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UNITED NATIONS AT 75 AND THE CHALLENGES FACING INTERNATIONAL LAW

Ved Nanda*

The United Nations and multilateralism will be the focus of my remarks that follow.

On September 21, 2020, the Member States celebrated the seventy-fifth anniversary of the founding of the United Nations.¹ In the Declaration marking the occasion, world leaders recounted the achievements of the body, including catalyzing decolonization, promoting and protecting human rights, working to eradicate disease, helping mitigate dozens of conflicts, and saving lives through humanitarian action.² They also enumerated challenges the world faces, such as “growing inequality, poverty, hunger, armed conflicts, terrorism, insecurity, climate change, and pandemics.”³ These challenges, the Declaration said, are interconnected and can only be addressed through reinvigorated multilateralism, which, it emphasized, “is not an option but a necessity as we build back better for a more equal, more resilient and more sustainable world.”⁴

In his remarks at the General Assembly ceremony marking the anniversary, U.N. Secretary-General António Guterres

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¹ G.A. Res 75/1, Declaration on the Commemoration of the Seventy-Fifth Anniversary of the United Nations, ¶ 1 (Sept. 28, 2020).

² *Id.* ¶ 2.

³ *Id.* ¶ 4.

⁴ *Id.* ¶ 5.

spoke of the U.N.'s "historical accomplishments."⁵ After noting a tremendous achievement that "[n]ever in modern history have [there been] so many years without a military confrontation between the major powers," he cautioned that "[t]he COVID-19 pandemic has laid bare the world's fragilities."⁶ These challenges, he indicated, "can only [be] address[ed] together."⁷ The Secretary-General emphasized that today there is "a surplus of multilateral challenges and a deficit of multilateral solutions."⁸

Guterres called for a "networked multilateralism, in which the United Nations family, international financial institutions, regional organizations, trading blocs and others work together more closely and more effectively."⁹ He recalled the observation of the President of the General Assembly, that the world needs "an inclusive multilateralism, drawing on civil society, cities, businesses, local authorities and more and more on young people."¹⁰ Guterres lamented that, 25 years after the Beijing Platform, "gender inequality remains the greatest single challenge to human rights around the world."¹¹

Indeed, multilateralism has been the focal point of the deliberations celebrating the U.N.'s 75th anniversary.¹² The following paragraphs demonstrate some of the typical expressions of support from world leaders for this focus on multilateralism.

⁵ António Guterres, U.N. Secretary-General, Remarks at General Assembly Ceremony marking the 75th Anniversary of the United Nations (Sept. 21, 2020), <https://www.un.org/sg/en/content/sg/speeches/2020-09-21/remarks-general-assembly-ceremony-marking-the-75th-anniversary-of-the-united-nations>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² See Press Release, Secretary-General, Inclusive, Networked Multilateralism Vital for Better World Governance, Says Secretary-General, at General Assembly's Seventy-Fifth Anniversary Meeting, U.N. Press Release SG/SM/20264 (Sept. 21, 2020).

Russian President Vladimir Putin praised the U.N. as “ha[ving] ‘competently fulfilled its mission’ to protect peace and promote sustainable development[,]” while calling on the international community to strengthen cooperation on a range of pressing issues.¹³ Russia’s Foreign Minister, Sergey Lavrov, also addressing the General Assembly, said, “[T]here is no alternative to . . . step[ping] up collective efforts to find solutions to global issues with the UN playing its central coordinating role.”¹⁴

China’s President Xi Jinping noted that, since the founding of the U.N., there has been “a period of rapid development of multilateralism,” that “China will continue to be a true follower of multilateralism,” and “[t]o put into practice the principle of multilateralism, [there must be action], not just talk.”¹⁵ Subsequently, President Xi told the World Economic Forum at Davos, Switzerland:

The problems facing the world are intricate and complex. The way out of them is through upholding multilateralism and building a community with a shared future for mankind.

First, we should stay committed to openness and inclusiveness instead of closeness and exclusion. Multilateralism is about having international affairs addressed through consultation and the future of the world decided by everyone working together. . . . We cannot tackle common challenges in a divided world, and confrontation will lead us to a dead end.¹⁶

Also addressing the General Assembly, India’s Prime Minister

¹³ *Forgetting lesson of history ‘short-sighted’, Russia’s Putin says, calls for cooperation to tackle health challenges*, UN NEWS (Sept. 22, 2020), <https://news.un.org/en/story/2020/09/1073152>.

¹⁴ Sergey Lavrov, Foreign Minister, Ministry of Foreign Aff. of the Russ. Fed’n, Statement on Behalf of the CSTO Member States at the UN General Assembly High-Level Meeting to Commemorate the 75th Anniversary of the UN (Sept. 21, 2020).

¹⁵ Xi Jinping, President of China, Remarks at the High-Level Meeting to Commemorate the 75th Anniversary of the United Nations 2, 4–5 (Sept. 21, 2020).

¹⁶ Xi Jinping, President of China, Special Address at the World Economic Forum Virtual Event of Davos Agenda: Let the Torch of Multilateralism Light Up Humanity’s Way Forward (Jan. 21, 2021).

Narendra Modi asked, “[W]here is the United Nations in this joint fight against [COVID-19]? Where is its effective response?”¹⁷ He said that India is an outward-looking country, committed to multilateralism and fundamental philosophy, declaring that “we treat the whole world as one family.”¹⁸

However, former-U.S. President Donald Trump, in his annual address to the General Assembly, told other nations that putting their own citizens first is “a true basis for cooperation.”¹⁹ Trump had forsaken multilateralism as he conducted a transactional foreign policy, withdrawing from many international agreements and organizations and threatening to withdraw from others.²⁰ These include the Iran Nuclear Deal, the Paris climate accord, the WHO, UNESCO, the Open Skies Agreement and the Intermediate-Range Nuclear Forces Treaty with Russia, the Human Rights Council, the Global Compact on migration and refugees, and the Trans-Pacific Partnership, among others.²¹

In stark contrast, America’s current President, Joe Biden,

¹⁷ *UN reform is ‘the need of the hour’: India premier*, UN NEWS (Sept. 26, 2020), <https://news.un.org/en/story/2020/09/1073862>.

¹⁸ *Id.*

¹⁹ *US delivering ‘peace through strength’: President Trump tells UN*, UN NEWS (Sept. 22, 2020), <https://news.un.org/en/story/2020/09/1073002>.

²⁰ See Alex Pascal, *Against Washington’s ‘Great Power’ Obsession*, ATLANTIC (Sept. 23, 2019), <https://www.theatlantic.com/politics/archive/2019/09/multilateralism-nearly-dead-s-terrible-news/598615/>.

²¹ *Id.*; Kingston Reif & Shannon Bugos, *U.S. Completes Open Skies Treaty Withdrawal*, ARMS CONTROL ASS’N (Dec. 2020), <https://www.armscontrol.org/act/2020-12/news/us-completes-open-skies-treaty-withdrawal>; Thomas Adamson, *U.S. and Israel officially withdraw from UNESCO*, PBS (Jan. 1, 2019, 10:15 AM), <https://www.pbs.org/newshour/politics/u-s-and-israel-officially-withdraw-from-unesco>; Gardiner Harris, *Trump Administration Withdraws U.S. From U.N. Human Rights Council*, N.Y. TIMES (June 19, 2018), <https://www.nytimes.com/2018/06/19/us/politics/trump-israel-palestinians-human-rights.html>; Edward Alden, *Want to Reverse ‘America First’? Start by Rejoining the TPP*, WORLD POL. REV. (June 2, 2020), <https://www.worldpoliticsreview.com/articles/28804/want-to-reverse-america-first-start-by-rejoining-the-tpp>; Patrick Wintour, *Donald Trump pulls US out of UN global compact on migration*, GUARDIAN (Dec. 3, 2017, 10:03 AM), <https://www.theguardian.com/world/2017/dec/03/donald-trump-pulls-us-out-of-un-global-compact-on-migration>.

warmly embraced multilateralism, as illustrated by his words that “America was ‘back, ready to lead the world’ . . . mark[ing] a clear break from the ‘America first’ administration of [Mr.] Trump.”²² Later, President Biden repeated this in his first address at the annual Munich Security Conference, which occurred virtually before a global audience, declaring that “America is back, the transatlantic alliance is back[.]”²³ He noted the Iran Nuclear Deal as one of his to-do list items, among others, “that he said would require close cooperation between the U.S. and its Western allies.”²⁴

In his first call to the Secretary-General, President Biden’s Secretary of State, Antony J. Blinken, “underscored the U.S. commitment to multilateral cooperation and praised the United Nations’ role as the indispensable anchor of the multilateral system.”²⁵

In his welcome address to participants at a conference entitled “U.N. at 75: Effective Multilateralism and International Law,” Federal Foreign Minister of Germany, Heiko Maas, said that he and his French colleague, Jean-Yves LeDrian, had “set up an Alliance for Multilateralism to defend and strengthen the international order” which has grown to more than 70 countries that “share the belief that international law is the DNA of global order.”²⁶

Multilateralism and international law have indeed shaped and led the international order after World War II. Consider the initial creation of the United Nations and the International

²² Katrina Manson & Courtney Weaver, *America is back and ready to lead world, says Joe Biden*, FIN. TIMES (Nov. 24, 2020), <https://www.ft.com/content/e9f7fc88-7f08-43af-976c-9b164cf32ed8>.

²³ Aamer Madhani, *Biden declares ‘America is back’ in welcome words to allies*, AP NEWS (Feb. 19, 2021), <https://apnews.com/article/biden-foreign-policy-g7-summit-munich-cc10859afd0f542fd268c0a7ddcd9bb6>.

²⁴ *Id.*

²⁵ Press Release, Ned Price, Spokesperson, U.S. Dept. of State, Off. of Spokesperson, Secretary Blinken’s Call with UN Secretary-General Antonio Guterres (Feb. 11, 2021) (on file with U.S. Dept. of State press releases).

²⁶ Heiko Maas, Fed. Foreign Minister of Germany, Welcome Statement on the Occasion of the Conference “UN at 75: Effective Multilateralism and International Law” (Sep. 10, 2020).

Court of Justice, followed by the establishment of the International Bank for Reconstruction and Development (the World Bank), the International Monetary Fund, and the General Agreement on Tariffs and Trade (and later the World Trade Organization). So many institutions, international and regional, were subsequently created to address international needs—the Food and Agriculture Organization, the World Health Organization, ad hoc war crimes tribunals, and the International Criminal Court, institutions under the United Nations Convention on the Law of the Sea, as well as other regional banks, regional human rights commissions, and courts.

However, the world has dramatically changed in the last 75 years. So many new states have emerged with their own needs, priorities, preferences, and expressions of non-Western positions. The West no longer has the control nor the power over international events and activities, and there are growing social and economic inequalities between and among nations. Current trends toward populism, protectionism, extreme nationalism, and extreme ideologies leading to unilateralism are challenging both multilateralism and international law.²⁷

Most challenges international law faces today, however, are not that different from those it has always faced.²⁸ International law lacks adequate enforcement and implementation, which has

²⁷ For a more in-depth discussion and current examples to this point, see generally Jordi Bacaria, *Populism and its Impact on Multilateral Institutions and Economic Trade*, in CIDOB REPORT NO. 01, BARCELONA CTR. FOR INT'L AFFS. 19–21 (2017).

²⁸ See generally Jutta Brunnée, *Challenging International Law: What's New?*, OPINIOJURIS (Nov. 13, 2018), www.opiniojuris.org/2018/11/13/challenging-international-law-whats-new/ (analyzing current international law challenges in a historical, social and political context); Jutta Brunnée, *Keynote Speech Part III: Challenging International Law: What's New?*, OPINIOJURIS (Nov. 19, 2018), <https://www.opiniojuris.org/2018/11/19/keynote-speech-part-iii-challenging-international-law-whats-new/> (comparing challenges to international law over the last century with current challenges); Christian Marxsen, *Symposium: How "New" Are the Current Challenges to International Law?*, OPINIOJURIS (Nov. 14, 2018), <https://www.opiniojuris.org/2018/11/14/symposium-how-new-are-the-current-challenges-to-international-law/> (discussing present international law crises and their commonality with post-World War II international law).

been a perennial challenge. Teaching international law for over 50 years, I am invariably asked this question by my students, and often in the very first class: is this a product of the state-centric system going back to the 1648 Treaty of Westphalia? Generally, countries jealously guard their sovereignty and are unwilling to accept third-party dispute settlement mechanisms. International law has also struggled to find creative and effective responses to the threats of terrorism and that of nuclear weapons, increasing poverty, and climate change and the destruction of the environment. This is illustrated by the U.N.'s response in establishing the Millennium Development Goals, followed by the Sustainable Development Goals for the period of 2015–2030.²⁹

Article 2(4) of the U.N. Charter on the prohibition of the use of force³⁰ and Article 51 on self-defense³¹ are subject to various interpretations. Preemptive use of force, permitted under international law, is so broadly interpreted as to extend it to preventive use of force, although the latter, if accepted widely, could pose a grave challenge to international peace and security. To illustrate, President George W. Bush's 2002 National Security Strategy stated:

We will disrupt and destroy terrorist organizations by . . . defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country . . .³²

²⁹ See generally Ved P. Nanda, *The Journey from the Millennium Development Goals to the Sustainable Development Goals*, 44 *Denv. J. Int'l L. & Pol'y* 389 (2016), for further discussion on the U.N.'s shift from the Millennium Development Goals to the Sustainable Development Goals.

³⁰ U.N. Charter art. 2, ¶ 4.

³¹ *Id.* art 51.

³² GEORGE W. BUSH, *THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA* 6 (2002).

And as far back as 1970, Professor Thomas Franck had asked: “Who killed Article 2(4)?”³³ Specifically, Professor Franck opined:

Yet today the high-minded resolve of Article 2(4) mocks us from its grave. That the rules against the use of force should have had so short a life appears due to various factors. The rules, admirable in themselves, were seemingly predicated on a false assumption: that the wartime partnership of the Big Five would continue, providing the means for policing the peace under the aegis of the United Nations. They appeared to address themselves to preventing conventional military aggression at the very moment in history when new forms of attack were making obsolete all prior notions of war and peace strategy. And the Charter itself provided enough exceptions and ambiguities to open the rules to deadly erosion.³⁴

I will confine my remarks here to discuss briefly two selected topics: Security Council reform and, certainly a new challenge, cybersecurity.

With its current membership structure—five permanent members and ten rotating members without veto—the Security Council is not viewed as transparent or accountable; it suffers from democracy deficiency and its legitimacy is questioned.³⁵ It does not reflect current realities nor represent the world community and is thus unable to effectively address the challenges the world community is facing.³⁶ To be more representative it must at least have a member each from Africa and Latin America, along with Japan, Germany, and India.³⁷

Speaking at an informal plenary meeting of the General Assembly on Intergovernmental Negotiations on Security Council Reform, President Volkan Bozkir considered it crucial

³³ See generally Thomas M. Franck, *Who Killed Article 2(4)? or: Changing Norms Governing the Use of Force by States*, 64 AM. J. INT'L. L. 809 (1970).

³⁴ *Id.* at 809.

³⁵ U.N. GAOR, 73d Sess., 36th & 37th plen. mtgs., U.N. Doc. GA/12091 (Nov. 20, 2018).

³⁶ See *id.*

³⁷ See *id.*

that the Council reforms should “reflect the realities of the 21st Century” and be “consistent with the five clusters identified” by the General Assembly in its 2008 decision (Decision 62/557).³⁸ These clusters are: “categories of membership; the question of the veto; regional representation; size of an enlarged Security Council and its working methods; and relationship between the General Assembly and the Security Council.”³⁹ This message, he said, had “been repeated by Heads of State and Government during this year’s High Level General Debate.”⁴⁰

The Security Council is unresponsive even to act on atrocity crimes because of the use of the veto. To illustrate, Russia has used 16 vetoes to shield the Syrian regime from any action, despite the findings of several U.N. reports, as well as reports from credible human rights organizations, that Syrian military and security forces are continuing to commit atrocity crimes ever since the Syrian crisis began in the Spring of 2011.⁴¹

Should the Uniting for Peace mechanism, adopted by the General Assembly in November 1950, not be used in the event of atrocity crimes?⁴² Reaffirming “the duty of the permanent members to seek unanimity and to exercise restraint in the use of the veto,”⁴³ the core of the resolution, Part A, reads that the General Assembly:

³⁸ Volkan Bozkir, President of the 75th Session of the U.N. General Assembly, Statement at the Informal Meeting of the Plenary on the Intergovernmental Negotiations on the Question of Equitable Representation On and Increase in the Membership of the Security Council and Other Matters Related to the Council (Jan. 25, 2021) [hereinafter Bozkir Statement].

³⁹ *Security Council reforms must reflect 21st century realities, says UN Assembly President*, UN NEWS (Jan. 26, 2021), <https://news.un.org/en/story/2021/01/1082962>.

⁴⁰ Bozkir Statement, *supra* note 38.

⁴¹ *Russia, China veto aid to Syria via Turkey at U.N. Security Council*, NBC NEWS (July 10, 2020, 3:01 PM), <https://www.nbcnews.com/news/world/russia-china-veto-aid-syria-turkey-u-n-security-council-n1233465>.

⁴² See G.A. Res. 377 (V), at 10 (Nov. 3, 1950). For further discussion on this question, see generally Ved P. Nanda, *The Security Council Veto in the Context of Atrocity Crimes, Uniting for Peace and the Responsibility to Protect*, 52 CASE W. RESV. J. INT’L L. 119 (2020).

⁴³ G.A. Res. 377 (V), *supra* note 42, at 10.

Resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor. Such emergency special session shall be called if requested by the Security Council on the vote of any seven members, or by a majority of the Members of the United Nations⁴⁴

As to cybersecurity, in light of developments in information and communication technologies, it has become a matter of intense concern. At the United Nations, two groups have been working to study existing and potential threats in the sphere of information security and possible measures to address them: the Open-ended Working Group on Developments in the Field of Information and Telecommunications in the Context of International Security (OEWG) and the United Nations Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security (UNGGE).⁴⁵

The OEWG submitted a draft substantive report (zero draft) in January 2021.⁴⁶ The final substantive session of the UNGGE has been scheduled for May 2021.⁴⁷ Following these sessions, it

⁴⁴ *Id.* ¶ 1.

⁴⁵ See *Developments in the field of information and telecommunications in the context of international security*, UNITED NATIONS: OFF. FOR DISARMAMENT AFFS., <https://www.un.org/disarmament/ict-security/> (last visited Apr. 19, 2021).

⁴⁶ Zero Draft of the Open-ended Working Grp. Substantive Rep. on Developments in the Field of Information and Telecommunications in the Context of International Security, U.N. Doc. A/AC.290/2021/L.2 (Jan. 19, 2021).

⁴⁷ *Events – Overview of upcoming regional and global events related to cyber capacity building*, CYBIL <https://cybilportal.org/events/> (last visited Apr. 19, 2021).

is hoped that the Member States will discuss and formalize the international law applicable to cyber operations.⁴⁸

Ultimately, the world needs inclusive multilateralism that engages all stakeholders with international law and the United Nations at its center.

⁴⁸ For discussions on the developments and expansion of China's cybersecurity system, see Lindsey W. Ford, *Extending the long arm of the law: China's international law enforcement drive*, BROOKINGS: ORDER FROM CHAOS (Jan. 15, 2021), <https://www.brookings.edu/blog/order-from-chaos/2021/01/15/extending-the-long-arm-of-the-law-chinas-international-law-enforcement-drive/>; and Steve Dickinson, *China Cybersecurity: No Place to Hide*, HARRIS BRICKEN (Oct. 11, 2020), <https://harrisbricken.com/chinalawblog/china-cybersecurity-no-place-to-hide/#:~:text=Under%20the%20guidance%20of%20the,cybersecurity%20system%20with%20Chinese%20characteristics.&text=As%20the%20system%20is%20implemented,the%20eyes%20of%20the%20party.>