# *Gemeinschaft* as the Lynchpin of Multilateralism: World Order and the Challenge of Multipolarity

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## INTRODUCTION

The world we live in is undergoing substantial changes. The 'liberal world order'[1] that has shaped global politics for the past seventy years seems to be in terminal decline: the incumbent President of the United States wishes to abandon the pro-free trade, pro-multilateralism foreign policy that has governed American relations with the world since the end of World War I,[2] authoritarianism is on the rise globally, including in strategically important democracies such as Turkey,[3] and ambitious states such as Russia seem capable of defying the international legal rules on the use of force and the aggressive conquest of territory with impunity.[4] If this trend continues, the impact of these changes will be profound, with a significantly re-configured world the likely outcome. From a Western perspective in particular, the prospect of an alien and more dangerous world awaits.

This paper seeks to understand the impact of the ongoing shifts in global politics upon the operation of international law. Specifically, it examines how a re-configuration of global political power from a 'unipolar' system dominated by the US to a 'multipolar' system in which the US will need to share the apex of the international political power structure with rising

[1] G. John Ikenberry, "The Future of the Liberal World Order: Internationalisation After America", *Foreign Affairs* 90(3) (2011), 56-68
[2] Stewart Patrick, "Trump and World Order", *Foreign Affairs* 96(2) (2017), 52-57
[3] Garry Kasparov and Thor Halvorssen, "Why the Rise of Authoritarianism is a Global Catastrophe", *Washington Post*, 13 February 2017
[4] Steven Myers and Ellen Barry, "Putin Reclaims Crimea for Russia and Bitterly Denounces the West", *New York Times*, 18 March 2014

states will affect the operation and evolution of the international legal system, with a particular focus upon how the present architecture of institutional multilateralism will interact with and guide these developments. It will be argued that the alterations that the rising states wish to make to the present international order – a rejection of universalist projects associated with US hegemony and a re-entrenchment of Westphalian sovereignty – will prove difficult to realise in the present institutional structure, due to the operational logic of multilateralism. Furthermore, the tension that will arise between this normative project and the structural obstacles it faces will threaten the world's ability to tackle a series of collective action problems, the most problematic of which would be the maintenance of collective security. A multipolar world thus has the potential to be a much more unstable and chaotic world than any experienced since the end of World War II.

This paper is divided into five sections. First, the context for the discussion at hand will be established, through an introduction to the ongoing shift to multipolarity and the theoretical framework necessary to understand how this transition will impact the architecture and operation of international law. Second, a sketch of the proposed transformation the rising states wish to make to the international legal system, and how this transformation may look in practice, will be provided. Third, the tension that will arise from the interaction of this transformation with the existing structure of institutional multilateralism will be examined, focusing on the structural relationship of states to the multilateral order. Fourth, the issues regarding collective action problems arising from this tension will be discussed, with a particular focus on collective security. The final section will offer a brief glimpse of a more promising path the multipolar world can take instead of its current trajectory.

## ESTABLISHING THE CONTEXT: POWER SHIFTS IN INTERNATIONAL POLITICS & THE ONGOING SHIFT TO MULTIPOLARITY

### *The Shift from Unipolarity to Multipolarity*

Power transitions are a common historical feature of the international political system, occurring when the dynamic at the apex of the international political power structure alters such that a dominant actor enters a period of decline and/or other actors in the system experience significant increases in power and influence.[5] The current era is experiencing such a transition, from a system marked by the 'unipolar' hegemony of the US, which has dominated international politics since the collapse of the Soviet Union in 1991 (if not from the end of World War II in 1945),[6] to a 'multipolar' configuration in which the US and its Western allies must share the apex of the power structure with a number of rising states, most notably those states which form the loose alliance known as the 'BRICs' – Brazil, Russia, India and China.[7] As with historical examples, this power transition has its origins in significant changes in the distribution of material power among the world's leading states.[8]

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[5] Robert Gilpin, *War and Change in World Politics*, (Cambridge, 1981); Paul Kennedy, *The Rise and Fall of Great Powers: Economic Change and Military Conflict from 1500 to 2000*, (New York, 1987)

[6] G. John Ikenberry, *Liberal Leviathan: The Origins, Crisis, and Transformation of the American World Order*, (Princeton, 2011); Charles Kupchan, "The Normative Foundations of Hegemony and the Coming Challenge to Pax Americana", *Security Studies* 23(2) (2014) 219-257: 246-251

[7] Congyan Cai, "New Great Powers and International Law in the 21st Century", *European Journal of International Law* 24(3) (2013), 755-795; Matthew Stephens, "Rising Powers, Global Capitalism and Liberal Global Governance: A Historical Materialist Account of the BRICs Challenge", *European Journal of International Relations* 20(4) (2014), 912-938; William Burke-White, "Power Shifts in International Law: Structural Realignment and Substantive Pluralism", *Harvard International Law Journal* 56(1) (2015), 1-79. In 2010, South Africa was added to the grouping (such that it became 'BRICS') and has participated in each of the nine annual summits the group has held to date. However, the author has decided to exclude South Africa from the analysis presented in this paper, as it is likely to have a much smaller impact upon the future evolution of the international system than the other four states in the group; for example, South Africa's economy is orders of magnitude smaller than that of the other BRIC states, being over four times smaller by nominal GDP than that of the next smallest (Russia) and ranked only 33rd largest in the International Monetary Fund's World Economic Outlook Database, with the other four BRIC states ranked in the top 12: https://www.imf.org/external/pubs/ft/weo/2018/01/weodata/index.aspx.

[8] Burke-White, 'Power Shifts in International Law', 2.

*How International Political Power Affects the Architecture and Operation of International Law*

As this paper is concerned with the impact of this transition upon the architecture and operation of international law, it is necessary to briefly sketch how the international legal system interacts with the power structures of global politics. A useful conceptual framework for understanding this relationship begins with an acknowledgement of the fundamental structural indeterminacy under which international law operates, a phenomenon best captured by Martti Koskenniemi in his seminal text *From Apology to Utopia*.[9] Koskenniemi posited that argumentation in international law oscillates between two poles, the "apology" pole rooted in the concrete will of states and the "utopia" pole rooted in normative idealism, with any position in the law ultimately founded upon one pole and thus open to criticism from the other.[10] For Koskenniemi, this indeterminacy derives from the construction of the law upon the political theory of liberalism,[11] but whereas the apology-utopia dilemma is overcome in the domestic liberal state through the overwhelming power of the central government enabling it to project its particular conception of the 'utopia' through the constitutional order, in the international system this centralised power is absent and thus the process is replaced by contestation among the leading states, which seek to project their particular conceptions of the utopia in a struggle governed by the dynamics of the international political power structure and the limitations imposed by the architecture of the international legal system.

A system marked by unipolar hegemony is a particular configuration of this dynamic, in which one state possesses an overwhelming dominance of political power and consequently has the ability to profoundly shape the international legal system in a manner not dissimilar to

[9] Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument,* (Cambridge, 1989)
[10] Koskenniemi, *From Apology to Utopia,* 58-69
[11] Koskenniemi, *From Apology to Utopia,* 5-6

the control an imperial metropole possesses over its peripheral subjects.[12] Rather than engaging in formal empire-building, the US approach during its period of dominance has been to engage in a subtler form of imperial projection known as "liberal hegemony".[13] Under this approach, the US has underwritten the cost of providing public goods, most notably the multilateral system of law-making and institution-building centred upon the UN, in a process known as "hegemonic stabilisation"; the resulting system has facilitated the realisation of US objectives, through a significant reduction in transaction costs, without the need for excessive resort to direct coercion.[14] US control has been further bolstered through the "socialisation" of foreign elites to the system's core values, such as liberal democracy and free trade, in a mechanism designed to legitimise hegemonic rule.[15]

The order of institutional multilateralism that forms the foundation of the contemporary international legal system must thus be seen as a facet of US hegemony, with the system designed to maintain a particular status quo that accrues asymmetric benefits to the US and its ideologically-aligned allies in the West. The transition from unipolarity to multipolarity is thus likely to involve an increased contestation over the architecture and operation of the present multilateral order, as the rising states seek to re-balance the international system such that they accrue their fair share of benefits from the system. While this contestation (and resulting change in the architecture of the international legal system) is consistent with historical power transitions, it is the contention of this paper that the current shift to multipolarity will be different to previous transitions, in that it will occur within a structure of institutional multilateralism of a complexity unique to human history, and that this multilateral order will

[12] Kupchan, 'The Normative Foundations of Hegemony', 221-224
[13] Ikenberry, *Liberal Leviathan*, 66-75
[14] For a good overview of hegemonic stability theory, including its origins, primary claims and limitations, see Duncan Snidal, "The Limits of Hegemonic Stability Theory", *International Organization* 39(4) (1985), 579-614.
[15] G. John Ikenberry, and Charles Kupchan, "Socialization and Hegemonic Power", *International Organization* 44(3) (1990), 283-315

significantly restrict the scale and type of possible changes to the international system; moreover, the tension between the changes sought by the rising powers and the restrictions imposed by the system may cause a number of substantial challenges to emerge concerning the maintenance of world order.

*The Particular Nature of the Ongoing Transition*

In order to understand how the transition to multipolarity differs from historical examples, it is necessary to utilise a distinction made in the work of Paul Diehl and Charlotte Ku between the "operating system" of international law, i.e. the specific nature of the structural order it imposes upon international relations through its rules and institutions, and its "normative system", i.e. the values and norms that imbue this structure with its content.[16] As Diehl and Ku argue, the process of power transition in the international system forms part of an evolutionary trend in the system referred to as "punctuated equilibrium", in which long periods of stasis are interrupted by brief moments of substantial change, initiated by an exogenous shock such as a major war.[17] These moments of change are the legal manifestations of underlying power transitions, and usually involve substantial alterations to both the operating and normative systems.[18]

In contrast to this revolutionary approach to international legal change, the ongoing transition involves a slower and more peaceful process of change.[19] Due to its huge military and economic resources, the US (and to a lesser extent its allies in Europe) will remain a

[16] Paul Diehl and Charlotte Ku, *The Dynamics of International Law*, (Cambridge, 2010), 28-46
[17] Diehl and Ku, *The Dynamics of International Law*, 64-74
[18] Diehl and Ku, *The Dynamics of International Law*
[19] There is some contention in the literature whether such a peaceful transition is possible, in particular whether the US and China can escape what is referred to as the 'Thucydides trap' of inevitable warfare between a declining and a rising power: see e.g. Graham Allison, *Destined for War: Can American and China Escape Thucydides' Trap?*, (London, 2017); Barry Buzan, "China in International Society: Is 'Peaceful Rise' Possible?", *Chinese Journal of International Politics 3* (2010), 5-36

significant power in the new multipolar configuration, sharing power with the rising states rather than dominating as before. There also appears to be little appetite among the rising powers for significant changes in the predominant economic logic of globalised capitalism premised on free trade[20] (indeed, the most significant challenge to this aspect of global order is coming from the West itself, through the rise of nationalist and protectionist populism).[21] Of greater interest for this paper, there is also a marked support for institutional multilateralism among the rising powers, with the UN, despite all its flaws (perceived and actual), retaining a perceived legitimacy as a fulcrum of the multilateral order and a potential forum for the amelioration of the existing deficiencies in international political organisation.[22] In essence, it appears that the rising states do not wish to utilise the transition to multipolarity to effect any large-scale changes to the operating system of international law, but merely to re-balance the international order through a transformation of the normative system. The specific nature of the proposed transformation, and what it would amount to in practice, is examined in the next section.

## SKETCHING THE PROPOSED TRANSFORMATION OF THE NORMATIVE SYSTEM OF INTERNATIONAL LAW

[20] For evidence of the ongoing support of the Chinese government for globalisation and free trade, see e.g. Jamil Anderlini et al, "Xi Jinping Delivers Robust Defence of Globalisation at Davos", *Financial Times*, 17 January 2017

[21] As Owen Worth argues, the global financial crisis of the late 2000s shattered the normative hegemony of neoliberal capitalism, allowing space for ideological contestation to thrive: Owen Worth, "Globalisation and the 'Far-Right' Turn in International Affairs", *Irish Studies in International Affairs* 28 (2017), 19-28: 20-22.

[22] See e.g. the importance attached by the Chinese Ministry of Foreign Affairs to the existing principles and structures of international law in a 2014 document entitled "China, A Staunch Defender and Builder of the International Rule of Law", full text available at: *People's Daily*, "Full Text of Chinese FM's Signed Article on Int'l Rule of Law", 24 October 2014, http://en.people.cn/n/2014/1024/c90883-8799769.html. See also the importance placed upon the UN Charter framework by the BRIC states in the November 2011 UN Security Council debate on the 'Protection of Civilians in Armed Conflict' (a debate that occurred in the immediate aftermath of the controversial application of the Responsibility to Protect by NATO in Libya): UN Security Council, *Protection of Civilians in Armed Conflict*, 9 November 2011, S/PV.6550

From the current foreign-policy approaches of the rising powers and dominant strands of international relations scholarship in these states, it is possible to discern the likely alterations to the normative system of international law that will be pursued through the transition to multipolarity. The most notable contrast between the US/Western approach to international legal norms and that of the rising powers, and thus the most likely site of contestation concerning the future evolution of the normative system, concerns the normative content of sovereignty and how this principle relates to the general architecture of international law. Related to this, it is also possible to discern an increasing rejection of universalist projects associated with US hegemony, such as the spread of liberal democracy and human rights, in favour of a domestic self-determination grounded upon cultural particularism. The transition to multipolarity is thus likely to be marked by an (at least attempted) re-entrenchment of the classical 'Westphalian' variant of sovereignty.

This support for Westphalian sovereignty derives from a rejection of the role its erosion plays in the Western approach to international law. Hegemons are likely to seek to shape the existing legal infrastructure into a more hierarchical and flexible form (a process Nico Krisch refers to as the "legalization of inequality"),[23] and the US/Western approach in this regard has been to promote the increasing penetration of international law into the domestic jurisdiction of states, culminating in the concept of 'sovereignty as responsibility'.[24] Corresponding with this, sovereignty has received regular criticism from Western scholars for being an outdated

[23] Nico Krisch, "International Law in Times of Hegemony: Unequal Power and the Sharing of the International Legal Order", *European Journal of International Law* 16(3) (2005), 369-408: 389-400

[24] Under sovereignty as responsibility, the normative basis of sovereignty is shifted from "control" to "responsibility" (Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocities Once and For All*, (Washington, 2008)), such that states become "[accountable] to the domestic and external constituencies as interconnected principles of the international order (Francis Deng, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, 1996), 27). The concept reached its zenith in the Responsibility to Protect doctrine, which countenances a range of international actions in response to the commission of atrocity crimes, including military intervention as a last resort (UN General Assembly, *2005 World Summit Outcome Document*, 24 October 2005, A/RES/60/1, paras. 138-139; UN Security Council, *Security Council Resolution 1674 (2006)*, 28 April 2006).

and obstructive principle that is preventing the protection of individuals from the tyranny of their governments and the realisation of the values of the international community.[25]

It is unsurprising that sovereignty in its traditional form has been championed as one of the major bulwarks of resistance by those opposed to US hegemony. In terms of foreign-policy approaches of the rising powers, China has been most vocal in undertaking robust defences of sovereignty as a protector against Western 'imperialism'; a good representation of its position in this regard can be found in the 2014 governmental document entitled "China, A Staunch Defender and Builder of the International Rule of Law".[26] The document traces the historical origins of China's foreign policy to the "untold sufferings" imposed upon it by "colonialism and imperialism" in the 'century of humiliation' that succeeded the Opium Wars, a historical experience that taught "the Chinese people [to] fully recognize how valuable sovereignty, independence and peace are."[27] This historical perspective positions China as a defender of developing world interests against Western hegemony in the international legal sphere, with the document contending that "North-South inequality in the formulation and application of international rules remains salient," and that:

> "Hegemonism, power politics and all forms of 'new interventionism' pose a direct challenge to basic principles of international law including respect for sovereignty and territorial integrity and non-interference in other countries' internal affairs."[28]

As it becomes a world power that can challenge this hegemony, China's responsibilities are perceived to be a counterweight to imperialism and a force for a more just world:

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[25] See e.g. Louis Henkin, "That 'S' Word: Sovereignty, and Globalization, and Human Rights, Et Cetera", *Fordham Law Review* 68(1) (1999), 1-14
[26] *People's Daily*, 'China, A Staunch Defender'
[27] *People's Daily*, 'China, A Staunch Defender'
[28] *People's Daily*, 'China, A Staunch Defender'

> "As China grows stronger, it will make [a] greater contribution to the maintenance and promotion of international rule of law, as it works with other countries to build a fairer and more reasonable international political and economic order."[29]

Similar perspectives can be seen from the other BRIC states. The Russian perspective on multipolarity involves a foreign policy theory of the same name, which acts a conscious attempt to provide "an alternative vision of the world order that contests the imposition of liberal values"[30] and sees sovereignty as "the cornerstone of the international system and attempts to undermine it as disruptive of global order."[31] Xymena Kurowska argues that the Russian multipolarity approach:

> "contests the idea that increasing interdependence in the globalising world leads to ideological homogeneity synonymous with liberal democracy. It thus objects to the liberal 'end of history' which assigned the role of loser to Moscow and its socio-political model… What prevents the transition to a truly multipolar world order, the argument goes, is the continuing hegemony of international norms generated during the short-lived 'unipolar moment', i.e. the US' uncontested dominance in global affairs immediately after the end of the Cold War."[32]

The Indian foreign-policy approach shares a similar root with the Chinese outlook through its foundation in the 'Five Principles of Peaceful Co-Existence',[33] and Indian

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[29] *People's Daily*, 'China, A Staunch Defender'
[30] Xymena Kurowska, "Multipolarity as a Resistance to Liberal Norms: Russia's Position on the Responsibility to Protect", *Conflict, Security & Development* 14(4) (2014), 489-508: 489
[31] Kurowska, 'Multipolarity as a Resistance', 495
[32] Kurowska, 'Multipolarity as a Resistance'
[33] The five principles are: 1. Respect for territorial integrity and sovereignty; 2. Non-aggression; 3. Non-interference in a state's internal affairs; 4. Equality and co-operation for mutual benefit; 5. Peaceful co-existence. The principles emerged initially as a framing for diplomatic relations between India and China in the mid-20th century, before being generalised as the principles of the Non-Aligned Movement. For an overview of the history of the principles and an argument for their contemporary relevance, see e.g. Edward McWhinney, "The New Vitality of the International Law Principles of Peaceful Co-Existence in the Post-Iraq Invasion Era: The 50th Anniversary of the China/India Pancha Sila Agreement of 1954", *Chinese Journal of International Law* 3 (2004), 379-384. Some scholars have interpreted post-Cold War Indian foreign policy to have moved beyond its traditional rooting in the Five Principles (see e.g. Subrata Mitra and Jivanta Schottli, "The New Dynamics of

governments have consistently rejected the normative shift inherent in the sovereignty as responsibility concept, perceiving the responsibility of governments to operate internally to the citizenry through constitutionalism and democracy rather than externally to the international community.[34] While Brazilian foreign policy is less robustly pro-sovereignty than its BRIC counterparts, featuring an emphasis upon "non-indifference" to the suffering of peoples,[35] it was nonetheless very condemnatory of NATO's overreach in Libya in 2011, leading it to promote a 'Responsibility while Protecting' standard for international interventions that prioritised preventive diplomacy and advocated tighter legal restrictions on such actions.[36]

While there is some variance between them, it is nonetheless possible to perceive a clear preference among the BRIC states for a return to a more restrictive variant of sovereignty and a stronger role for the 'international rule of law'. This view is captured well in a 2009 Joint Statement released by the BRIC states, in which the states declared their support for "a more democratic and just multi-polar world order based on the international rule of law, mutual respect, cooperation, coordinated action and collective decision-making of all states," as well as expressing their "commitment to multilateral diplomacy with the United Nations playing the central role in dealing with challenges and threats."[37] It is also important to note that the logistics of a multipolar configuration will tend to push the evolution of the normative system away from universalist projects towards a narrower normative baseline, due to the difficulties of establishing consensus among multiple actors from diverse cultural traditions as opposed to

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Indian Foreign Policy and its Ambiguities", *Irish Studies in International Affairs* 18 (2007), 19-34: 30-34), but this understates the degree to which its legacy still frames the Indian approach to sovereignty-centred issues, such as the R2P doctrine and the International Criminal Court: see e.g. Madhan Jaganthan and Gerrit Kurtz, "Singing the Tune of Sovereignty? India and the Responsibility to Protect", *Conflict, Security and Development* 14(4) (2014), 461-487; David Fidler and Sumit Ganguly, "India and Eastphalia", *Indiana Journal of Global Legal Studies* 17(1) (2010), 147-164: 157-158.

[34] Jaganthan and Kurtz, "Singing the Tune of Sovereignty?", 473

[35] Paula Almeida, "From Non-Indifference to Responsibility While Protecting: Brazil's Diplomacy and the Search for Global Norms", *South African Institute of International Affairs* Occasional Paper No. 38 (2013), 6-7

[36] Annex to UN Security Council, *Letter Dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations Addressed to the Secretary-General*, 11 November 2011, S/2011/701

[37] UNSC, *Letter Dated 9 November 2011*

a lone hegemon supported by ideologically-aligned allies. The prospect for the multipolar world is thus a system of a less ambitious and more practical-oriented nature than the present system, in which the focus of the normative system will be upon the international rule of law, international consensus in decision-making, and the UN as the fulcrum of the institutional multilateral apparatus.

*One Possible Outcome: William Burke-White's Multi-Hub System with Variable Geometry*

An interesting vision of how such a multipolar system could operate has been provided by William Burke-White, who has predicted the emergence of a "multi-hub" system.[38] In Burke-White's conceptualisation, power will diffuse in the system not only across a number of states, but also through independently operating shifts in the economic, military and 'soft power' fields, as a result of asymmetries in the relative power and influence enjoyed by the leading states in these different fields,[39] i.e. the increase in military or economic power enjoyed by the rising states may not be matched by similar increases in soft power, due to the lack of a coherent normative vision to compete with the Western vision of liberal democracy.[40] Burke-White argues that the result of such a diffusion would be issue-specific asymmetries in power distribution across the spectrum of international politics and law, as different states take the lead on different issues; this would result in a system of "variable geometry" in which powerful states would dominate spheres of influence of both territorial and issue-specific natures.[41]

Offering a somewhat optimistic perspective of such an outcome, Burke-White predicts this structure would generate "soft competition" between the hubs on specific issues,[42] as well

[38] Burke-White, 'Power Shifts in International Law'
[39] Burke-White, 'Power Shifts in International Law', 14-33
[40] For an elaboration on this aspect of the multipolarity phenomenon, see e.g. Cai, 'New Great Powers', 764-765
[41] Burke-White, 'Power Shifts in International Law', 14-33
[42] Burke-White, 'Power Shifts in International Law', 29

as a decline in the strategic efficacy of coercion within the regional subsystems.[43] He does however concede that co-ordination problems of a global scale (such as climate change) would become increasingly difficult to solve,[44] and that the effective fragmentation of the international system into a series of regional subsystems could lead to increased fragmentation in the interpretation of international law as the 'hubs' favour different perspectives on contentious issues.[45] While this is an interesting vision of how a multipolar configuration could evolve within the restrictive structure of institutional multilateralism, Burke-White underplays the potential chaos and instability of such a system. In order to illustrate why, it is necessary to begin with an examination of how the existing operating system, based on institutional multilateralism, and the proposed normative system, premised on sovereignty and the international rule of law, would interact.

## REALISING THE NEW SOVEREIGN ORDER: IS MULTILATERALISM PARASITIC UPON SOVEREIGNTY?

While the proposed new configuration for the normative system theoretically offers an appealing basis for a more just and rules-oriented international system, the system is liable to face some significant practical challenges deriving from deficiencies in its construction. The problem at its core concerns the tension between the proposed normative shift towards a more robust sovereignty and the operational logic of institutional multilateralism, with two aspects to the problem to be discussed: first, the structural limitations placed upon sovereignty by multilateralism, both in terms of freedoms of action and what we might refer to as 'freedoms

[43] Burke-White, 'Power Shifts in International Law', 33
[44] Burke-White, 'Power Shifts in International Law', 38
[45] Burke-White, 'Power Shifts in International Law', 43-47

of omission'; second, the impact of the shift to multipolarity upon the collective action problems facing the world.

While the erosion of Westphalian sovereignty in the contemporary international system can be partly attributed to the universalist projects associated with US hegemony, it is important to recognise that it is not the sole cause. One of the primary causes of the decline in absolutist sovereignty is that it is unsustainable as a position within the operational logic of multilateralism; while initially constructed upon sovereignty as a foundational principle,[46] multilateralism is ultimately parasitic upon that very sovereignty, such that the erosion of sovereignty from its Westphalian peak should be understood to be an inevitable consequence of how the multilateral order evolves. This occurs both with regards to freedom of action, i.e. what states are permitted to do, and freedom of omission, i.e. what states are permitted to refrain from doing. The inevitable restrictions upon such freedoms generated by institutional multilateralism will now be discussed, the former with regards to the pooled sovereignty problem, and the latter with regards to the impact of 'structural norms'.

*Pooled Sovereignty*

The pooled sovereignty problem derives from the difference between how classical international legal theory, constructed upon the logic of bilateral relationships, understands the binding force of treaties, and how such treaties function in a system of institutional multilateralism. Under the classical conception, a state's ratification of a treaty and the consequential binding to the treaty's legal effects is understood to be an affirmation rather than a derogation of sovereignty, in what we can call the '*Wimbledon* model'.[47] This functions as

[46] Amitav Acharya, "Multilateralism, Sovereignty and Normative Change in World Politics", *Institute of Defence and Strategic Studies Singapore Working Paper* (2005), 4-11
[47] *S.S. Wimbledon (U.K. v. Japan)*, P.C.I.J. 17 August 1923, para. 35

an adequate expression of bilateral relationships because the state is consenting to be bound by the terms of the treaty as agreed, and there are mechanisms to escape the obligation if there is a fundamental change in what those terms mean in practice.[48] The state thus possesses a reasonable amount of control over the scope of its consent, and while states can disagree on interpretative matters, there is a limit to the extent to which one side can change the scope of the agreement.

The *Wimbledon* model however proves hopelessly inadequate when applied to multilateral treaties concerning the creation and operation of an organisation, such as the UN Charter. In this instance, states have 'pooled' their sovereignty into a central body, which operates with a certain degree of autonomy depending on the exact nature of the conferral of powers. Dan Sarooshi offers a taxonomy for such conferrals, which he divides into agency relationships, delegations, and transfers.[49] While agency relationships can fit comfortably into the *Wimbledon* model for understanding the sovereignty-treaty dynamic, the model is a poor descriptor of the latter two types on account of the state's loss of control. Under a transfer of sovereignty, the state bestows powers upon the international organisation over which it has no direct control, but has nonetheless consented to be bound by its decisions.[50] This loss of control can however also unintentionally arise from a delegation, which as Sarooshi argues can in effect become a transfer if "the conferring states have no direct control over the supranational organisation's exercise of those powers and if the organisation possesses the sole right to exercise them."[51]

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[48] This is the doctrine of *rebus sic stantibus*, in which treaties become in applicable because of a fundamental change in circumstances, codified in Article 69 of the Vienna Convention of the Law of Treaties (23 May 1969, 1155 UNTS 331)
[49] Dan Sarooshi, *International Organizations and Their Exercise of Sovereign Powers*, (Oxford, 2005), 29
[50] Sarooshi, *International Organizations*, 29-33
[51] Sarooshi, *International Organizations*, 66

These transfers of sovereignty are problematic for the *Wimbledon* model because a sufficiently autonomous organisation can effectively change the terms of the agreement through its practice, with the state having no real control (or even say) over this process and a limited (or in the case of the UN, seemingly no) ability to regain its sovereignty through withdrawal. Indeed, it is almost inevitable that an autonomous organisation existing for a sufficient length of time will evolve into something different to that conceptualised in its founding treaty. A good example of this phenomenon is the UN Security Council, which holds an enormous amount of legal power (including the right to authorise the use of force against a state,[52] even if the matter in question falls within its domestic jurisdiction),[53] whose power is wielded by only fifteen states (with five of those states having significantly more power), and whose operational scope is extremely broad and effectively self-interpreted,[54] a scope that in practice has expanded considerably.[55] While member states of the UN have formally pooled their sovereignty through the ratification of the UN Charter, to what extent can it be claimed that a state has meaningfully consented to its entire operation, if one of its constituent organs can act without any input or control from the state, in matters beyond the explicit scope of the agreed text, to the extent that it can even take military action against that very state? This issue

[52] United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Article 42
[53] UN Charter, Article 2(7)
[54] *Prosecutor v. Dusko Tadic*, 2 October 1995, ICTY, Appeals Chamber, *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction*, paras. 26-28
[55] On the expansion of the Council's power, see e.g. the incorporation of actions tackling "non-military sources of instability in the economic, social, humanitarian and ecological fields" within its mandate: UN Security Council, *Decision of 31 January 1992 (3046th Meeting): Statement by the President*, 31 January 1992

is further compounded by the fact that states most likely cannot withdraw from the UN,[56] and would potentially still be subject to Security Council action even if they could.[57]

This is not to argue that the actions of autonomous international organisations are somehow illegal or illegitimate, but merely to highlight that the *Wimbledon* model inadequately captures the realities of a modern international legal system grounded in institutional multilateralism. The point here is that there is a limit to the usefulness of classical terms such as "consent" and even "sovereignty" (at least as conceived in its Westphalian form) to understanding state freedom in the UN era. While states may reject the sovereignty as responsibility concept, it is to a certain degree merely a description of the form sovereignty must take in an institutional multilateral system in order for that multilateralism to function properly,[58] rather than a prescription about how sovereignty ought to be constructed. Instead of operating from the position that "restrictions upon states cannot be presumed,"[59] restrictions upon state freedom are a functional necessity in a multilateral order, insofar as the tension between state freedom and the requirements of that order (particularly regarding institutions with crucial functions such as the Security Council) must always be resolved in favour of the latter if one wishes for the order to endure. There is a point at which the balance between sovereign freedom and multilateral order becomes a zero-sum proposition, and to seek to re-entrench Westphalian sovereignty is to weaken multilateralism, which in a world facing a series

[56] There is no withdrawal clause in the UN Charter; while states could theoretically utilise *rebus sic stantibus* to withdraw, in practice the International Court of Justice has interpreted this rule in a very restrictive manner – the necessary changes that transform a treaty's core obligations must "imperil the existence or vital development of one of the parties": *Fisheries Jurisdiction (U.K. v. Ice.)*, I.C.J. 25 July 1974, para. 38. The only attempt to date of a state attempting to withdraw from the UN, undertaken by Indonesia in 1965, was for all intents and purposed ignored, with the Secretary-General recognising the move merely as "cessation of cooperation" until the state smoothly resumed its membership a number of months later: Henry Schermers, "International Organizations" in Mohammed Bedjaoui (ed.), *International Law: Achievements and Prospects*, (Paris, 1991), 84

[57] There is a degree of legal ambiguity as to whether the Security Council can authorise actions against non-member States: nothing contained in Articles 39, 41 and 42 of the UN Charter indicates that the actions authorised therein are limited to being taken against UN members only; additionally, Article 2(7) refers to 'any State' rather than 'any member State'.

[58] See e.g. Eyal Benvenisti, "Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders", *American Journal of International Law* 107(2) (2013), 295-333

[59] *S.S. Lotus (Fr. v. Turk.)*, P.C.I.J. 7 September 1927, para. 44

of significant collective action problems can be a dangerous choice to make. This point will be returned to after a discussion on the role of structural norms in a multilateral system.

*Structural Norms*

In addition to the restrictions upon state freedom to act, a multilateral system must also by functional necessity restrict a state's freedom to refrain from taking actions; a multilateral system by its very existence imposes a much greater range of duties upon states than under the classical 'bilateral' system.

Under the classical conception, states are free from all but that to which they have consented, either explicitly or implicitly,[60] with the binding force that generates obligations deriving from the principle of *pacta sunt servanda* ("agreements must be kept"). This rule can be understood to operate as a functional *Grundnorm* for the system, without which it could not operate as a legal system. Such norms are described using various nomenclature in the literature, such as 'fundamental principles' or 'systemic norms', but in this paper they will be referred to as 'structural norms'. Such norms form the skeleton upon which the operating system functions: as Schwarzenberger characterises them, they "can be eradicated from international law only at the price of destruction of international law itself."[61] In the classical structure, these norms are fairly limited in number, incorporating such principles as the sovereign state as the base unit, recognition, good faith and the rules governing the creation of customary international law.[62]

It is important to emphasise that even though structural norms exist as an administrative necessity for the operation of a legal system, this does not mean they are devoid of prescriptive

[60] As with the requirement for persistent objection to be exempted from a rule of customary international law.
[61] Georg Schwarzenberger, *The Fundamental Principles of International Law*, (The Hague, 1955), 326
[62] Alexander Orakhelashvili, *Peremptory Norms in International Law*, (Oxford, 2008), 45

content: they are concerned as much with the type of legal system to be constructed, as they are with the construction of a legal system *per se*. The sparse nature of the bilateral structure, on account of the positivistic emphasis on freedom and consent, somewhat disguises this prescriptive aspect by the extreme limitation on the number and type of structural norms utilised, but it is for example visible in the precise content of the *rebus sic stantibus* rule, the rules on customary international law, and perhaps most consequentially in the establishment of the state as the base unit: these represent collective choices about how the system will operate, eschewing alternative mechanisms and units for governing the system. The three highlighted examples are all concerned with systemic stability: *rebus sic stantibus* establishes an asymmetric relationship between treaty entry and exit, imbuing the binding force of the treaty with consequence, while nonetheless enabling states to exit agreements following a fundamental change of circumstances; the rules on customary international law permit and govern a mechanism for the evolution of legal rules in the absence of formal codification; and the state as the base unit facilitates clarity regarding territorial control or potentially clashing rights and obligations.

The number of structural norms in the classical bilateral structure is nonetheless quite small, as there is not a significant amount of public governance required in a system that functions on the basis of decentralised anarchy. The shift to institutional multilateralism, however, changes the operational logic of the system through the emergence of a vastly expanded public space, represented institutionally by international organisations and in a conceptual manner by the notion of the 'international community', an entity with interests distinct from those of individual states.[63] The maintenance of this expanded public space requires a commensurate expansion in structural norms, particularly those which perform the

[63] For a useful overview of the literature concerning the 'international community' as a legal concept, see e.g. Gleider Hernandez, "A Reluctant Guardian: The International Court of Justice and the Concept of 'International Community'", *British Yearbook of International Law* 83(1) (2013), 13-60: 19-27

prescriptive function discussed above. Crucially, these new structural norms require adherence from the states that operate within the multilateral order, similarly as for example the rules of customary international law must be obeyed by states in recognising the emergence of new custom. These norms, through their prescriptive aspect, thus generate a much more expansive set of obligations for states than exist under the classical bilateral structure.

It is for this reason probably not a coincidence that concepts such as *jus cogens* norms, from which no derogation is permitted regardless of state consent,[64] and *erga omnes* obligations, which are owed to the international community as a whole,[65] emerged as recognised components of international law only in the UN era. Alexander Orakhelashvili characterises these as "public order norms," a concept borrowed from domestic public law, whose function is to "operate a public order protecting the legal system from incompatible laws, acts and transactions;"[66] it is in essence to maintain the internal stability of the system by providing a minimum moral content, without which the system would be liable to lose its social cohesion. While Orakhelashvili distinguishes between public order norms and structural norms, as he argues they perform different functions in the legal system,[67] this distinction ignores the aforementioned prescriptive content of structural norms and downplays the fact that the purpose of 'values' and moral content in social systems is to regulate behaviour such that the structure of society is maintained; by perceiving public order norms and structural norms as two facets of the same phenomenon, namely social cohesion, we can understand their systemic role and thus their indispensability in the multilateral order.

Maintenance of these indispensable norms is thus a functional necessity of the multilateral system, and consequently the system must restrict the freedom of omission of states

[64] VCLT, Article 53
[65] *Erga omnes* obligations were first recognised in the *Barcelona Traction* case in 1970: *(Belgium v Spain)*, ICJ 1970, para. 3
[66] Orakhelashvili, *Peremptory Norms*, 10
[67] Orakhelashvili, *Peremptory Norms*, 44-48

such that the norms are upheld; there is an imposition upon states to take positive actions to maintain the system. Any sufficiently robust assertion of sovereignty is liable to enter into a zero-sum tension with the duty to maintain these norms, just as with the aforementioned restrictions imposed by the pooled sovereignty problem. This constraint upon sovereignty means that the proposed transformation to the normative system is liable either to fail to break the chains imposed by multilateralism, or to weaken the multilateral order; neither of these is a desirable outcome.

The maintenance of collective security, as the counterpart to the *jus cogens* norm concerning the prohibition on the use of force, is one such structural norm that should be understood to generate an obligation upon all states; its importance as a structural norm, and moreover the importance of the obligations it generates in the context of its status as a collective action problem, will now be discussed.

## THE PROBLEM MANIFESTED: THE SPECTRE OF COLLECTIVE ACTION PROBLEMS

The tension between the normative vision projected by the rising states and the structural restrictions imposed upon sovereignty by the operational logic of institutional multilateralism is an irreducible one, and has the potential to damage the perception of multilateralism as a desirable ordering principle for international society. If the attempt to re-entrench Westphalian sovereignty and regain the ostensibly lost freedoms fails because the constraints of multilateralism cannot in actuality be loosened, multilateralism may experience a backlash through the frustration of an impotent sovereignty; if the attempt to re-entrench Westphalian sovereignty succeeds, the functioning of the multilateral system may break down, and such a dysfunctional system will likely be the subject of disdain.

The reason such a failure of multilateralism would matter is because it would significantly complicate efforts to tackle the collective action problems that currently face humanity, of which three are of paramount importance: climate change, transnational terrorism, and collective security. By their very nature, collective action problems require effective co-ordination and collaboration in order to be solved, qualities that are much easier to realise in a multilateral structure than under a wholly consent-based arrangement. As Nico Krisch argues, the traditional "consent-based structure presents a structural bias against effective action on global public goods,"[68] due to the high cost of producing such goods and their non-excludable character providing a substantial incentive for free-riding.[69] While the provision of a global public good does not in every instance amount to a collective action problem, with for example what Krisch refers to as "single-best effort goods" capable of being provided by a single actor,[70] most global public goods in a multipolar configuration comprise either "aggregate-effort goods" or "weakest-link goods", each of which are somewhat problematic to provide in a consensual structure.[71]

This is so because the absence of a hegemon in a multipolar configuration means it lacks the 'benevolent despot' to incur the bulk of the cost of supplying public goods (per hegemonic stability theory), nor can such a hegemon incentivise weaker states to contribute towards the cost of provision through either persuasion or coercion. The provision of public goods must thus become a collaborative effort, with costs distributed among multiple states. The transition to multipolarity will thus make it more difficult to successfully tackle climate change (an aggregate-effort good) and transnational terrorism (a weakest-link good). However, the most profound and disturbing impact of multipolarity in this regard concerns the provision

[68] Nico Krisch, "The Decay of Consent: International Law in the Age of Global Public Goods", *American Journal of International Law* 108(1) (2014), 1-40: 4
[69] Krisch, 'The Decay of Consent', 3
[70] Krisch, 'The Decay of Consent', 4
[71] Krisch, 'The Decay of Consent'

of collective security. Under a unipolar system, the maintenance of collective security can operate as a single-best-effort good, with the hegemon capable of underwriting the cost of maintaining international peace through the deterrence of its overwhelming military superiority. The most prominent example of this phenomenon under US hegemony was the action taken in the first Gulf War in 1990-91, in which Iraq was punished for its invasion of neighbouring Kuwait and swiftly defeated.[72] Without a hegemon to incur this cost, the maintenance of collective security shifts from being a single-best-effort good to being an aggregate-effort good, with all the major powers required to contribute to its maintenance; this would be particularly the case in a system that moved towards a regionalised form, such as Burke-White's multi-hub system.

With the provision of collective security becoming an aggregate-effort good, the importance of co-ordination and collaboration among the major powers would increase inordinately, and in particular institutionalised fora designed to facilitate such co-operation, such as the Security Council, would become far more prominent and important than under a unipolar system. In essence, the Security Council would be required to perform a role more closely aligned with the literal wording of its mandate, to "maintain or restore international peace and security".[73] Whether the Council would be fit to meet such a requirement is quite uncertain.

*The UN Security Council: League of Nations Redux?*

The Security Council is the second iteration of attempts to create an institutionalised collective security mechanism for the world, and its structure is designed to overcome the shortcomings

[72] UN Security Council, *Security Council resolution 678 [1990] [Iraq-Kuwait]*, 29 November 1990
[73] UN Charter, Article 39

of the first, the League of Nations. The League structure was an attempt at "peace through law"[74] through a regulation of warfare, in which Members gave a commitment to engage in dispute settlement procedures before recourse to war[75] and promised to respond to an illegal war of aggression through collective action.[76] The League failed in its task because, as Louis Henkin argues, it relied upon a horizontal system of enforcement, in which the task of punishing violations of the collective peace was outsourced in a diffuse matter to all the states of the League; it was thus easy for individual states to eschew responsibility when the moment to act arrived.[77]

Similarly, Thomas Franck has identified the shortcoming in the League structure to be "the absence of institutional machinery for deciding when a violation had occurred and for mobilising community-wide resistance to a violator."[78] The Security Council, as an executive organ which could formally identify a violation and thus mobilise the community to act, was an attempt to overcome this deficiency. However, it is not clear if the Council's structure in actuality enables it to identify violations in all (or even the most serious) cases, or to sufficiently mobilise the international community to take action.

With regards to the formal identification of a violation, a potential obstacle presents itself in the form of the veto power held by the Permanent 5.[79] It must be acknowledged that the veto is a conscious attempt to solve another problem the League system faced, namely the inability to obtain or retain the support of all the major powers. The veto provides a buy-in for the P5 to the system, by ensuring that the Security Council cannot act against its interests; in

[74] Robert Delahunty and John Yoo, "Peace Through Law? The Failure of a Noble Experiment" *Michigan Law Review* 106 (2007), 923-940
[75] *Covenant of the League of Nations*, Paris, 28 April 1919, Article 15
[76] League Covenant, Articles 10 and 16
[77] Louis Henkin, *International Law: Politics and Values*, (Dordrecht, 1995), 210-213
[78] Thomas Franck, *Fairness in International Law and Institutions*, (Oxford, 1995), 257
[79] UN Charter, Article 27

this regard, it is a "necessary concession to the reality of international life."[80] However, the veto system allows the P5 to bring the Council to deadlock by preventing the adoption of a Resolution. While this is an immensely frustrating event when it occurs in the context of a civil war or humanitarian crisis,[81] such frustration would pale in comparison to the problem a veto would pose in the context of a literal threat to 'international peace and security', especially if the source of the threat emanated from one of P5 themselves. In such a situation, no formal identification of a violation would occur, and the task of punishing a violation of the peace would be outsourced to the general body of states in a diffuse manner, as with the League system.

As regards to mobilising resistance against a violator, two additional problems present themselves. First, the Council's composition, representing an anachronistic understanding of the distribution of global power, could if left unreformed lead it to suffer from a legitimacy deficit in the medium- to long-term, as it could be prone to accusations of imposing a predominantly Western imperialist structure upon the international system; in a crisis situation, such a legitimacy deficit could stifle efforts to rally global support to tackle a threat to the peace. Second, and more importantly, the Council remains in a position where enforcement of its Resolutions involving military force requires the assembly of an *ad hoc* arrangement of forces supplied from states. While the Charter system provides for a kind of quasi-permanent military force for the Council provided from the armed forces of member states,[82] in practice Council-authorised forces continue to be assembled voluntarily for each instance of action. It thus remains the case that states must be willing to assume the costs of enforcing Council

[80] Noel Dorr, "A New World Order? The Role of the United Nations in the International System", *Irish Studies in International Affairs* 15 (2004), 35-56: 42

[81] Such as the ongoing Syrian civil war, for which the Council has been unable to undertake any robust action on account of a series of vetoes from Russia and China: Sean Butler, "'To Unite Our Strength to Maintain International Peace and Security': The International Response to the Syrian Civil War & the Global Discourse on State Sovereignty", *Irish Yearbook of International Law* 9 (2016), 7-24: 10-17

[82] UN Charter, Article 43

Resolutions on an ongoing basis. While the institutional machinery that Franck saw absent in the League structure does now exist, the system remains at its heart one of horizontal enforcement.

These issues are of concern here because a multipolar configuration is likely to be a more unstable environment than a unipolar configuration, on account of the competition between actors for dominance and relative status in a fluid environment increasing the dynamicity of the system. While Burke-White may be correct in predicting a reduction in coercion within each regional hub, this is likely to be replaced by an increase in force projection in the inter-hub environment as powerful states jostle to increase their respective spheres of influence. The future multipolar configuration could be prone to the types of proxy conflicts, in areas where spheres of influence overlap or interests clash, that marked the Cold War.[83] The present conflict in Syria could thus represent the future trajectory of international politics, with major powers using civil wars and areas of instability as arenas in which to compete for influence and dominance.[84] To prevent such conflicts from escalating into a full-scale war between two or more of the major powers, the Council would need to be fit and able to discharge its mandate; what is worrisome in this regard is that the Council has never faced a robust test of whether in actuality its collective security system is an improvement upon the League structure.

In this regard, the 2014 annexation of Crimea by Russia could represent a harbinger of future challenges, in that it demonstrated the flaws of the UN collective security system. While the prohibitions against the use of force and the acquisition of territory through conquest are vital structural norms of the present multilateral order, little action (beyond a series of unilateral

[83] Indeed, the sites of such overlaps and clashes would be much greater in a multipolar system than under the bipolar configuration of the Cold War.
[84] An examination of the Syria conflict as proxy conflict from the US perspective can be found in Seyed Hashemi and Mostafa Sahrapeyma, "Proxy War and US's Smart-Power Strategy (The Case of Syria 2011-2016)", *The Quarterly Journal of Political Studies of Islamic World* 6(4) (2018), 83-101

economic sanctions) was taken in response to Russia's actions in Crimea. The General Assembly passed a Resolution condemning the annexation,[85] but the Security Council could not do likewise because of a Russian veto.[86] Even action outside the Council framework was extremely limited: the US was unwilling to assume the cost of punishing the violation militarily, choosing instead (along with the majority of the Western world) to pursue economic sanctions. The ultimate consequence of this has been that Crimea remains in *de facto* Russian control at the present date.

## CONCLUDING THOUGHTS: COULD "MORAL SELF-BINDING" SAVE THE WORLD FROM MULTIPOLARITY?

As this article has explored, the future prospects for global order are in a more precarious state than is commonly accepted. In the absence of US hegemony as a binding force, both in terms of its central normative project promoting democracy, human rights and free trade, and its physical capacity to underwrite the cost of providing global public goods, the world faces a series of collective action problems that offer a significant threat to world order. The demise of US power has exposed to view a number of latent deficiencies in the contemporary structure of institutional multilateralism, most notably the dissensus over the normative content of sovereignty among the states at the apex of the international political power structure, and the shortcomings in the design of the UN collective security architecture; as these deficiencies play a more central role in the coming years, sustaining the relatively peaceful international environment enjoyed since 1945 becomes an increasingly precarious proposition.

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[85] UN General Assembly, *Territorial Integrity of Ukraine,* A/RES/68/262, 27 March 2014

[86] UN Security Council, *Letter Dated 28 February 2014 from the Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council (S/2014/136),* 15 March 2014, S/PV.7138, 3. The draft Resolution (S/2014/189) was sponsored by 42 countries, including France, the UK and the US. China abstained on the motion, arguing that "a resolution at this juncture will only lead to confrontation and further complicate the situation": 8

Rather than accept this bleak vision of world order under multipolarity, I would like to conclude this article with a vision of possible hope for the future. If the present operating system of international law is to be retained in the coming era, and the proposed transformation to the normative system supported by the rising states is likely to expose and exacerbate the flaws in this operating system due to the irreducible tension between Westphalian sovereignty and the operational logic of institutional multilateralism, then a new strategy is needed. One possible (if somewhat nebulous) path away from the dystopian world described here would be to adopt a new normative system, one more able to overcome the flaws in the operating system. Such a system would need to retain the strengths of the normative vision that underpinned US hegemony and facilitated the construction of the complex multilateral order, but would need to escape its shortcomings, namely its association with an imperialism that projected particularist Western values as if they were universal truths.

In essence, the challenge is to construct a true 'international community', one in which the cultural diversity of humanity is better represented than the current iteration. This is a conceptual challenge, in which a conscious effort must be made to construct a *Gemeinschaft*, or a community based around a shared normative vision, rather than a *Gesellschaft*, a society constructed around mutual interests but with no widespread or enduring shared vision, the type of order that would emerge from the proposed re-entrenchment of sovereignty.[87] The necessity of building this *Gemeinschaft* derives from the fact that, despite sovereign freedom and consent eroding as a consequence of the operational logic of multilateralism, in a practical sense state consent remains a logical imperative for the proper functioning of the system, due to the lack of a strong centralised executive power to coerce actors into doing what is necessary; the system in essence remains rooted in a form of voluntary participation. In order for states to be

[87] The concepts of *Gemeinschaft* and *Gesellschaft* derive from the work of sociologist Ferdinand Tönnies (*Fundamental Concepts of Sociology (Gemeinschaft and Gesellschaft)*, (New York, 1940)(translation by Charles Loomis))

willing to submit to the necessities and restrictions of the multilateral structure, a communal binding force is necessary. A shared normative vision would provide such a binding force through, in the parlance of Robert Keohane, increasing the perception of "empathic interdependence" between actors in the system.[88] The participants in this community become willing to obey rules they understand as moral obligations rather in terms of immediate self-interest, both as regards their self-perceptions and their considerations of others as trustworthy colleagues,[89] and this perception builds a virtuous circle that facilitates the support for agreements that would be considered "unbalanced" under a naked self-interest calculus.[90]

This is particularly true with regards to the requirement for an aggregate contribution for the maintenance of collective security. As Jurgen Habermas argued, in analysing Kant's idea of 'Perpetual Peace', the key to an enduring peace is to produce a sense of "moral self-binding" in governments so that they "must feel obligated to subordinate their own *raison d'etat* to the [goal of peace]";[91] without this, the peace "would remain hostage to an unstable constellation of interests that is likely to degenerate and fall apart."[92] Consequently, while some scholars such as Dani Rodrik believe cultural differences between peoples will ultimately prevent a genuine *Gemeinschaft* emerging,[93] I am of the opinion that we cannot afford to fail. In the absence of a radical overhaul of the international legal operating system, an endeavour that itself would be fraught with the possibly catastrophic consequences of failure or error, the deficiencies that the transition to multipolarity has exposed can only be counterbalanced by a

[88] Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy*, (Princeton, 1984), 120-125
[89] Keohane, *After Hegemony*, 126-127
[90] Keohane, *After Hegemony*, 127-131
[91] Jurgen Habermas, "Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years' Hindsight", in James Bohman and Matthias Lutz-Bachmann (eds.), *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal*, (Cambridge, 1997), 113-153: 117-118
[92] Habermas, 'Kant's Idea of Perpetual Peace', 117
[93] Dani Rodrik, *The Globalisation Paradox*, (Oxford, 2011), 207-232

properly functional normative system, and in a multipolar and hegemon-free world only a truly communal normative vision will suffice.