's people, not previously dreamt of.

Another meeting organized by the United States was held in 1944 at Dumbarton Oaks, near Washington.³ This addressed the political framework for the postwar world. It was hoped that this meeting would provide a better foundation for law, peace and security than the *Covenant* of the League of Nations had afforded. To ensure that, this time, the United States would join the world body, special voting rights in the proposed Security Council were agreed and later reflected in the *Charter* of the United Nations.⁴ Many smaller nations opposed this privilege. However, it was eventually accepted to ensure that the United States of America and the Union of Soviet Socialist Republic would participate.

A counterpoise to the special status accorded to the five "permanent" members of the Security Council ("P5") was the agreement that the United Nations would be based on principles of "universal human rights", "justice" and the "rule of law". These values were stated in the UN *Charter*.⁵ The requirements of human rights were spelt out in greater detail in the *Universal Declaration of Human Rights* (UDHR) adopted in 1948. That instrument had been drafted by

2. See generally BENN STEIL, *THE BATTLE OF BRETTON WOODS: JOHN MAYNARD KEYNES, HENRY DEXTER WHITE AND THE MAKING OF A NEW WORLD ORDER* (2013).

3. See STEPHEN SCHLESINGER, *ACT OF CREATION: THE FOUNDING OF THE UNITED NATIONS* (2003) (noting that the Dumbarton Oaks Conference was held on Aug. 21, 1944-Oct. 7, 1944).

4. U.N. Charter art. 23, ¶ 1.

5. U.N. Charter art. 1, ¶ 1.

an expert committee, following the establishment of the United Nations and after the death of President Roosevelt. The committee was chaired by the late President's widow, Mrs. Eleanor Roosevelt. It was envisaged that the UDHR would be followed by treaties that would move beyond aspiration. They would include binding legal obligations with machinery for their enforcement.

Notwithstanding the political stalemate of the Cold War (1947-1989), many other acts of multilateral engagement were adopted. These included the establishment of military tribunals to subject a number of the leaders of the defeated Axis powers in Europe and the Far East to public trial for war crimes and "crimes against humanity."⁶ Although no permanent court of the United Nations was created for the ongoing enforcement for human rights law, as had at first been envisioned, many treaties expressing different aspects of universal human rights law were ratified. Bodies were created (including the UN Human Rights Commission later replaced by the UN Human Rights Council) to enhance accountability for violations of human rights. New officeholders such as the UN High Commissioner for Human Rights and many individual mandate holders were established to enlarge the accountability of tyrants and autocrats. Nations that gained their political independence in the post-war world commonly adopted national constitutions that contained human rights protections. Typically, these constitutions reflected many of the provisions of international treaty law. Specialized human rights tribunals were also created to respond to specific wrongs. A system of Universal Periodic Review⁷ (UPR) was eventually established by the Human Rights Council to ensure that all nations, great and small, would be regularly held publicly accountable for their human rights records. This international machinery was imperfect. However, it relied on education, promotion and media coverage to promote accountability, so as to lift the visibility of universal human rights; to demand an effective rule of law and to respond to the demand for greater justice throughout the world for all persons.

This article will describe briefly the perspectives of participants in the United Nations political and human rights machinery; how it looked from the inside; and how it appeared reasonable to assume that it would continue to function indefinitely in the way in which it had evolved. We expected that it would continue to grow with occasional

6. *See generally* PHILIPPE SANDS, *EAST WEST STREET* (2016).

7. G.A. Res. 60/251, Human Rights Council (Apr. 3, 2006).

setbacks but with a trajectory likely to continue. I will then describe a number of events of recent times that have challenged the confidence and optimism that accompanied the creation of the United Nations, its organs and agencies. I will conclude with an explanation of why I remain optimistic about the ongoing prospects of the post-war settlement, especially in the field of global human rights.

The engagements with the United Nations to be described have continued over many decades. They have been wide in focus, ranging from human rights mandates relating to Cambodia⁸ and North Korea.⁹ They have also involved specialized agencies.¹⁰ All the while, whilst performing most of these functions, the author served in judicial office in Australia. This meant that it was possible to consider UN engagements with the critical eye of the holder of national constitutional offices. Optimism and idealism following the early engagements have been maintained; but without ignoring the defects and limitations that frequently arose. The exposition is partly anecdotal. But it has the merit of long duration, much variety and a highly varied focus.

II. THE ROOSEVELTS AND THE UNITED NATIONS

Anyone seeking to understand the creation of the United Nations should visit Hyde Park on the Hudson River, close to New York. The family home of a branch of the Roosevelt family there, and the attached residence of Eleanor Roosevelt, are full of imagery that help to explain the remarkable willpower of F.D. Roosevelt and his wife. Although President F.D. Roosevelt died before the meeting convened in San Francisco in 1945 to formally establish the new world organization, his home in Hyde Park is filled with reminders of his strong and remarkable personality. Amongst the most potent symbol of his determination is a small lightweight wheelchair by which he moved about within that home to perform his work duties in this alternative

8. *See generally* Special Representative of the Secretary-General for Human Rights in Cambodia, U.N. Doc. SG/A/621 (Mar. 14, 1996).

9. *See* Rep. of the Detailed Findings of the Comm'n of Inquiry on Human Rights in the Democratic People's Republic of Korea, Human Rights Council on Its Twenty-Fifth Session, U.N. Doc. A/HRC/25/CRP.1 (Feb 7, 2014).

10. *See generally* World Health Organization Global Commission on AIDS (1989-93); International Labour Organization, Commission on Freedom of Association: Mission to South Africa (1991-2); UNDP appointed independent chairman, Malawi Constitutional Conference (1994); UNESCO, International Bioethics Committee (1996-2005); UNODC Judicial Integrity Group (2001-06); UNAIDS Reference Group on HIV and Human Rights (2004-19); Member of UNDP Global Commission on HIV and the Law (2011-12).

White House.¹¹

The design of the residence at Hyde Park was inhospitable to a person, who in 1921, had been rendered immobile by poliomyelitis. He refused to make any significant modifications to the residence. He hoped and expected, that he would be restored to an ability to walk. He never wanted to acknowledge that this might not happen. The only change of substance in the design of his home was the installation of a ramp to allow movement on the ground floor from living to working areas; and the introduction of a small elevator so he could proceed to sleeping quarters, one floor above ground level. He and his mother, respectively, had each of the large bedrooms on the upper floor. Eleanor Roosevelt, when she slept in the building, had a tiny room adjacent to the President's bedroom that had previously been a dressing room. It is instructive to reflect upon his determination to fulfil the enormous burdens of the office of President, during an unprecedented four terms, with so few concessions to his unyielding physical limitations. Yet Hyde Park was where he confronted the challenges of the Great Depression, the approaching War, the engagement with Churchill and later the Russians, and the planning for the world's post-war institutions. If ever contemporary observers feel discouraged by national and global challenges confronting them, they need to remind themselves of the grit and determination of President Roosevelt. Repeatedly he demonstrated how willpower, optimism and rational idealism could triumph over severe adversity.

Eleanor Roosevelt visited Sydney, Australia in 1943. She did so at the request of the President to encourage the Australian Allies and to open a veterans' hospital, built with American aid, in a suburb in Sydney near my home. In 1943 I was attending a local kindergarten. The school children were gathered on the footpath of a major road along which the Eleanor Roosevelt's motorcade passed by. I like to think that I caught her eye.¹²

Certainly, five years later, at the beginning 1949, I was attending a public school not far from my home when the new teacher, Mr. Keith Gorringer, gave all of his students a gift. For me it was to prove precious. We were told that the Australian Minister for External

11. *See generally* ROBERT DALLEK, FRANKLIN D. ROOSEVELT: A POLITICAL LIFE (2017); JAMES TOBIN, THE MAN HE BECAME: HOW FDR DEFIED POLIO TO WIN THE PRESIDENCY 114-15 (2013).

12. JOSEPH P. LASH, ELEANOR AND FRANKLIN: THE STORY OF THEIR RELATIONSHIP (1971).

Affairs, Dr. H.V. Evatt, had been elected the third President of the General Assembly of the United Nations.¹³ During his term, the General Assembly had adopted an important declaration (the UDHR). During the War, Mr. Gorringe had served in the Australian military. He took pains to explain to his young charges, the importance of upholding the principles of the UDHR. Unless we did so, we were warned, our generation would be doomed to continue fighting and dying in global wars.

To those who lived in the immediate postwar years, the imagery of the atomic bombs detonated over Japan in August 1945 and the nuclear weapons' tests in the ensuing decades, pictured in the newspapers, brought home the message that our teacher had conveyed to us. The contents of the UDHR were explained. The role of the United Nations was described. The UDHR that we received was printed on airmail paper, lightweight sheets rarely seen in those days of austerity. On the front of the document was the new UN symbol showing our planet and its continental geography, including the large island of Australia. Later this imagery was to assume a fresh perspective when the Soviet Union launched a manned satellite, *Sputnik*, on October 4, 1957, followed by the American mission to the Moon on July 20, 1969. These developments encouraged human beings to imagine their planet as seen from outside its physical confines and to conceive of it as a unity, viewed from beyond its terrestrial existence.

III. MUNICIPAL LAW AND GLOBAL NORMS

Global law: Most judges and lawyers discharge their functions without too much, or any, concern about international law or the law of foreign countries. Yet in my youth, and until 1986, the final court of appeal for many Australian cases was the Judicial Committee of the Privy Council convening in London. The constitutional link to an Imperial court made up of (mostly) very experienced English judges had disadvantages. However, it did tend to rescue Australian lawyers from parochial attitudes and hostility towards comparative law. In reading decisions of the Privy Council, it was not uncommon to find references to the way in which cases, similar to the appeal in hand, had

13. Herbert Vere Evatt (1894-1965), President of the General Assembly of the United Nations (3rd Session) 1948-49; Justice of the High Court of Australia (1930-40); Australian Minister for External Affairs and Attorney-General (1941-49); Leader of the Federal Opposition (1951-60); Chief Justice of New South Wales (1960-62).

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been decided by judges in the United Kingdom, Canada, New Zealand, South Africa and other Commonwealth countries. Occasionally there were even references to decisions of United States courts. No one considered that citing such cases, as such, bound the national judiciary. However, the habit of mind of referring to analogous reasoning and the common experience that it was useful to do so, tended to reduce the hostility to overseas sources of law, whether in international law or the law of other countries with legal systems similar to our own.

Appeals to the Privy Council from Australian courts ended soon after I was appointed to judicial office in 1975.¹⁴ In the event, I was to preside as President of the Court of Appeal of New South Wales in the last Australian judgment that went on appeal to London. The appeal was dismissed.

Soon afterwards, in 1988, I was invited to participate in a conference of mostly Commonwealth judges convened in Bangalore, India, by Justice P.N. Bhagwati, past Chief Justice of the Supreme Court of India. Such meetings were not unusual. They reflected the continuing links that existed because of the shared history of the inherited English common law. Most of the participants at the conference were judges of the final courts of appeal of their countries. The only exceptions were myself and a young American judge who had been invited to participate, Judge Ruth Bader Ginsberg. She was then a judge, like me, of an intermediate court of appeal. In her case, this was the Court of Appeals for the D.C. Circuit. We have maintained a friendship over the three decades since Bangalore.

In that meeting, with the other participants, Judge Ginsberg and I endorsed a conference statement signed by all attendees. This contained the *Bangalore Principles on the Domestic Application of International Human Rights Law*.¹⁵ Those principles included the assertion that, where domestic law was ambiguous and did not provide a ready solution to the case in hand, it was permissible for the municipal judge to consider the growing body of international human rights law. Such law would not, of course, bind the judge of a municipal court as a matter of law, unless incorporated in the local law. Nor could it be used if it were inconsistent with local law. However, if there were ambiguity or uncertainty in the local law, a municipal judge could inform his or her mind by exploring the principles and case

14. *Australia Act 1986* s 11 (Austl.).

15. Michael D. Kirby, *The Role of the Judge in Advancing Human Rights by Reference to International Human Rights Norms*, 62 *AUST L.J.* 514, 531(1988).

law of universal human rights. In this way the local judge would contribute, in municipal jurisdiction, to increasing familiarity with the ever-growing body of international human rights law.

Upon my return to Australia from Bangalore, I witnessed cases arising in my court where it appeared quite useful to have regard to basic principles in UN human rights treaties which Australia had ratified, although it had not expressly incorporated the treaty provisions into domestic law. If universal principles appeared relevant to the case in hand and were elaborated in other countries it could sometimes be of help to apply the wisdom of the judges utilizing broad principles of human rights law.¹⁶ Within Australian legal literature discussion ensued about this approach to legal development.

Four years after the *Bangalore Principles* were adopted, the High Court of Australia tackled an important case that challenged the previous refusal of Australian courts to recognize the land rights of Australia's Indigenous peoples. Although there have been elected legislatures in Australia since the early days of settlement and responsible government from the 1850s, the common law denial of recognition to land claims of Indigenous people was never corrected by legislation. When this approach was ultimately challenged in the nation's highest court, there was no relevant constitutional principle that could be invoked to empower the judges to change what, by then, was a long-established rule of the common law. However, by invoking a principle similar to the *Bangalore Principles*, the majority in the High Court of Australia decided to have regard to the universal principles of "a wider civilization". This took the judges to United Nations human rights law. The majority held that such international law had made it plain that discrimination against people on the grounds of their race in the enjoyment of universal rights was impermissible. Whilst, as a matter of law, these rules of international law did not bind Australian judges to apply them in the absence of legislative incorporation, they could sometimes influence the development of a new common law rule. What the judges had declared in an earlier time, they could reconsider, amend and re-express later to bring domestic law into harmony with universal principles of human rights. This is what the court did.¹⁷ At the time I was not a member of the court. I watched this development with close attention.

In the United States Supreme Court, issues began to arise which

16. See *Gradidge v Grace Bros. Pty Ltd* (1988) 93 FLR 414 (CANSW).

17. See *Mabo v Queensland [No.2]* (1992) 175 CLR 1, 42 (Austl.).

presented the question whether that court also could consider and use in its judicial reasoning developments of universal principles in international human rights law. For example, in *Atkins v. Virginia*,¹⁸ a question arose concerning the validity of laws providing for capital punishment in the case of a disabled minor. Justice Ginsberg and others in the majority considered it useful to have regard to such international developments. Justice Scalia was strongly of the opposite opinion.¹⁹

After I joined the High Court of Australia in 1996, we had similar differences, strongly expressed, concerning resort to international human rights law.²⁰ This issue remains one upon which judges hold strongly differing opinions. The law is here in a process of development and evolution. However, the future surely favors a much closer relationship between international and domestic law as the former helps to shape the latter. Moreover, national judges should play a principled part in implementing international law, including on human rights, influencing its contours by reference to practical consideration in hard cases.

Many other encounters with international law arose to convince me of the importance and utility of cooperation, engagement with and learning from similar and sometimes dissimilar decisions and from initiatives of the international community.²¹

HIV/AIDS epidemic: When in the late 1990s HIV/AIDS arrived in Australia and the United States, there were, at first, significant differences in the approaches that were taken to the disease. These differences became clear to me when, in 1989, I was appointed by a notable epidemiologist, Dr. Jonathan Mann, to the World Health Organization's (WHO) Global Commission on AIDS. At the time, there were no antiretroviral treatments that would control and reverse the devastating effects of the Human Immunodeficiency Virus (HIV) in persons who became infected with it. The Global Commission on AIDS was an international body that included two of the most important scientists who were studying the epidemic, namely Dr. Luc Montagnier of France, later Nobel Laureate, and Dr. Robert Gallo of

18. 536 U.S. 304, 306-07 (2002).

19. *Id.* at 337-54.

20. *Al-Kateb v Godwin* (2004) 219 CLR 562, 586-95 (Austl.); *Id.* at 617-30 (Kirby, J., dissenting); *Roach v Electoral Commissioner* (2007) 233 CLR 162, 224-6 (Austl.) (Heydon, J., dissenting).

21. MICHAEL D. KIRBY ET AL., *HIV LAW, ETHICS AND HUMAN RIGHTS: TEXT AND MATERIALS* 312 (D.C. Jayasuriya ed., 1995).

United States, whose work helped develop the test for the presence of HIV in human subjects. Another United States participant in the WHO Commission was Professor June Osborn, a Professor of Public Health at the University of Michigan. Mann and Osborn propounded the principle of engagement with the vulnerable populations at greatest risk of HIV infection. This approach turned traditional epidemic control on its head. Instead of quarantine, isolation and punitive approaches, the strategy recommended by the WHO Commission called for cooperation, the removal of criminal sanctions and engagement with those most at risk. In the result, those countries (New Zealand, Australia and the United Kingdom) that followed the approach recommended by the United Nations body enjoyed immediate reductions in their levels of infection. Those countries that did not engage with at risk populations (the United States, Russia and China) saw the levels of HIV infection continuing to rise.

The importance of cooperation over HIV at an international level was ultimately recognized in the United States. President G.W. Bush established the President's Emergency Fund (PEPFAR) to combat HIV. The President also supported United States financial subventions and leadership in the creation of the Global Fund against AIDS, Tuberculosis and Malaria. These strategies were soon enhanced by developments in the pharmaceutical responses to HIV which led to the development of effective anti-retroviral treatment. Through global cooperation, that treatment is now available to more than 24 million patients throughout the world. This has saved the lives of millions. At the same time, it has helped to reduce infection and stigma. The United Nations has continued to spread the message about HIV control through UNAIDS, a joint program of UN agencies created to increasing the efficiency of the global response. This could not have been achieved by a single country. Yet, HIV/AIDS involved a mortal danger to every country. The success of the global cooperation afforded a clear demonstration of the vital importance of multilateral responses to universal problems. It was an illustration of an instance where, having begun as a reluctant participant, the United States became a leader in beneficial global strategies that are continuing and broadening to embrace other diseases (such as Hepatitis, Malaria and Tuberculosis) and new epidemics (such as Ebola and new strains of influenza).

Cambodia Special Rapporteur (S.R.): In 1990, the Khmer Rouge regime was ousted from power as a consequence of an armed incursion of military forces from Cambodia's neighbor, Vietnam. In the result, a peace accord was signed in Paris in 1991 aimed to bring a

democratically elected government to power and to ensure that universal human rights were respected. The *Paris Peace Accord* of that year included provision for the appointment by the Secretary-General of the United Nations of a special representative to monitor the observance of human rights in that country. I was appointed by Secretary-General Boutros Boutros-Ghali to be the first such special representative. I held the office from 1993 to 1996, when I relinquished it on my appointment to the High Court of Australia. The special representative was required to report each year to the then UN Human Rights Commission in Geneva and to the Third Committee of the General Assembly of the United Nations in New York. The reports sought to balance the successes achieved by the UN office in Phnom Penh and by the Cambodian Government. But also, the failures resulting from the departures of the Cambodian Government from human rights protections in the country.²² The reports contained a mixture of successes and failures.

My first appointment in Cambodia was followed by the appointment by other UN Representatives, and eventually Rapporteurs fulfilling mandates to report regularly to the Human Rights Commission and later to the Human Rights Council. The latest reports of the office-holders contain accounts of increasing autocracy in Cambodia because of the anti-democratic actions of the Hun Sen Government. However, by such reports, the world continues to receive detailed accounts of the government that remains in place in Cambodia. That regime cannot hide its face or fully disguise its conduct. The presence and voice of the United Nations are amongst the best guarantees that eventually the hopes and expectations of the *Paris Peace Accord* of 1991 will be fulfilled.²³

North Korea Commission Of Inquiry (COI): In 2014, after concluding my judicial service in Australia, the UN High Commissioner for Human Rights (Judge Navi Pillay) appointed me to chair a Commission of Inquiry on Human Rights Violations in the Democratic People's Republic of Korea (DPRK) (North Korea). The report of that body was completed in little more than 6 months. Its procedures followed the tradition of Anglo-American public inquiries. The Commission of Inquiry was conducted in public, with access to the media and to the communities and people affected. The report had a considerable impact on the political organs of the United Nations. It

22. See MICHAEL D. KIRBY, *THROUGH THE WORLD'S EYE* 24-40 (2000).

23. *Cambodia Eases up on One Dissident to Distract Attention from Another*, THE ECONOMIST (Nov. 14, 2019), <https://www.economist.com/asia/2019/11/14/cambodia-eases-up-on-one-dissident-to-distract-attention-from-another>.

led to strong votes in the General Assembly and in the Security Council. The latter, by a procedural vote, placed the issues of human rights in DPRK on its continuing agenda.²⁴

During the G.W. Bush and Obama Administrations in the United States, that country and others insisted, in the organs of the United Nations, on progress on human rights in DPRK. They viewed such progress as being closely integrated with the reduction in the dangers of nuclear weapons and intercontinental missiles. However, since the election of the Trump Administration, issues of human rights have largely disappeared from high level discussion. Much the same appears to have happened in the Republic of Korea (South Korea), following the election of Moon Jae-in as President in May 2017. No significant achievements seem to have occurred anywhere in the field of disarmament or abandonment of nuclear weapons. As well, no achievements appear visible in the situation of human rights or security in North Korea. The most that can be said is that the report of the Commission of Inquiry remains on the agenda of the UN General Assembly and the Security Council. It remains before the United Nations and the international community. Until there has been progress on human rights in North Korea, the safety of the Korean Peninsula and of the people of North Korea will remain unsure. North Korea cannot hide behind its policy of secrecy and harsh treatment of its own people and a few imprudent visitors. The role of the United Nations extends to bringing hope and encouragement to those who are oppressed and to civil society organizations that continue to raise their voice, demanding compliance by North Korea with UN human rights law. In time, the report of the Commission of Inquiry will likely encourage action on the interconnected issues of human rights and peace and security. No individual country could exert influence on DPRK in the same way that the increase in sanctions, voted by the Security Council, has done with the participation of all the P5 members of that Council.

There have been countless other developments in the United Nations and in other multilateral institutions. The above are merely instances in which the author has been involved.

24. U.N., *supra* note 9.

IV. PUSH BACK

A. Eastern Europe & European Union

Evidence of a new era of push back from multilateral cooperation in the international community has already occurred in North Korea as just described. However, the instances of the retreat from multilateral action in the pursuit of common goals extend far beyond that instance.

Because of the unchallenged global ascendancy that the United States enjoyed, especially following the fall of the Berlin Wall in Germany in November 1989, several notable commentators wrote optimistically on the consequent historical shift.²⁵ Some observers rejoiced, expressing the conviction that liberal democracy had triumphed definitively over the excesses of totalitarian and nationalist utopias. Thus, Francis Fukuyama declared:

The triumph of the West, of the western *idea*, is evident first of all in the total exhaustion of viable systematic alternatives to western liberalism... [This is] the end point of history with the universalization of western liberal democracy as the final form of human government.²⁶

This assessment appealed to notions based on the suggested broad sweep of history, having regard to the outcome of the Second World War, the creation of the United Nations, the end of the Cold War, and the ascendancy of the values for which the Allies had fought, especially the United States. Further suggested evidence of the high and growing level of global unification was seen in the Millennium Summit that the United Nations in 2000, resulting in the Millennium Development Declaration. This saw agreement at the United Nations on the *Millennium Development Goals* (MDGs), designed to symbolize a united humanity in a new age. It appeared to confirm the triumph of liberal globalism. So did the expansion and apparent success of the European Union, with its new members admitted from freshly liberated states of Eastern Europe. Their embrace of liberal multilateralism also appeared to confirm Fukuyama's assessment and prediction.

However, in the midst of this liberal triumphalism there were already cautionary voices. Isaiah Berlin pointed to a potential

25. MARK ELLIS, *CRISIS OF OUR TIME: THE RISE OF POPULISM* (in Van Bok Till Anne Ramberg, 179, (Stockholm, 2018).

26. FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* xi (1992).

weakness of liberalism:²⁷

A liberal sermon that recommends machinery designed to prevent people from doing each other too much harm, giving each human group sufficient room to realize its own idiosyncratic, unique, particular ends without too much interference with the ends of others, is not a passionate battle-cry to inspire men to sacrifice to martyrdom and heroic feats.

The potential of autocracy, nationalism and intolerance to rise once again had been predicted as early as 1945 by Karl R. Popper.²⁸ Unfortunately, after the turn of the millennium a number of developments appeared quickly to establish the wisdom of these warnings. Whereas in 2000, populist parties in Hungary, Poland, Slovakia, the Czech Republic and Bulgaria won only 9.2% of the national votes in democratic elections, by 2017, that figure had risen to 31.6%. The result was that populist political leaders began to win a growing voice in government power, notably in Europe. The consequence has been that Poland returned to a form of authoritarian rule based on non-democratic values, involving examples of disregard for universal human rights. Hungary's government also attacked the judiciary, civil society and the media.²⁹ Slovakia's xenophobic neo-Nazi nationalism assumed a similar posture.³⁰ President Emmanuel Macron of France began to warn that Europe faced "a civil war" and even the risk of "sleep-walk[ing] into authoritarianism."³¹

What have been the causes of this rapid and unexpected turnabout in national policies? To what extent have the same symptoms begun to appear in the countries of Western Europe, the United States and

27. Quoted in Roger Cohen, *The Death of Liberalism*, N.Y. TIMES (April 14, 2016), <https://www.nytimes.com/2016/04/14/opinion/the-death-of-liberalism.html>.

28. K.P. POPPER, *THE OPEN SOCIETY AND ITS ENEMIES* 71-72 (Princeton University Press 1971 reprint); see also MARK ELLIS, *CRISIS OF OUR TIME: THE RISE OF POPULISM* (in Van Bok Till Anne Ramberg, 179, (Stockholm, 2018).

29. András Bozóki & Dániel Hegedűs, *An externally constrained hybrid regime: Hungary in the European Union*, Democratization (Apr. 13, 2018), <https://www.tandfonline.com/doi/full/10.1080/13510347.2018.1455664>.

30. Bojan Bugarić and Alenka Kuhelji, *Varieties of Populism in Europe: Is the Rule of Law in Danger?*, 10 HAGUE J. RULE L. 1, 1 (Mar. 3, 2018).

31. Bruno Waterfield, *Populism will lead us into the abyss, warns Macron*, THE TIMES, (Apr. 18, 2018), <https://www.thetimes.co.uk/article/populism-will-lead-us-into-the-abyss-warns-macron-pkkjv37zk>; THE ECONOMIST, *Assessing Emmanuel Macron's apocalyptic vision*, THE ECONOMIST (Nov. 7, 2019), <https://www.economist.com/leaders/2019/11/07/assessing-emmanuel-macrons-apocalyptic-vision>.

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elsewhere? A consequence of an ongoing civil war in Syria and dislocation in the post war situation in Iraq has been the revival of strong political responses to the sudden arrival of large numbers of illegal immigrants in Europe. Staunchly anti-immigration and anti-Islamic policies have become common in Italy, Greece and elsewhere. More recently, they have spread to Austria, Germany and even Sweden. In Sweden, an anti-immigrant party won third place in the 2018 elections. In the Netherlands, an anti-European Union and anti-Islamic Party for Freedom (PVV) called for the closing of Islamic schools in the country and the recording of the individual ethnicity of Netherlands citizens. Similar policies were also advocated in France by the National Front, demanding a clamp down on public benefits for immigrants, including healthcare. In Poland, legislation was enacted initially criminalizing claims that Poles had been implicated in the wartime Holocaust against the Jews, instead of blaming that calamity entirely on the Nazi German occupation.³²

The same forces that were at work in continental Europe spilled over to the Brexit referendum in the United Kingdom. This vote narrowly affirmed a decision to leave the European Union. The vote constituted a strong anti-EU protest on the part of English nationalism. However, Scotland and Northern Ireland, also parts of the United Kingdom, voted effectively to remain in Europe. The same trend was evident in the national election conducted in the United Kingdom in December 2019. This pattern of voting constitutes a fracture that potentially endangers the futures not only of the European Union but also the Union of the United Kingdom.³³ On January 31, 2020, it resulted in the departure from the EU of the United Kingdom, a major member country, as well as a revival of English nationalism and economic uncertainty.

A common element affecting the growing rejection of multilateralism in European states has been the strong antagonism towards migrants, the disillusionment over modern politics, a fear of Islamic expansion, and nostalgic yearning for a return to the supposedly happier times of poorly remembered nationalism.

The consequence of these developments in Europe has been a

32. See Rick Noack, *Poland's Senate passes Holocaust complicity bill despite concerns from U.S., Israel*, THE WASHINGTON POST (Feb. 2, 2018), <https://www.washingtonpost.com/news/worldviews/wp/2018/02/01/polands-senate-passes-holocaust-complicity-bill-despite-concerns-from-u-s-israel/> (reporting the law later deleted criminal provisions).

33. See *supra* note 26.

reduction in global freedom, a diminution in the shared features of democratic governance, adoption of limitations on political rights and civil liberties, strongly expressed hostility towards asylum seekers and refugees, increased legal interference in media freedom, and spreading opposition to the rules-based international order that had, until recently, seemed secure and largely unquestionable.³⁴

The most concerning feature of these changes has been the decline in a social and economic commitment to globalism in consolidated democracies, defined as those countries that between 1985 and 2005 were usually rated “free.” Certainly, this appears to have occurred when the 20-year period is analyzed before the present 13-year decline set in. Yet probably the most remarkable feature of these changes has been the evidence of push back against multilateralism in the most mature and stable democracies, including the United States of America, the United Kingdom and Australia. From being the most reliable and committed supporters of a global rules-based system, these countries can now, at least to some extent, be seen as going through a period of withdrawal from multilateralism and, instead entering an age of nationalist and nativist isolationism.

*B. United States, United Kingdom and Australia*³⁵

United States: Virtually from the inauguration of Donald Trump as President of the United States, steps have been taken by that country to withdraw from treaty arrangements, to reduce links with United Nations bodies, and to cut funding for UN and other international activities, formerly at the center of United States foreign policy. The list of such developments is long. Without pretending to an exhaustive list, the following will give a perspective of a generally consistent approach to the role of the United States in the multilateral world:

NAFTA: The North American Free Trade Agreement (“NAFTA”) followed an earlier agreement between the United States of America and Canada (“CUSFTA”).³⁶ For most of the subsequent quarter

34. See Freedom House, *Democracy in Retreat: Freedom in the World 2019*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/freedom-world-2019/democracy-in-retreat> (finding that 68 countries had suffered net declines in political rights and civil liberties during 2018, with only 50 registering gains and there had been global declines in political rights and civil liberties for a worrying 13 consecutive years with net score declines).

35. Jeffrey D. Sachs, *The Crisis of Anglo American Democracy*, PROJECT SYNDICATE (Jul. 25, 2019), <https://www.commondreams.org/views/2019/07/28/crisis-anglo-american-democracy>.

36. 19 U.S.C. § 3311 (1996); see Raj Bhala, *Lessons About NAFTA Renegotiations from Shakespeare's Othello: From the Three Amigos to America as Iago?*, 33 MD. J. INT'L L. 38,

century of NAFTA's history, the United States, Canada and Mexico enjoyed a "stable and growing trade relationship based on a healthy friendship".³⁷ This changed soon after the Trump Administration commenced on 20 January 2017. The new President immediately initiated renegotiation. Some analysis suggested that the calls for change reflected "a corporatist agenda favoring certain powerful American business sectors."³⁸ The chief US negotiator for NAFTA made it clear that the purpose of the negotiations was to win back the jobs and manufacturing capacity for the United States allegedly lost under NAFTA. This was because, "for countless Americans this agreement has failed... We cannot ignore the huge trade deficits, the lost manufacturing jobs, the businesses that have closed."³⁹ The hostility expressed towards NAFTA, and especially Mexico's role in it, shared a resonance with hostility towards the influx of Mexican migration and President Trump's solution building of a "wall" to protect the southern borders of the United States from illegal migration, from Mexico and other Hispanic countries.⁴⁰ Eventually, the NAFTA renegotiation went ahead and a new agreement (United States, Mexico, Canada Agreement USMCA) is expected to come into force on July 1, 2020.

TPP Treaty: Re-engagement in the NAFTA negotiations should also be seen in the context of a somewhat surprising and unexpected withdrawal of the United States from participation in the final text of the Trans-Pacific Partnership Agreement ("TPP"). After years of tough negotiations over the TPP and the emergence of a final text that appeared to provide very substantial protections for US corporations, particularly pharmaceutical manufacturers, the United States formally withdrew from TPP on 23 January 2017.⁴¹ In the result, and following

38 (2018).

37. *Id.* at 39. This law had been in effect from January 1, 1989.

38. *Id.*

39. Andrew Mayeda & Eric Martin, *Trump Serves Notice on Nafta: The U.S. Won't Accept a Touchup*, BLOOMBERG (Aug. 16, 2017), <https://www.bloomberg.com/news/articles/2017-08-16/trump-serves-notice-on-nafta-the-u-s-won-t-accept-a-touchup>.

40. See generally Terence Garrett, *Where There's a Wall There's a Way: The End (?) of Democratic Discourse Regarding Immigration and Border Security Policy*, 33 MD. J. INT'L L. 183 (2018); Gerald Dickinson, *Property Musings at the U.S.-Mexico Border*, 33 MD. J. INT'L L. 162 (2018).

41. Donald J. Trump, *Presidential Memorandum Regarding the Withdrawal of the United States from the Trans-Pacific Partnership Negotiation and Agreement*, (January 23, 2017), <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-regarding-withdrawal-united-states-trans-pacific-partnership-negotiations-agreement/>; see also David A. Gantz, *The Risks and Rewards of Renegotiating the North American Trade Relationship*, 33 MD. J. INT'L L. 127, 133-34 (2018).

initiatives of Japan, other participants in the TPP negotiations brought a modified version of the TPP Agreement into force without the United States. One consequence of the modification was the removal of certain provisions in the draft agreement upon which the United States had previously insisted, affording so-called *TRIPS+* protection for [United States] intellectual property rights, including in pharmaceutical inventions. From the point of view of the continuing participants in TPP, the outcome was generally considered an improvement. Inferentially, the US withdrawal was intended to leave open other free trade “deals” with participants yet to be identified and assessed.

Iran: One of the international agreements, negotiated by the Obama Administration, which was most vehemently criticized by President Trump during his election campaign was the Joint Comprehensive Plan of Action (JCPOA) with Iran. This Plan was concluded in 2015 between the five permanent members of the UN Security Council, together with the European Union, Germany, and Iran.⁴² President Trump criticized the agreement as wholly inadequate to achieve an end to the threat to the United States, Israel and other US interests involving the possible Iranian development of nuclear weapons. Some of the criticisms of JCPOA may have been justified. However, instead of demanding return to the negotiating table, the United States simply withdrew over the protests of the other participants. This has had significant economic consequences for Iran. It has severely harmed its capacity to sell its petroleum exports in the face of unilateral United States sanctions imposed upon transactions involving Iranian banks. It is not immediately apparent how unilateral withdrawal, apart from preserving a free hand to the United States in follow-up action, makes the resulting global situation safer from the dangers of nuclear weapons proliferation. Unilateral withdrawal from multilateral agreements that are disapproved by the Trump Administration has become a common approach of the United States following the inauguration of President Trump.

Climate change: Another instance involving notice of unilateral withdrawal from an important international agreement on an incontestably significant multilateral instrument has been the United States withdrawal from the Paris Framework Agreement on Climate Change of which the Trump Administration also disapproved.⁴³ Even

42. Barack Obama, *Presidential Memorandum—Preparing for Implementation of the Joint Comprehensive Plan of Action of July 14, 2015* (JCPOA), Office of the Press Secretary (Oct. 18, 2015).

43. See Eric Lipton, *As Trump Dismantles Clean Air Rules*, N.Y. TIMES (Aug. 20, 2017),

allowing for possible points of legitimate disputation over the contents of the Framework Agreement, given the existential character of the danger to the international community of climate change and the need to address those changes rapidly as a global community, simply walking away does not seem to be a rational response. Above all, it is not the response that maximizes the deployment of the United States leadership commensurate with its post-1945 pursuit of American and global national goals and previously accepted responsibilities.

Human Rights Council: In June 2018, having secured reelection to the Human Rights Council of the United Nations, the Trump Administration announced that it was withdrawing from membership of that body.⁴⁴ The election to membership of the HRC of a number of countries with poor records in the protection of human rights of their own citizens was again the stated source of irritation. On the other hand, the United Nations includes a number of serial offenders against UN treaty law on human rights. If the HRC is to reflect the world as it is and to play a role in conveying the importance attached by the Organization to human rights, the election of countries with disappointing records on human rights is virtually inevitable. Rather than withdrawing, a mere rational response would seem to be repeated confrontation with offenders in the HRC over the record of the abusers.

In any case, every country has its own instances of human rights derogations. The object of the HRC (and especially following the adoption of the new system of Universal Periodic Review)⁴⁵ is to enhance the sharing of knowledge and perspectives and the provision of experience and offers of technical assistance. The United States' leadership in human rights concerns dates back to the origins of the *Charter*, the adoption of the UDHR and later treaty law. Walkout may express irritation. But it deprives the global community of the clear voice and participation of the United States in a forum where that voice should be heard as an example of global leadership.

UN dues: In May 2019 several leaders of the United Nations began voicing their concern about the failure of member states to pay their dues in accordance with treaty obligations. The Secretary-General and other leaders of the Organization called on UN member

<https://www.nytimes.com/2018/08/19/us/politics/epa-coal-emissions-standards-william-wehrum.html> (reporting U.S. walks out Paris Framework Agreement on Climate Change).

44. See *U.S. Quits 'Biased' UN Human Rights Council*, BBC NEWS (20 Jun. 2019), <https://www.bbc.com/news/44537372> (noting Ambassador Nikki Haley called the Council a "cesspool of political bias" that "makes a mockery of human rights").

45. See *supra* note 7.

states to pay their assessed contributions without further delay and to prioritize the provision of funding for United Nations' human rights and other mechanisms. Deprived of financial support, the work of the six treaty bodies of the United Nations is adversely affected and its effectiveness is downgraded. The largest unpaid contributions were those of the United States. This is a further instance of the unilateral diplomacy of irritation. However, it is not a response that conforms to the United States' legal obligations; nor is it one likely to produce constructive outcomes.⁴⁶

Humanitarian programs: The United States has also failed to participate in vitally important national humanitarian work under the United Nations. It has limited its contributions to the International Fund for Agricultural Development and the International Agriculture and Food Security Agency. It has also declined to contribute to a new compact on global migration.⁴⁷ The failure of the United States to participate in these moves leaves a large gap not only in the resources of the United Nations but also in the international dialogue on essential projects. Nothing effective has been put in its place.

Commission on Unalienable Rights: One of the steps taken by US Secretary of State Pompeo in 2019 was the establishment of an Executive Commission to re-express the "unalienable rights" that might eventually replace the international human rights law of the UN treaty bodies.⁴⁸ Coinciding with the US walkout from the Human Rights Council and the criticism of the HRC's elaboration of human rights affecting women's reproductive rights, the rights of sexual minorities and other issues, this initiative can also be seen as a stepping back from the previous US leadership on the content of international human rights law.

As the international community approaches the 75th anniversary

46. UN Secretary-General: Treaty bodies UN human rights bodies feeling unprecedented and unacceptable cuts to their work. Statements by International Service of Human Rights (ISHR). Carol Morell, *Trump Shrugs as U.N. Warns It's about to Run Out of Money*, WASHINGTON POST (Oct. 9, 2019), https://www.washingtonpost.com/national-security/trump-shrugs-as-un-warns-its-about-to-run-out-of-money/2019/10/09/568f8756-eac5-11e9-85c0-85a098e47b37_story.html.

47. This was established by a unanimous vote of the UN General Assembly adopted on April 6, 2017 as *Global Compact for Safe, Orderly and Regular Migration* (GCM).

48. The Times Editorial Board, *Editorial: Mike Pompeo's new panel on human rights is unnecessary and maybe dangerous*, LA TIMES (Jul. 11, 2019), <https://www.latimes.com/opinion/editorials/la-ed-pompeo-rights-20190711-story.html>; Masha Gessen, *Mike Pompeo's Faith-Based Attempts to Narrowly Redefine Human Rights*, NEW YORKER (Jul. 10, 2019), <https://www.newyorker.com/news/our-columnists/mike-pompeos-faith-based-attempt-to-narrowly-define-human-rights?verso=true>.

of the foundation of the United Nations, it is witnessing the substantive withdrawal of the United States from its previous leadership role on a number of fronts. This has happened at a time when such leadership appears more important than before. It seems scarcely likely that that international community will agree to a re-expression of universal human rights, so hard won and developed over the past 75 years, in terms of any “natural law” notions that might or might not have influenced the founders of the American Constitution. It is one thing to assert new notions of “religious liberty” in one’s own country. Doing so for the entire global community seems unlikely to be successful or, if so, only at the cost of alliances by proponents with countries that often have abysmal records on human rights.

Israel: The United States has, from its foundation, maintained a very strong relationship with the State of Israel. At one stage, there was hope that, where earlier administrations in the United States had failed, the Trump Administration might achieve a break-through on Israeli/Palestinian relationships. However, recent unilateral actions on the part of the United States appear to make any such initiatives unlikely to be productive. The United States’ unilateral recognition of Jerusalem as the capital of Israel, the moving of the US diplomatic mission to that city, and the later unilateral recognition of Israeli settlements in Palestinian territory make progress on this flashpoint international issue more difficult to attain than ever.⁴⁹

Korea: Until recently, in the United States Congress, there has been a high level of bipartisan support for international attention to the human rights abuses committed on its own people by the Government of DPRK (North Korea).⁵⁰ President Trump’s first statement to the General Assembly of the United Nations, following his election, contained threats of “fire and fury” if North Korea did not agree to surrender its nuclear weapons. However, this approach was suddenly and unilaterally changed to protestations of friendship and meetings of the leaders in Singapore in June 2017.⁵¹ Despite further abbreviated meetings in Hanoi and at the Demilitarized Zone in Korea, no substantive “deal” has so far been struck.

49. THE ECONOMIST, *America’s Decision to Recognise Israeli Settlements Makes Peace Less Likely*, ECONOMIST (Nov. 21, 2019), <https://www.economist.com/leaders/2019/11/21/americas-decision-to-recognise-israeli-settlements-makes-peace-less-likely>. See also *supra* note 42-43.

50. U.N. S.C. Rep. of the Human Rights Council, Feb. 7, 2014, U.N. Doc. A/HRC/25/CRP.1; GE (2014).

51. The meeting of President Trump and Kim Jong-un took place in Singapore on June 12, 2018, and resulted in a joint statement.

President Trump has presented concurrent demands to the Government of the Republic of Korea (South Korea) to quadruple the amount paid by it for the presence of 28,000 United States troops stationed on the Korean Peninsula. Whilst some renegotiation of financial contributions to the United States for the provision of troops might be justified, the demand as made, has been criticized as “outlandish.” It allegedly overlooked the mission of the US forces in Korea both for the Republic of Korea and for the United States’ own interests and geopolitical leadership.⁵² Meantime, no real progress has been made in the reduction of the increased dangers of North Korea’s nuclear weapons and its ongoing abuses and crimes against humanity towards its own people. This notwithstanding, in December 2019 the United States declined support for a proposed meeting of the Security Council on Human Rights Day to address the ongoing human rights situation in DPRK. This was so although the Assistant UNSG pointed out that the talks between the US and DPRK were “stalled.”⁵³

Nuclear weapons: The United States has not maintained the leadership shown by President Reagan and his successors in initiating new measures of arms control and for securing the passage of treaties and other initiatives through the United States Senate. From President Reagan to President Obama, important initiatives were adopted to recognize, as President Reagan once put it, that a nuclear war “cannot be won and must not be started.”⁵⁴

It was this recognition of the special and urgent dangers of the spread of nuclear weapons that led to the first US-Soviet arms accord after 1972, the *Intermediate Range Nuclear Forces Treaty* (INF). The success of that treaty provided a momentum for other arms control initiatives that followed in the 1990s. The INF Treaty banned a specified class of nuclear weapons, including the production and flight testing of ground launched missiles with ranges between 300 and 3,400 miles. The treaty also required the destruction of existing intermediate

52. The Editorial Board, *Trump’s Lose-Lose Proposition in Korea*, N.Y. TIMES (Nov. 21, 2019), <https://www.nytimes.com/2019/11/21/opinion/trump-korea.html?searchResultPosition=1>.

53. United Nations, *Security Council Briefing on Non-Proliferation/Democratic People’s Republic of Korea*, Assistant Secretary-General Khaled Khiari, U.N. (Dec. 11, 2019), <https://dppa.un.org/en/security-council-briefing-non-proliferationdemocratic-peoples-republic-of-korea-assistant-secretary>.

54. See Bernard Gwertzman, *Reagan Reassures Russians on War*, N.Y. TIMES (Jan. 26, 1984), <https://www.nytimes.com/1984/01/26/world/reagan-reassures-russians-on-war.html> (reporting in an address directly to the people of the Soviet Union President Reagan declared that there was only one sane policy to preserve their civilization in the current age: “A nuclear war cannot be won and must never be fought.”).

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range missiles. It greatly enhanced the stability and safety of Europe and the wider world by reducing the threat of sudden nuclear attack. It was approved by the US Senate in 1988 by a vote of 93-5.

The INF Treaty was followed by the *Treaty on Conventional Armed Forces in Europe* (CFE Treaty) 1991, the *Strategic Arms Reduction Treaty* 1994, the follow on *START II Treaty* of 1996, and the UN *Chemical Weapons Convention* signed by President George H.W. Bush and sent to the Senate by President W.J. Clinton.

President Trump has substantially put other arms control initiatives in reverse. He withdrew the United States participation from the INF treaty, a step that resulted in the immediate withdrawal of the Russian Federation.⁵⁵ This was done without a congressional or Senate initiative or approval. It enlarged the dangers of the use of nuclear weapons. Ostensibly, this action appeared to follow the belief of the Trump Administration that the Russian Federation was not complying with the INF Treaty and that there was some advantage in the US developing smaller nuclear weapons for operational use in a field of war.⁵⁶

Additionally, the Trump Administration has indicated the possible withdrawal of the United States from the “*Treaty on Open Skies*” of 1992 that allows aerial scrutiny on the part of participating states, including the United States and the Russian Federation, to reassure their respective military forces against the risks of unexpected attacks or military preparations.⁵⁷ Developments that increase the availability and potential use of nuclear and other weapons by the United States and other states are unfavorable developments for the safety of the international community, including the United States and its people. Such steps have serious consequences for civilization. Both the United States and the Russian Federation complain about alleged infractions by the other of the terms of the treaty. The appropriate response to such a complaint would appear to be addressing the breaches rather than abandoning the valuable

55. The Intermediate Nuclear Arms Treaty (INF) was signed by President Reagan and Soviet General Secretary Gorbachev on December 8, 1987 and became effective on June 1, 1988. See DAN DILLER & SARA STEFANI, RICHARD G. LUGAR: INDIANA’S VISIONARY STATESMAN 114-131 (2019).

56. See David Brown, *U.S. Officially Pulls Out of Missile Treaty with Russia Today*, POLITICO (Feb. 8, 2019), <https://www.politico.com/newsletters/morning-defense/2019/08/02/us-officially-pulls-out-of-missile-treaty-with-russia-today-464535>.

57. The Open Skies Treaty was negotiated between NATO and the Warsaw Pact on the initiative of President George H.W. Bush and signed by him on March 24, 1992. It came into effect on January 1, 2002. The treaty has 34 parties.

protection.

Nuclear Ban Treaty: In 1996, the International Court of Justice, in an Advisory Opinion, declared that states possessing nuclear weapons had a legal duty to engage in “bona fide negotiations” to bring about the destruction of the huge stockpiles of nuclear weapons whose existence is an existential danger for the survival of human and other life forms on earth. So far, no such negotiations, bona fide or otherwise, have produced any outcome as envisioned by the World Court. In consequence, an international civil society organization, the International Campaign to Abolish Nuclear Weapons (ICAN), initiated negotiations for a new treaty to render the possession, use and threat of use of nuclear weapons unlawful according to international law.⁵⁸

The drafters of this treaty did not expect that nuclear weapons states would suddenly abandon their weapons. However, they did contemplate that, if the treaty came into force, possession and use, including threat of use, of nuclear weapons would lose their legitimacy in international law. Moreover, if the treaty came into force, steps could be taken to commence the destruction of such armaments or some of them. Dangers, such as accidents, mistakes or ill-considered actions are so great, in the case of nuclear weapons, that a failure to act is not a sensible option.

The United States has opposed the development of the Nuclear Ban Treaty. Yet that treaty has already secured 37 ratifications. It will come into force when 50 ratifications are deposited with the United Nations. The United States has strongly lobbied allies against participation in negotiations for such a treaty. However, waiting for the United States and other nations that possess nuclear weapons to initiate an acceptable treaty appears futile, especially in the current global circumstances. The Nuclear Ban Treaty, in this sense, is a response of smaller nations to the growing dangers perceived in the recent international initiatives of the United States of America and other states. Doing nothing is incompatible with the statement of the World Court in 1996. It appears inconsistent with even a rudimentary consideration of the risks that the current global situation presents to

58. The Treaty on the Prohibition of Nuclear Weapons is not yet in force. It was opened for signature at the United Nations Office in New York on July 7, 2017. At the time of publication, it had secured 81 signatories and 37 countries have deposited instruments of ratification. It comes into force 90 days after the deposit of 50 ratifications. *See* Treaty on the Prohibition of Nuclear Weapons, U.N., art. 13–15, Jul. 7, 2017; *See generally* THE 2017 NUCLEAR BAN TREATY: A NEW PATH TO NUCLEAR DISARMAMENT, (Joseph Camilleri, Michael Hamel-Green, & Fumihiko Yoshida eds. 2019).

humanity, its ecology and environment.

C. United Kingdom and Australia

United Kingdom: The evidence of pushback against multilateralism on the part of the United Kingdom is most evident in the steps taken by that country to withdraw from membership of the European Union. That withdrawal has now been accomplished following a general election in December 2019. Although raising separate issues, there is also the threatened withdrawal of the United Kingdom from the Council of *Europe* or at least from *the European Convention on Human Rights*. These European initiatives are seen by some opponents as an intrusion of multilateral institutions into British sovereignty and institutional self-government.

Whereas the United States could possibly survive a major curtailment of the rule-based international legal order that developed following the *Charter* of the United Nations, virtually no other country could do so. Certainly the United Kingdom is itself dependent upon the rules-based international order for the pursuit of its national interests in security, trade in technology and international cooperation in any predictable and orderly way. The same is even more true of a country like Australia, because of its large geographical area, small population, surrounding oceans and dependence on international trade and the maintenance of peace and security. Australia and Britain are significant participants in international treaty law and in the multilateral institutions that implement, update and uphold orderly relations between nations according to international law.

Australia: The Australian Commonwealth, has been a constructive player in most of the multilateral arrangements that have grown up since 1945. Generally speaking, such participations has been viewed as an uncontroversial necessity for a country such as Australia, arising from its history, geography and self-interest. The present Australian Foreign Minister (Senator Marise Payne), whilst acknowledging that the international legal system needed reform, declared in 2018 that:⁵⁹

Far from abandoning the international system we are speaking loudly in its defense. We will be safer and more prosperous in a world where global differences

59. Canberra, *Senator the Hon Marise Payne, Minister for Foreign Affairs, Address at AIIA National Conference 2018*, AUSTL. INST. INT'L. AFF. (Oct. 17, 2018), <http://www.internationalaffairs.org.au/resource/senator-the-hon-marise-payne-minister-for-foreign-affairs-address-at-aiia-national-conference-2018/>.

are managed, and global challenges met, by agreed rules rather than the exercise of power alone.

A federal election held in Australia in May 2019 unexpectedly returned to office a conservative government led by Mr. Scott Morrison. Invigorated by his re-election, Mr Morrison took the occasion of an address to the Lowy Institute in Sydney, a think tank, in October 2019 to address what he described as “negative globalism” driven by “an unaccountable internationalist bureaucracy.”⁶⁰

Several commentators pointed to the unspecific nature of these criticisms. They suggested that the expressed discontent was fueled by similar frustrations that had driven Brexit in the United Kingdom, had unleashed nationalism in Eastern Europe, and had energized President Trump’s initiatives in the foreign policy of the United States. Diplomats conscious of Australia’s modest role in the international order pointed cautiously to the fact that “the middle powers need rules. We need rules more than the Russians or the Chinese or the Americans.” Wielding a “big stick” is not a privilege enjoyed by Australian or like leaders. Whilst some media outlets supported Prime Minister Morrison’s remarks, the Opposition Australian Labor Party distanced itself from them stating, “Our international commitments have not been forced upon us, we have taken them on voluntarily.”⁶¹

On the other hand, particular news media consistently endorsed Prime Minister Morrison’s observations. They pointed to the similarities between them and the speech by President Trump at the UN General Assembly when the President declared that “the future does not belong to globalists. It belongs to patriots.”⁶² Their editor declared that Mr. Morrison had shown a “good grasp of a changing world” exercised a “big picture vision [which was] incisive and reassuring.”⁶³ The latter was said to be anticipating a new beneficial trade agreement with the United Kingdom, post Brexit. Not a few commentators on Mr. Morrison’s remarks suggested that his observations resonated with the views of Donald Trump when he

60. Michael Koziol, *Morrison Says He’s ‘Not Waiting by the Phone’ for Invitation to China*, THE SYDNEY MORNING HAROLD (Oct. 4, 2019), <https://www.smh.com.au/politics/federal/morrison-says-he-s-not-waiting-by-the-phone-for-invitation-to-china-20191004-p52xjd.html>.

61. *Id.*

62. Chris Kenny, *UN Mandarins Call Shots Over Voters*, THE AUSTRALIAN (Oct. 5, 2019), <https://www.theaustralian.com.au/inquirer/un-mandarins-call-shots-over-voters/news-story/359e44535666e064a442c2fb7151f010>.

63. EDITORIAL BOARD, THE AUSTRALIAN (Oct. 3, 2019).

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said:⁶⁴

We should avoid any reflex towards a negative globalism that coercively seeks to impose a mandate from an often ill-defined borderless global community. And worse still, an unaccountable internationalist bureaucracy.

With a slap at the current efforts of the United Nations to achieve multilateral progress through the *Sustainable Development Goals*,⁶⁵ for global objectives by 2030, this commentator declared that the Australian Prime Minister's approach was affording "a sustainable Australian development goal." Yet, because we all live in the increasingly integrated world, national goals inevitably need to adapt to, and reflect, the requirements of the world about us.

V. COVID-19 & MULTILATERALISM

WHO Engagement: As previously indicated, the World Health Organization (WHO) is a United Nations agency. It was founded in 1948 as the first of the specialized agencies. Working with partners in recent years, it has achieved significant successes in the eradication of smallpox, polio and the reduction of cases of tuberculosis, malaria, and crises in maternal and child health. It has responded to a succession of public health emergencies including Ebola in 2014 and 2018; polio in 2014; and endemic influenza, including from the (H1N1) virus (2009).⁶⁶

Since 2005, the WHO response to public health emergencies of international concern has been authorized under the International Health Regulations (IHR). WHO monitors global health trends in infectious diseases; conducts research; sets standards; provides technical support; and issues reports and statistical information. Its current budget (2020-21) is USD \$4.8 billion. This is \$2 billion less than the budget for the US Centers for Disease Control and

64. Helen Davidson, *UN Human Rights Commissioner Rejects Morrison's Attack on 'Internationalist Bureaucracy'*, THE GUARDIAN (Oct. 7, 2019), <https://www.theguardian.com/australia-news/2019/oct/08/un-human-rights-commissioner-rejects-morrison-attack-on-internationalist-bureaucracy>.

65. See generally, United Nations, *The Sustainable Development Agenda 2015* (last visited March 30, 2020), un.org/sustainabledevelopment.

66 L.O. Gostin, "COVID-19 Reveals Urgent Need to Strengthen the World Health Organization" *Jama Forum* (Apr. 30, 2020), <https://jamanetwork.com/channels/health-forum/fullarticle/2765615>.

Prevention.⁶⁷

As suggested above, WHO responded comparatively quickly to the first appearance of the Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS).⁶⁸ It is a lead UN agency in the joint UN Programme on AIDS (UNAIDS), established in 1994. Despite its global mandate, worldwide responsibilities and complex functions, WHO is “chronically underfunded”,⁶⁹ especially given the global healthcare objectives adopted by the United Nations in the *Sustainable Development Goals*.⁷⁰

In addition to budgetary subventions, WHO is heavily dependent on voluntary contributions. The US Government is the largest funder of WHO, with an assessed and voluntary contribution \$4.5 billion or 15% of the total biennial income of the agency. The vital tasks undertaken by WHO constitute a prime example of the essential character of some multilateral activities. Diseases in humans and other living creatures (including contagious and infectious conditions) are no respecters of international borders.⁷¹ They cannot usually be tackled effectively by individual states.

Outbreak of COVID: The rapid trajectory of the novel coronavirus, later named “COVID-19” by the WHO,⁷² was reportedly first detected in Wuhan, China, in November 2019.⁷³ A cluster of cases of early manifestations involved an atypical severe pneumonia of unknown cause.⁷⁴ Many earlier cases reportedly involved contact with the Wuhan wet market. Within less than six months of first reported

⁶⁷ *Id.*

⁶⁸ M. MERSON & S. INRIG, *THE AIDS PANDEMIC, SEARCHING FOR A GLOBAL RESPONSE*, 15-26 (Springer 2018).

⁶⁹ Gostin, *supra* note 66.

⁷⁰ UNITED NATIONS SUSTAINABLE DEVELOPMENT GOALS (last visited June 3, 2020), <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>.

⁷¹ Sook Jong Lee, *COVID-19 Infects International Organizations*, EAST ASIA FORUM (Apr. 21, 2020), <https://www.eastasiaforum.org/2020/04/21/covid-19-infects-international-organisations/>.

⁷² An acronym constituted by coronavirus (COVI) disease (D), first appearing in 2019.

⁷³ Josephine Ma, *Coronavirus: China's First Confirmed COVID-19 Case Traced Back to November 17*, SOUTH CHINA MORNING POST (Mar. 13, 2020).

⁷⁴ N. Chen, M. Zhou, X. Dong, J. Qu, F. Gong, Y. Han et al, *Epidemiological and Clinical Characteristics of 99 Cases of 2019 Novel Corona Pneumonia in Wuhan China: A Descriptive Study*, THE LANCET, 395 (10223), 507-13, DOI:10.1016/SO140-6736(20)30211-7; pmc7135076; pmid3207143.

manifestation, COVID-19 resulted in 5.5 million cases of reported infections in 188 countries leading to more than 350,000 deaths. The death rate following infection varies significantly. In the United States within the first 6 months there were more than 100,000 deaths; in the United Kingdom 37,000. In Australia, 103 deaths. So far, no confirmed effective therapies or vaccines have been declared by WHO.⁷⁵

Origins and doubts: The fast spread of infection and high levels of mortality quickly caused acute international concern. Early reports suggested that the causative virus was natural, having an animal origin. There were reported similarities between COVID-19 and viruses appearing in certain animals (civets). However, particular factors led to expressed concern. The first was an apparent attempt by local authorities, initially in Wuhan, to require medical staff who first reported the condition, to withdraw their report under threat of legal process. The death of the young doctor concerned in the initial report caused criticism, including in China, concerning the lack of transparency in the initial handling of the infection. The second cause of anxiety was the revelation of the existence in Wuhan of a specialized research institution (Wuhan Institute of Virology, since closed) reportedly conducting research into diseases including reservoirs of coronavirus in bats. These reports raised public questions in the United States as to whether COVID-19 had been artificially created and released accidentally or otherwise.⁷⁶ Whilst US intelligence agencies reported negatively, President Trump began to raise the possibility that China was to blame for the outbreak, its initial sources, early reassuring responses and later follow up.⁷⁷ Expert virologists dismissed the criticisms.⁷⁸ The rapid lock down and isolation of Wuhan and district quickly contained the spread of the virus in China. However, international travel, still then unrestricted, soon contributed to a rapid rise of infections in Iran and Europe, contradicting earlier suggestions that China had brought the global spread under control by its strict

⁷⁵ WHO, *Q&A on coronaviruses (COVID-19)* (Apr. 17, 2020), afro.who.int/publications/qa-coronaviruses-covid-19 (archived from the original on May 14, 2020).

⁷⁶ J. Rogin, *State Department Cables Warned of Safety Issues at Wuhan Lab* WASHINGTON POST (Apr. 14, 2020).

⁷⁷ S. Holland & D. Brunnstrom, *Trump Says US Investigating Whether Virus Came from Wuhan Lab*, REUTERS (Apr. 16, 2020).

⁷⁸ Geoff Brumfiel & Emily Kwong, *Virus Researchers Cast Doubt on Coronavirus Lab Accident*, NPR (Apr. 23, 2020), npr.org/sections/goatsandsoda/2020/04/23/841729646/virus-researchers-cast-doubt-on-theory-of-coronavirus-lab-accident.

policy of quarantine. Thirdly, praise for the Chinese initiatives by the WHO Director-General (Dr. Tedros Adhanom Ghebreyesus) was criticized by some observers as excessive, premature and unjustified. Political leaders including President Trump, demanded access more “objective” facts about the true origins of the virus.

It was in these circumstances that President Trump initiated his complaints that WHO had been too slow in alerting the world as to the dangers of the virus; too hesitant in initiating protective steps that should be taken; dilatory steps in designating it a pandemic; and to ensuring the highest priority to the global response. Meanwhile, huge disruptions to the employment, travel and economic activity of populations of many countries, including amongst poor and vulnerable people, enhanced a sense of frustration and anger in some quarters especially in the United States. So did the inescapably slow process of developing safe and effective therapies and vaccines by scientifically acceptable protocols clinical trials observing.

Pushback: WHO took several steps following the official notifications for the first time of the Wuhan outbreak by Chinese authorities on December 31, 2019.⁷⁹ On the following day, an incident management support team was created. Four days later member states were notified of the outbreak in China. A “guidance” advisory was issued on January 10, 2020. When the Chinese scientists shared the genetic sequence of the new virus on January 12, 2020,⁸⁰ WHO immediately initiated development of a test for exposure of human subjects to the causative agent. On January 22, 2020, a WHO emergency committee was convened. It postponed a decision on whether a pandemic should be declared. Unverified reports alleged that this delay was caused by Chinese pressure, anxious about economic isolation of China’s trade. Designation of a pandemic was duly taken on January 30, 2020, notifying countries on the need for containment. Virtually daily briefings were thereafter provided by WHO on developments in infections.

By April 2020, WHO was confronting criticism that it had been “too close to Beijing”. China also was criticized for its “historical

⁷⁹ R. Perez-Pena Jr. & Donald G. McNeil (April 16, 2020), *W.H.O. Now Trump’s Scapegoat, Warned About Coronavirus Early and Often*, THE NEW YORK TIMES (Apr. 16, 2020).

⁸⁰ On Chinese sharing of the genetic sequence of COVID-19, see WHO Novel Coronavirus-China.

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aversion to transparency and sensitivity to international criticism”.⁸¹ Defenders of WHO argued that close engagement with the country at the source of the initial outbreak of a possible epidemic was essential and inescapable and that WHO was always vulnerable because of its budgetary limitations.⁸² On April 14, 2020, President Trump announced that the United States would halt funding, ultimately discretionary funds, to WHO, condemning what was described as its severe mismanagement and “covering up of the spread of the coronavirus”.⁸³ This step, in the midst of the rapid escalation of infections was criticized by many as both seriously unwarranted and counterproductive. If pursued, it was argued, the United States “will lose our voice and even our influence, even with our allies”.⁸⁴

At this point in the developing multilateral response to the crisis Australia proposed an “independent international inquiry into the genesis of COVID-19”. The Chinese Ambassador to Australia condemned this initiative and warned of consequences. China’s President Xi Jinping reportedly telephoned 36 national leaders to head off any such inquiry. Ultimately, however, the proposal gathered supporters in Europe and even Africa, determined to find the truth and the “lessons learned” from the global handling of the COVID19 crisis.⁸⁵

The proposal for an independent inquiry was on the agenda of the (virtual) meeting of the World Health Assembly, the supervisory institution of UN members for WHO, that met May 18-19, 2020. President Trump threatened unspecified steps if WHO did not show independence from China.⁸⁶ Eventually, an amended resolution was unanimously adopted by the WHA. It called for WHO to “initiate at

⁸¹ James Griffiths, *The Coronavirus Crisis Is Raising Questions Over China’s Relationship with the World Health Organization*, CNN (Feb. 16, 2020).

⁸² Gostin, *supra* note 66.

⁸³ Daniel Victor & Christine Hauser, *What the W.H.O. Does, and How U.S. Funding Cuts Could Affect It*, THE NEW YORK TIMES (Apr. 15, 2020) <https://www.nytimes.com/2020/04/15/health/who-world-health-organization-cornavirus.html>.

⁸⁴ James C. Hernández, *Trump slammed the W.H.O. over coronavirus. He’s not Alone*, THE NEW YORK TIMES, (Apr. 8, 2020); *see also* Quint Forgey & Caitlin Oprysko, *Trump Announces, then Reverses, Freeze on Funding for World Health Organization*, POLITICO (Apr. 7, 2020).

⁸⁵ Karen Middleton, *Australia Pushes for Global Inquiry into Outbreak*, THE SATURDAY PAPER (Apr. 25, 2020) <https://www.thesaturdaypaper.com.au/news/politics/2020/04/25/australia-pushes-global-inquiry-outbreak/15877368009743>.

⁸⁶ *See supra* note 84.

the appropriate moment, and in consultation with member states, a stepwise process of impartial, independent and comprehensive evaluation, including using existing mechanisms, as appropriate to review experience gained and lessons learned from the WHO-coordinated international human rights response to COVID-19.”⁸⁷ Observers pointed to the watering down of the language of the resolution. No specific mention was made of the initial suggestion that WHO should be armed with new powers (akin to those available to UN weapons inspectors) to compulsorily gather information about an impending health crisis. Nor was a resolution, proposed by 13 members of WHA, that Taiwan should be invited (as Palestine is) to be an observer at WHO as had happened in the past until China objected. Taiwan has one of the lowest COVID-19 infection and death rates in the world and was prepared to describe its strategies.

In consequence of Australia’s role in pushing the proposal for an independent inquiry, it found its barley exports to China suddenly became subject to an 80% tariff. Allegedly this was because of unsanitary standards. Warnings about other retaliatory trade moves by China have been voiced.⁸⁸ Within Australia, several critics, whilst not objecting to the desirability of a COVID19 investigation, questioned the wisdom of Australia assuming a role as “deputy sheriff”, following the Trump Administration.⁸⁹ However, as if to support the WHA initiative, new research, in an as yet unreviewed scientific paper from Flinders University in Australia, raised fresh questions about genetic features of the COVID-19 virus and its unique adaptation to infecting humans that were said to differentiate it from other corona viruses

⁸⁷ Anthony Zwi, *The WHO Coronavirus Inquiry Will be More Diplomatic than Decisive. But Australia Should Step up in the Meantime*, THE CONVERSATION (last visited June 3, 2020), <https://theconversation.com/the-whos-coronavirus-inquiry-will-be-more-diplomatic-than-decisive-but-australia-should-step-up-in-the-meantime-139030>.

⁸⁸ *Australia’s Trade with China: Barley Barney and Beef Beef”: China hits Australia Where it Hurts*, THE ECONOMIST 20-21 (May 21, 2020).

⁸⁹ John McCarthy, *This Is No Time to Start a Coronavirus Blame Game*, Financial Review (April 22, 2020), [afr.com/world/asia/this-is-no-time-to-start-a-coronavirus-blame-game-20200421-p541ov](https://www.afr.com/world/asia/this-is-no-time-to-start-a-coronavirus-blame-game-20200421-p541ov); Joseph A Camilleri, *Can we rescue the China relationship from the abyss?* (May 25, 2020) <https://johnmenadue.com/joseph-a-camilleri-can-we-rescue-the-china-relationship-from-the-abyss/>, Jack Waterford, *Shooting Ourselves in the Boot Again*, (May 26, 2020) <https://johnmenadue.us20.list-manage.com/track/click?u=8f6fe397c38ea1083d2f54c77&id=956acbad09&e=833fefb2dc>.

occurring in nature.⁹⁰ Where a virus spreads so rapidly and causes a level of high but variable levels of mortality, it is inevitable that questions will demand answers, however unjustified suspicions later prove to be.

Political realities in many nation states complicate the analysis and resolution of the foregoing issues. However, the case of COVID-19, like other instances mentioned in this article, illustrate the critical importance of multilateral cooperation; the likelihood of nation states pushing their own perceived interests; the risks of pushback; and the consequent necessity of retaining the advantages of multilateralism whilst adjusting for the expressions of doubt, hesitation and skepticism. Urgent necessity and global realities frequently cause pressure for multilateral engagement. Perceived domestic advantages of nation states often provoke a contrary pressure. Generally, most countries have to adjust to the resolution of these competing forces to take advantage of the cooperation whilst at the same time pursuing their own separate interests.

VI. EVALUATION

A survey of world governance since 1945 has demonstrated the important changes that have occurred in the international community. Many capable experts failed to predict the fall of the Berlin Wall in 1989. When it happened there was much optimism, especially about the enlargement of universal human rights, the right to development and the enhancement of international institutions. Sometimes the growth of the spirit of optimism was intoxicating. The path ahead seemed likely to deliver still greater engagement between nation states and enlarged international cooperation.

The events that have happened over the past 30 years have sometimes been discouraging. Although in this review most attention has been paid to developments in Eastern and Western Europe, in the United Kingdom of Brexit, the United States of the Trump Administration and even Australia, there have been many troubling developments in other lands. Previously substantially stable and rule-observing countries like Venezuela, the Philippines and Brazil have succumbed to populism. China has stepped up its great power

⁹⁰ *Australian researchers suggest coronavirus may be a human creation*, THE NEW DAILY, May 23, 2020, (last visited June 3, 2020) <https://thenewdaily.com.au/news/coronavirus/2020/05/23/coronavirus-research-study/>.

assertiveness. The people of Hong Kong have pushed back against this attitude, thereby demonstrating the enduring desire of human beings for freedom, human rights and the rule of law. Some writers have lamented that multilateralism is now “in freefall.”⁹¹ However, advocates of the beneficial impact on our world of technological developments explain, powerfully, how countries should remain open to cooperation if they are to derive the highest dividends of improvements in economic development, human rights and global health.⁹²

There is no denying that disappointing events have marked the past three decades. Still, we should not underestimate the abiding elements in the world that remain sources of optimism and hope. These include the way in which, on some occasions, the otherwise nationalist initiatives of the Trump Administration can achieve outcomes beneficial to the whole international community by subjecting outdated policies of the international legal order to critical questioning and demanding that they adapt to new thinking and new technology.

One case where a beneficial outcome occurred concerned what was at first described as selfish United States assertiveness against the Universal Postal Union (UPU). This is a 145-year-old international organization, founded in 1874, which coordinates international mail and parcel delivery and transfers of costs of the global postal service. Manifestly, this is a beneficial example of multilateral cooperation.

However, because of failures to adjust the “terminal dues” charged within the system, the United States Post was effectively subsidizing a flood of small posted packages into the United States, primarily from China. The estimated annual cost of this subsidy to the US postal authority was \$500 million. What began as an “adjustment” to postal rates, fixed when China was a poor developing country, had grown, according to Mr. Peter Navarro, assistant to the US President for Trade and Manufacturing Policy, to be a “distorted system”. Defenders of it, pursuing their own national advantages tried to bully countries in order to retain the advantage. Notwithstanding, the United States indicated its intention to withdraw from the UPU unless new

91. Richard Gowan, *Multilateralism in Freefall?*, U.N. UNIVERSITY (July 30, 2018), <https://cpr.unu.edu/the-multilateral-freefall.html>; Scott Morris, *The Incredible Shrinking Multilateralism*, CTR. FOR GLOBAL DEV. (Feb. 13, 2018), <https://www.cgdev.org/blog/incredible-shrinking-us-multilateralism>.

92. Bill Gates, *Open Voice – The Case for Multilateralism*, THE ECONOMIST (Oct. 3, 2018), <https://www.economist.com/open-future/2018/10/03/the-case-for-multilateralism>.

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arrangements were agreed. On this occasion, that happened.⁹³ In the result, on 25 September 2019, a unanimous agreement was reached amongst the UPU's 192 members to adopt a reform proposal. It would probably not have been agreed but for the threat that the United States would otherwise withdraw. If it had come to that, it would have necessitated a great number of bilateral agreements and possibly a breaking up of the beneficial international arrangement.

Despite the withdrawal of the United States, the UN Human Rights Council remains in place. For all its failings and weaknesses, it constantly pushes recalcitrant countries to improve the human rights of vulnerable, stigmatized and disadvantaged people who would otherwise be left to suffer in silence. This writer has seen the way international civil society can sometimes organize the representation of those who would otherwise be voiceless in our world. In the General Assembly the global community, step by step, moves in the face of resistance towards a solution to the existential danger of nuclear catastrophe. So, in the General Assembly the world has proclaimed the *Sustainable Development Goals* to enhance objectives that, even if only partly fulfilled, would be likely to improve the lives of people who would otherwise not be helped and rarely be heard.

Also, in the General Assembly, a forum is sometimes provided to address another existential challenge to humanity, namely the *Framework Convention on Climate Change*. In the margins of the General Assembly discussion of the global epidemics of HIV/AIDS, malaria and tuberculosis, funding is still being raised and targeted towards the desperately sick and needy people who would otherwise needlessly die. More than 24 million people are currently in receipt of lifesaving antiretroviral therapy. This keeps these people alive and also at low risk of spreading the infection because their viral load is low and under control. That, in turn, reduces stigma against them.

Amongst the most vulnerable and stigmatized people in the world are those who fall into the categories of sexual minorities. These minorities can be defined by reference to the sexual orientation and gender identity of members (SOGI). If it were not for the United Nations, there would probably be few international champions to speak up for these minorities. This is a minority that includes the present writer.

In June 2016, a resolution of the UN Human Rights Council

93. Peter Navarro, *The Trump Guide to Diplomacy*, N.Y. TIMES (Oct. 15, 2019), <https://www.nytimes.com/2019/10/15/opinion/trump-universal-postal-union.html>.

provided for the appointment for an independent expert on SOGI for an initial period of three years, since extended. In the Council, the vote was a close one. Twenty-three of the member countries voted in favor, 18 voted against, and 6 abstained. Amongst the UN member states that voted in favor of the mandate there were some at the time that might have been thought to be unlikely or unreliable champions of human rights. Yet they included Bolivia, Cuba, Mongolia, Venezuela and Vietnam. Of the 18 countries that voted against the mandate, 11 have populations that are substantially Islamic. They formed, and still remain, vigorous critics on this issue.⁹⁴

In 2019, the mandate for the Independent Expert on SOGI fell to be renewed. This time the vote was more clear cut: 27 members of the Human Rights Council voted in favor; 12 voted against; and 7 abstained. Of the 12 opponents, all except one country had a substantial Islamic population. The one non-Islamic exception was China. It did not favor the mandate because it risked the Council's intruding into its "sovereign" rights.⁹⁵

To illustrate the determination of the opposition to this development concerning human rights following the creation of the mandate by the Human Rights Council in 2016, the decision was challenged in the General Assembly of the United Nations. The challenge was first raised in the Third Committee of the General Assembly where 84 states approved the mandate and 77 disapproved, with 17 abstentions.⁹⁶ Not content with that outcome the African group took the vote to the Fifth Committee of the General Assembly in order to challenge the budget for the mandate. That challenge was also rejected by 82 nations, but supported by 65, with 16 abstentions.⁹⁷ Had the abstentions voted with the opponents, the vote would have been almost exactly tied. On the same day, following the vote in the Fifth Committee of the General Assembly the proposed disallowance was tabled for decision in the plenary meeting of the General Assembly. The plenary vote was similar to the earlier votes, but with an increased plurality in favor of the ongoing work of the mandate.⁹⁸ These votes in the organs of the United Nations reached parallel outcomes in 2019. They show the general tendency of the world to move, slowly and cautiously but inexorably, in favor of outcomes that protect the

94. U.N. Human Rights Council, Resolution 32/2 (June 2016).

95. U.N. General Assembly, Dec. 23, 2016, U.N. Doc. A/C.5/71/L.19; GE (2016).

96. U.N. General Assembly, Sept. 27, 2016, U.N. Doc. A/C.3/71/1; GE (2016).

97. U.N. General Assembly, Dec. 23, 2016, U.N. Doc. A/C.5/71/L.19; GE (2016).

98. The UNGA Plenary Vote took place on December 23, 2016. There were 65 votes for the termination of the mandate; 82 votes for its continuance; and 16 votes abstaining.

vulnerable and reflect rational thought and scientific knowledge.⁹⁹ They do not support a conclusion that populist and isolationist attitudes are collecting an increasing number of committed supporters in the wider international community.

Some might still argue that these votes show that the attempted interference of international organs and officials in the religious, cultural and historical norms of countries holding other views who deeply resent pressure from others urging them to abandon long held values. However, the other interpretation is that these votes show that the global community continues to respond cautiously, but positively, to such challenges. It does so, even in the imperfect environment of United Nations votes. The world edges steadily forward towards a protection of minorities otherwise oppressed for being who they are.

It is instances like the majority acceptance of the mandate for the Independent Expert for the HRC on Sexual Orientation and Gender Identity that demonstrate the ongoing function of universal human rights and role of multilateral agencies and those who work within them. Not all outcomes in the United Nations or the wider world are favorable. Some are disappointing and unworthy of praise. Many are flawed and still need greater enlightenment. Yet the center continues to hold.

The COVID-19 pandemic is just the latest instance of how differences can arise over multilateralism and pushback can occur by particular nation states, based on perceived special interests and advantages. Reconciling the thrust and counter-thrust is an inevitable feature of multilateralism. It is not proof that multilateralism has failed. Often it is a demonstration that it is working in the world as it is.

The United Nations, as the epicenter of global multilateralism, remains a source of hope and a challenge for the future of humanity. Predictions of the demise of the new world order have proved misplaced. The arc of humanity continues to bend towards peace and security, universal human rights, justice and the rule of law. Hard-wired human rationality seems to be behind this persistent and beneficial inclination. Humanity will struggle to keep it so because multilateralism is a consequence of natural human appreciation, self-interest, modern technology and the empathy that tends to emphasize

99. Robert C. Blitt, *Leveraging Regional Human Rights Mechanisms Against Universal Human Rights – The OIC Permanent Human Rights Commissions Study on Sexual Orientation*, 60 WM. & MARY L. REV. 1, 42 (2018).

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and favor the commonalities in human existence over the forces that sometimes cause differences and divisions.