

COUNTERNORMATIVITY AND THE INTERNATIONAL ORDER

DAN E. STIGALL*

I. INTRODUCTION

“We were used to an international order that had been based on Western hegemony since the 18th century Things change.”¹

We stand at a crossroads for the future of the international order and the nation state. The contemporary international order, of course, is structured by nation states—each of which is (at least in theory) the supreme political authority within its own territory and able to independently exercise its functions free from the interference of any other state.² Nation states dominate both the domestic and international legal planes, acting as “the primary actors responsible for making and implementing international rules and policies.”³ Moreover, according to the principle of sovereign equality, nation states are technically considered coequals on the international plane.⁴ No country stands above the rest—at least not in a technical legal sense. This acknowledged power to operate with primacy within one’s borders and free from external interference is generally referred to as sovereignty, and it is a defining feature

* Dan E. Stigall is an attorney with the National Security Division of the U.S. Department of Justice (DOJ). LL.M. 2009, The George Washington University; J.D. 2000, Louisiana State University.

1. Tobias Bunde et al., *Westlessness*, 6 MUNICH SEC. REP. 1, 7 (2020), https://securityconference.org/assets/user_upload/MunichSecurityReport2020.pdf [<https://perma.cc/6M67-H73K>] (quoting Emmanuel Macron, President of Fr., Speech at the Annual Ambassador’s Conference (Aug. 27, 2019) (transcript available at *President Sets Out French Foreign Policy Goals*, FR. IN THE U.K. (Aug. 1, 2020), <https://uk.ambafrance.org/President-sets-out-French-foreign-policy-goals> [<https://perma.cc/NHW7-PESR>])).

2. See DAVID J. LUBAN ET AL., INTERNATIONAL AND TRANSNATIONAL CRIMINAL LAW 31 (Barkow et al. eds., 3d ed. 2019).

3. Mette Eilstrup-Sangiovanni & Stephanie C. Hofmann, *Of the Contemporary Global Order, Crisis, and Change*, 27 J. EUR. PUB. POL’Y, 1077, 1078 (2020) (citing J. Samuel Barkin & Bruce Cronin, *The State and the Nation: Changing Norms and the Rules of Sovereignty in International Relations*, 48 INT’L ORG. 107, 107–30 (1994)).

4. See Hans Kelsen, *The Principle of Sovereign Equality of States as a Basis for International Organization*, 53 YALE L.J. 207, 207–09 (1944).

of the modern nation state.⁵ The concept of a nation state, like the notion of sovereignty, however, has changed over the years.⁶ Just as living organisms evolve in response to external factors,⁷ nation states respond to the dynamics of the international order. In that regard, the trajectory of world affairs has arced toward a progressively more liberal world order characterized by open markets, capitalism, security cooperation, and the spread of liberal democracy.⁸ The aspirational objective of this liberal trend is a world that is “open, multilateral, and rules-based,”⁹ and which seeks to foster “liberal democracies that protect human rights and that implement neoliberal economic policies.”¹⁰

This trend has shaped the way in which contemporary nation states interact and function which has led to new understandings of sovereignty. The evolutionary trend over the past several decades—marked by developments such as international human rights, the ascendance of international justice mechanisms, and the legitimization of humanitarian intervention based on the “responsibility to protect” (R2P)¹¹—has led to an understanding of sovereignty that is less absolute, more relative, and increasingly steered by international norms and liberal expectations. In describing the ultimate objective of this progression, commentators have noted that “[a] legitimate state must increasingly be understood through the language of democracy and human rights. Legitimate authority has become linked, in moral and legal terms, with the maintenance of human rights values and democratic standards.”¹² Otherwise stated,

5. Joseph Raz, *Human Rights in the Emerging World Order*, 1 *TRANSNAT'L LEGAL THEORY* 31, 42 (2010) (“The ability of states to block interference in their internal affairs, to deny that they are responsible in certain ways to account for their conduct to outside actors and bodies, is what traditionally conceived state sovereignty consists in.”); Kelsen, *supra* note 4, at 207 (indicating that sovereignty is a “recognized characteristic[] of the States as subjects of international law”).

6. See LUBAN ET AL., *supra* note 2, at 31, 41.

7. See JOHN N. THOMPSON, *THE GEOGRAPHIC MOSAIC OF COEVOLUTION* 4–6 (2005).

8. G. John Ikenberry, *Power and Liberal Order: America's Postwar World Order in Transition*, 5 *INT'L RELS. ASIA-PAC.* 133, 133, 137 (2005); see also Bunde et al., *supra* note 1, at 6 (“The ‘West’ has never been a monolithic concept but rather an amalgam of different traditions, the mix of which changed over time. Yet, for the past decades, the answer to the question what it was that kept the West together was straightforward: a commitment to liberal democracy and human rights, to a market-based economy, and to international cooperation in international institutions.”).

9. Mohamed S. Helal, *The Crisis of World Order and the Constitutive Regime of the International System*, 46 *FLA. ST. U. L. REV.* 569, 571–72 (2019).

10. *Id.* at 580.

11. See Hans Kundnani, *What Is the Liberal International Order?*, 17 *GERMAN MARSHAL FUND POL'Y ESSAYS* 1, 3, 6 (2017), https://www.gmfus.org/sites/default/files/What%2520is%2520the%2520Liberal%2520International%2520Order_Project%2520edited.pdf [<https://perma.cc/9UMZ-Q9VE>].

12. Girik Bhalla & Sameeksha Chowla, *Sovereignty in the Modern Context: How Far Have We Come?*, 2 *J. INT'L RELS. & FOREIGN POL'Y* 147, 162 (June 2014).

classical sovereignty, which theoretically denotes “the absolute, exclusive, and final authority,” has given way to a new or “post-classical sovereignty” which is more limited, contingent, and constrained by a range of international and even potentially supranational forces.¹³

Not all countries, however, have had equal ability to shape world affairs. History demonstrates that the world order has primarily been directed by a small group of countries—a dominant core group—that has generally shared a common view of how international affairs should be structured and how players on the international stage should behave. History also demonstrates that the cohesive arrangements that have defined respective world orders tend to disintegrate when that dominant core group becomes too ideologically dissonant.¹⁴ What follows is generally chaos and retrenchment. This Article notes the trend toward ideological dissonance in the current international order—one which portends a regression to a retrograde system of sovereigns that are less constrained by international norms and less committed to the values of the liberal international order. This is due to a political and ideological misalignment among the major powers now exacerbated by a distinctly Sino-Russian counter-normativity effort that is focused on undermining many of the rules that define the current international order and accelerating changes in global power dynamics. This Article demonstrates that the shifting power arrangements among modern nation states herald an era that will be less democratic, less open, and fraught by the increasing risk of interstate conflict. This Article further describes the changes that are now underway and posits that the responsibility for the defense of the liberal international order must now be aggressively undertaken by a wider group of liberal democracies.

II. THE WORLD ORDER IN AN ERA OF GEOSTRATEGIC CHANGE

The world order as we know it was largely shaped by the United States. The end of Cold War ushered in an era of unchallenged U.S. predominance, described by G. John Ikenberry as “the age of American unipolarity.”¹⁵ During this time, the United States stood as the hegemonic guardian of a liberal world order defined by “open markets, international institutions, cooperative security democratic community, progressive change, collective problem solving, shared

13. Timothy Zick, *Are the States Sovereign?*, 83 WASH. U. L.Q. 229, 261, 264–65 (2005).

14. See discussion in Part III, *infra*.

15. Ikenberry, *supra* note 8, at 133.

sovereignty, [and] the rule of law.”¹⁶ These ideas were also championed by other likeminded nations and even echoed by less potent states that, looking to the United States for leadership and support, were willing to accede to U.S. expectations.¹⁷ The diffusion of these ideas and values, while certainly beneficial for other countries in various respects, also served important U.S. strategic interests as their growing acceptance “made other states willing to work with rather than resist American preeminence.”¹⁸ U.S. hegemony, therefore, undergirded the trend of progressive liberal evolution in international affairs, and their deep encodement in the international system.¹⁹

Even so, such ideas were never universal.²⁰ As Robert Kagan has noted, the liberal world order is anything but inevitable. “The order is an artificial creation subject to the forces of geopolitical inertia.”²¹ U.S. power, the engine of that inertia, however, has been diluted in recent years, and the former unipolarity has given way to something more complex and chaotic.²² Although the United States remains (and will remain) a powerful force on the international stage in the coming era, the emerging world order is rapidly becoming one of asymmetric multipolarity.²³ This means that the world will have a plurality of powerful nations, but no unrivaled hegemon. Instead, what will emerge is a more fragmented world order in which “all actors are inextricably intertwined in multiple layers of the system,” but only a few countries exist as “central hubs of the system.”²⁴ Within that group, a distinction arises “between dominant or central powers, major powers, regional powers and local powers.”²⁵ This state of

16. See Kundnani, *supra* note 11, at 2 (quoting G. JOHN IKENBERRY, *LIBERAL LEVIATHAN: THE ORIGINS, CRISIS, AND TRANSFORMATION OF THE AMERICAN WORLD ORDER 2* (2011)).

17. See generally James Lee, *Foreign Aid, Development, and US Strategic Interests in the Cold War*, 66 INT'L STUD. Q. (2022) (volume in progress, pagination not yet established) (describing how countries developed anti-communist policies as a requirement to receive aid from the United States).

18. See Ikenberry, *supra* note 8, at 145.

19. See ROBERT KAGAN, *THE JUNGLE GROWS BACK: AMERICA AND OUR IMPERILED WORLD 9* (2018) (“The present world order has favored liberalism, democracy, and capitalism not only because they are right and better—presumably they were right and better in the 1930s, too—but because the most powerful nature in the world since 1945 has been a liberal democratic capitalist nation.”).

20. See Kundnani, *supra* note 11, at 3.

21. KAGAN, *supra* note 19, at 9.

22. See Yan Xuetong, *Becoming Strong: The New Chinese Foreign Policy*, FOREIGN AFFS., July/Aug. 2021, 40, 42.

23. Thomas Renard, *A BRIC in the World: Emerging Powers, Europe and the Coming Order*, 31 EGMONT PAPERS 1, 18 (2009).

24. *Id.* at 16, 18.

25. *Id.* at 18.

affairs will have profound consequences for the international legal system and the functionality of the nation state.²⁶

A. *The Road to Where We Are*

To demonstrate the likely future of the nation state, it is helpful to look to the origins of the concept. As previously noted, the current global order—based on national sovereignty and aspiring to economic liberalism and “rule-based multilateralism”²⁷—remains state-centered and state-led.²⁸ This was not always the case. The early world was characterized by multiple, competing, overlapping, and shifting political authorities that were not necessarily coextensive with any defined territory.²⁹ To further complicate matters, in the West the spiritual authority of the Church (which presided over all of “Christendom”) was layered over this morass of teeming temporal authorities.³⁰ This situation conclusively ended in Europe with the culmination of the bloody conflict between feuding Catholic and Protestant estates known as the Thirty Years’ War (1618-1648), in which the belligerents included “France and Sweden, on the one side, and the Habsburgs and their allies, on the other.”³¹

26. See *id.* (discussing the different ways a change in the global balance of power could impact inter-state relations).

27. Eilstrup-Sangiovanni & Hofmann, *supra* note 3, at 1078 (citing G. JOHN IKENBERRY, *AFTER VICTORY: INSTITUTIONS, STRATEGIC RESTRAINT, AND THE REBUILDING OF ORDER AFTER MAJOR WARS* (2001)).

28. *Id.*

29. See Stéphane Beaulac, *The Westphalian Model in Defining International Law: Challenging the Myth*, 8 AUSTL. J. LEGAL HIST. 181, 189 (2004) (“After the collapse of the Western Roman Empire in 476, most territories in Europe were in a chaotic political status because of the so-called barbarian invasions. The separate communities constituted segmented societies characterised by a heterogeneous form of social organisation. At the time, individuals had different rights and obligations, which could overlap and conflict since the decentralised feudal structure was not based on a strictly linear hierarchy. As Daniel Philpott put it: ‘Feudal lines of obligation resembled a system of arteries in a body, not a pyramid with an apex.’”).

30. Daniel Philpott, *Religious Freedom and the Undoing of the Westphalian State*, 25 MICH. J. INT’L L. 981, 983 (2004) (“In the medieval *Respublica Christiana*, political authority was dispersed among the Pope, the Holy Roman Emperor, kings, nobles and bishops, but none of these authorities held sovereignty or supreme authority within a demarcated territory. Indeed, they thought of themselves as members of a common civilization with a common faith and shared values. Following its apogee, though, the Middle Ages shed its [sic] both its institutional diversity and its moral consensus. Over the next three and a half centuries section by section of the European landscape lost its political eclecticism and took on the form of a sovereign state.”); see also Daud Hassan, *The Rise of the Territorial State and the Treaty of Westphalia*, 9 Y.B. N.Z. JURIS. 62, 65 (2006) (discussing how, in contrast with the post-Westphalia division of power among European states, power in Medieval Europe was consolidated in religious institutions).

31. See Beaulac, *supra* note 29, at 196–97.

1. The Peace of Westphalia

The Peace of Westphalia of 1648 is generally noted as an inflection point in the history of international relations, and—if not the germinal moment which gave rise to the modern conception of the state and the corresponding principle of state sovereignty—at least represents a significant marker on the road to the realization of these concepts.³² Comprised of three treaties which were negotiated at Osnabrück and Münster in northwestern Germany,³³ the Peace of Westphalia envisioned a world of “mutually recognized sovereign territorial states” in which “each state, whether monarchy, principality, or republic, the sole sovereign authority in the territory to which it lay claim.”³⁴ In addition, “[t]he Westphalian model also imagined that the international system would maintain itself through a coordinated system of international law, treaties, and diplomatic exchanges.”³⁵

To speak of a Westphalian *world* order, however, is to engage in a bit of Eurocentric hyperbole. As Henry Kissinger has noted, the process that led to the Peace of Westphalia was “conducted without the involvement or even the awareness of most other continents or civilizations.”³⁶ In other parts of the world, other civilizations were arranging themselves differently and pursuant to their own political needs. China was “the center of its own hierarchical and theoretically universal concept of order,”³⁷ and “[i]n much of the region between Europe and China, Islam’s different universal concept of world order held sway, with its own vision of a single divinely sanctioned governance uniting and pacifying the world.”³⁸ Likewise, Russia, though a significant European power, was not represented at Münster and Osnabrück.³⁹

32. See Douglas Howland & Luise White, *Introduction: Sovereignty and the Study of States*, in *THE STATE OF SOVEREIGNTY: TERRITORIES, LAWS, POPULATIONS* 1, 3 (Douglas Howland & Luise White eds., 2009); Hassan, *supra* note 30, at 66; see also Beaulac, *supra* note 29, at 182–86 (discussing the general consensus that the Peace of Westphalia “constituted a paradigm shift in the development of the present state system” but asserting that the concept of state sovereignty actually began to develop earlier in history).

33. See José-Manuel Barreto, *Cerberus: Rethinking Grotius and the Westphalian System*, in *INTERNATIONAL LAW AND EMPIRE: HISTORICAL EXPLANATIONS* 149, 161 (Martti Koskenniemi et al., eds. 2017); but see Beaulac, *supra* note 29, at 198 (claiming that the Peace was comprised of only two treaties).

34. Howland & White, *supra* note 32, at 3.

35. *Id.*

36. HENRY KISSINGER, *WORLD ORDER* 3 (2014).

37. *Id.* at 4.

38. *Id.* at 5.

39. Alun A. Preece, *The Common Law and National Sovereignty* 18 (2003) (unpublished paper presented at the 2003 Irish Association of Law Teachers Annual Conference).

Nonetheless, the Peace of Westphalia remains, in the international legal imagination, the symbolic point of departure toward modernity.⁴⁰ And still today, the Peace of Westphalia is widely viewed as “the starting point for the development of modern international law.”⁴¹ The agreements reached in Westphalia in 1648 “marked the formal recognition of states as sovereign and independent political units,”⁴² and, importantly, “ushered in the notion of sovereign equality, which it would be the task of future generations to implement fully and extend universally.”⁴³

2. The Concert of Europe

This notion of sovereign equality would develop in the coming centuries through the writings of jurists such as the 18th century jurist Emer de Vattel,⁴⁴ and resonated with intellectual force following Napoleon’s defeat and subsequent abdication,⁴⁵ when the Great Powers of the age (mainly Austria, Russia, Britain, and Prussia, but also smaller European powers) assembled at the Congress of Vienna to create what would come to be considered the first international governmental organization.⁴⁶ Through the Concert of Europe, this gathering of European sovereigns sought to stabilize the international order by safeguarding equilibrium (balance of power) among European powers.⁴⁷ This forum became a platform for the coordina-

and in revised form to the Marquette University Law School on May 7, 2003) (“England, Poland, Russia and Turkey, not being directly involved, were the only European powers that were not represented at the two assemblies.”).

40. See Leo Gross, *The Peace of Westphalia 1648–1948*, 42 AM. J. INT’L L. 20, 26, 28–29 (1948).

41. *Id.* at 26.

42. CHARLES S. RHYNE, INTERNATIONAL LAW: THE SUBSTANCE, PROCESSES, PROCEDURES AND INSTITUTIONS FOR WORLD PEACE WITH JUSTICE 9 (1971).

43. Christopher Weeramantry & Nathaniel Berman, *The Grotius Lecture Series*, 14 AM. U. INT’L L. REV. 1515, 1523 (1999) (printing a revised version of talks originally presented at the 1999 Annual Meeting of the American Society of International Law, co-sponsored by the American University College of Law).

44. John Hilla, *The Literary Effect of Sovereignty in International Law*, 14 WIDENER L. REV. 77, 117 (2008).

45. MICHAEL SHEEHAN, THE BALANCE OF POWER: HISTORY AND THEORY 123 (1996). *But see id.* at 125 (“One of the features of the concert system was that it was more explicitly a great power system than its eighteenth-century predecessor. The lesser states had few rights and were not treated as equal members of the system.”).

46. See Nnuriam Paul Chigozie, *The Quest for Global Security and Peace, and the Rise of International Organizations: Historical Perspective*, 1 EQUATORIAL J. HIST. & INT’L RELS. 1, 7 (2018); WERNER J. FELD ET AL., INTERNATIONAL ORGANIZATIONS: A COMPARATIVE APPROACH 18 (3d ed. 1994).

47. Bob Reinalda, *From the Congress of Vienna to Present-Day International Organizations*, U.N. CHRON., Dec. 2014, at 12, 13 (2014).

tion of multilateral security efforts and a range of other issues such as countering revolutionary foment, combatting the slave trade, and so forth.⁴⁸

This early effort at international organization, however, remained a European affair that was largely controlled by a powerful subset of European powers. As Herbert Weinschel notes, the six major powers (Great Britain, Austria, France, Prussia, Russia, and Italy) “laid down rules of international law which came to be accepted by practically all the other states,”⁴⁹ but minor European powers were marginalized.⁵⁰ Further, John Hilla states that “[w]ith regard to the doctrine of sovereign equality, the outcome of the Congress of Vienna was that truly sovereign equality existed afterward only among the Great Powers themselves, who were the states whose collective hegemony was legally instituted by the resulting treaties.”⁵¹ This clear distinction between the dominant core group and secondary countries was a defining feature of international affairs under the Concert of Europe and, though it did generate resentment among secondary countries, the dominance of this core group “over such a long period gave an underlying stability to international relations.”⁵² Thus, “at the Congress of Vienna, the evolution of sovereignty consisted not of the deconstruction of the mythological Westphalian system or of Vattel’s conception of sovereign equality but of the incorporation of the doctrine of sovereign equality into a system of legalized hegemony.”⁵³

Despite its contribution to the abolition of the international slave trade,⁵⁴ it must be emphasized that the Concert of Europe was not generally liberal in its orientation. It was a means for likeminded

48. Beatrice de Graaf et al., *Vienna 1815: Introducing a European Security Culture*, in *SECURING EUROPE AFTER NAPOLEON: 1815 AND THE NEW EUROPEAN SECURITY CULTURE* 1, 5 (Beatrice de Graaf et al. eds., 2019).

49. Herbert Weinschel, *The Doctrine of the Equality of States and Its Recent Modifications*, 45 *AM. J. INT’L L.* 417, 420 (1951).

50. MARK MAZOWER, *GOVERNING THE WORLD: THE HISTORY OF AN IDEA* 5 (2012) (quoting the statement of Friedrich von Gentz, advisor to Austrian chancellor Prince Metternich, Gentz that, “[t]he states of the second, third and fourth rank submit tacitly, though nothing has ever been stipulated in this regard, to the decisions made in common by the great preponderant Powers.”).

51. See Hilla, *supra* note 44, at 122.

52. F.R. BRIDGE & ROGER BULLEN, *THE GREAT POWERS AND THE EUROPEAN STATES SYSTEM 1814–1914*, at 1–2 (2d ed. 2013).

53. Hilla, *supra* note 44, at 122.

54. See Randall Lesaffer, *Vienna and the Abolition of the Slave Trade*, OUPBLOG (June 8, 2015), <https://blog.oup.com/2015/06/vienna-abolition-slave-trade/> [https://perma.cc/R4EW-A4X8] (discussing the adoption of the Declaration of the Eight Courts Relative to the Universal Abolition of the Slave Trade of 8 February 1815 at the Congress of Vienna).

powers of Europe to “maintain their power, oppose revolutionary movements, [and] weaken the forces of nationalism.”⁵⁵ This was a gathering that viewed themselves as part of a shared civilization with similar values⁵⁶—and those values required the maintenance of monarchical legitimacy.⁵⁷ Importantly, though Russia was part of the core group of countries that influenced the Concert of Europe, this was Tsarist Russia led by Alexander I—an autocrat who shared much of the same views as other European autocrats.⁵⁸ The dominant core group of the Concert of Europe, therefore, initially shared a common orientation based on autocracy rather than what we understand as liberalism (which had yet to truly evolve).⁵⁹

Although it was successful in many regards during its existence, the forces of political change would have their effect on this international organizational prototype, especially as some countries began to grow more democratic and the values among the members of the group began to diverge. Political reforms and the events such as the revolutions of 1848 were signaling a new era that would cleave differences and create ideological distance among the Great Powers⁶⁰:

Two of the members, England and France, continued to develop in a liberal direction while Austria, Russia, and Prussia (later Germany), in contrast, remained more autocratic. Furthermore, nationalism, which reflected the rise of the lower and middle classes in the course of modernization, grew among the populations of all powers and was manipulated by ruling elites to maintain the legitimacy of their rule.⁶¹

55. Chigozie, *supra* note 46, at 8.

56. See ANDREI P. TSYGANKOV, *RUSSIA AND THE WEST FROM ALEXANDER TO PUTIN* 68 (2012) (discussing the religious and moral values shared by most European monarchs, and how alliances and adversarial relationships were formed on the basis of those shared values).

57. See Miloš Vec, *The Power of Peace: Diplomacy between the Congress of Vienna and the Paris Treaties 1919*, U.N. CHRON., Dec. 2014, at 16, 17 (2014) (asserting that the Congress of Vienna “was based upon the threat of intervention, which ensured the enforcement of the consented principles of monarchical legitimacy (not of constitutionalism) and the relative equality among the powers”).

58. See TSYGANKOV, *supra* note 57, at 68–69 (2012) (explaining that, although Alexander I advocated for liberal and republican ideals throughout his reign, the support he initially expressed for revolutionary regimes dissolved after the 1812 Napoleonic occupation of Moscow, after which point he became deeply committed to upholding the established political order in Europe).

59. See MAZOWER, *supra* note 50, at 5, 10, 12; G. John Ikenberry, *The End of Liberal International Order?*, 94 INT’L AFFS. 7, 13 (2018) (“It is hard to see a distinctive or coherent liberal international agenda in the nineteenth century. At this time, such notions were primarily manifest in ideas about world politics that emerged from thinkers and activists committed to liberalism within countries—in ideas about liberalization of trade, collective security, arbitration of disputes and so forth.”).

60. See Ikenberry, *supra* note 59, at 12.

61. MÉLANIE ALBARET ET AL., *THE 21ST CENTURY CONCERT STUDY GRP., A TWENTY-FIRST CENTURY CONCERT OF POWERS – PROMOTING GREAT POWER MULTILATERALISM FOR*

The Concert of Europe could not metabolize the increasing ideological differences among its dominant core group of countries, and Europe slowly fractured into competing alliance systems. The structures established by Congress of Vienna withered and were unable to prevent significant armed conflicts within Europe such as the Crimean War, the Austro-Prussian War, and the Franco-Prussian War.⁶² By the time Archduke Franz Ferdinand and his wife Sophie, Duchess of Hohenberg were assassinated in Sarajevo in 1914, the architecture of the Concert of Europe was far too degraded to prevent the chain of events that would lead to the outbreak of World War I (WWI).⁶³

3. The League of Nations

WWI was a catastrophic shock to the international system—one which dramatically reshaped the world's geopolitical realities,⁶⁴ and its conclusion ushered in an era heavily marked by the Wilsonian vision of a “new international order based upon broad and universal principles of right and justice.”⁶⁵ At the Paris Peace Conference of 1919, more than thirty states—led by the United Kingdom, France, the United States, and Italy—negotiated the Treaty of Versailles.⁶⁶ Law professor Steve Charnovitz notes:

It was not just a North Atlantic treaty; the signatories also included China, Japan, Siam, Liberia, South Africa, Bolivia, Brazil, Ecuador, Peru, and Uruguay. In addition, many delegations came from non-self governing territories and colonies, and these

THE POST-TRANSATLANTIC ERA 30 (2014), https://www.hsfk.de/fileadmin/HSFK/hsfk_downloads/PolicyPaper_ATwentyFirstCenturyConcertoPowers.pdf [<https://perma.cc/B7KU-4UP3>].

62. See Huw J. Davies, *The Concert of Europe: The Rise and Fall of the First United Nations*, DEFENCE-IN-DEPTH (Oct. 24, 2014), <https://defenceindepth.co/2014/10/24/the-concert-of-europe-the-rise-and-fall-of-the-first-united-nations/> [<https://perma.cc/5QNA-P689>].

63. See Fid Backhouse et al., *Franz Ferdinand, Archduke of Austria-Este*, in ENCYC. BRITANNICA, <https://www.britannica.com/biography/Franz-Ferdinand-Archduke-of-Austria-Este> [<https://perma.cc/34ZF-YHQV>]; MICHAEL J. BUTLER, INTERNATIONAL CONFLICT MANAGEMENT 17 (2009).

64. See Fraser Cameron, *The Impact of the First World War and Its Implications for Europe Today*, HEINRICH BÖLL STIFTUNG (July 8, 2014), <https://www.boell.de/en/2014/07/08/impact-first-world-war-and-its-implications-europe-today> [<https://perma.cc/R6N9-MPNJ>].

65. President Woodrow Wilson, Address at a Joint Session of the 65th Congress (Feb. 11, 1918), in 56 CONG. REC. 1936 (1918).

66. See Steve Charnovitz, *The Emergence of Democratic Participation in Global Governance (Paris, 1919)*, 10 IND. J. GLOB. LEGAL STUD. 45, 60 (2003); *The Paris Peace Conference and the Treaty of Versailles*, U.S. DEP'T OF STATE: ARCHIVE, <https://2001-2009.state.gov/r/pa/ho/time/wwi/89875.htm> [<https://perma.cc/JR95-VQUF>].

delegations were sometimes afforded the opportunity to provide formal or informal input into the negotiations. Besides setting the terms of the peace, the Treaty of Versailles also established the League of Nations. The conference's broad participation and agenda justify giving the five-month negotiation the moniker of a global conference.⁶⁷

The resulting document contained numerous compromises and provisions related to the settlement of the war, and the first 26 clauses of the Treaty of Versailles (called "The Covenant") established the League of Nations.⁶⁸ The League was expansive in its membership, but retained a dominant core group of countries that generally shared a common political and ideological orientation—three western democracies and a Japan that (under Emperor Taisho) was experiencing a climate of political liberalism⁶⁹ and had "shifted from its earlier imperialistic foreign policy line to an approach based on efforts at international cooperation and restraint from intervention in China's domestic affairs."⁷⁰ The structure of the League, however, remained "hampered by the principle of sovereign equality carefully maintained by the Covenant—the principle that no State can be bound without or against its will."⁷¹ It was also in the Covenant "that the political hegemony of great Powers was for the first time given legal recognition . . . and thereby transformed into legal hegemony."⁷² It was only the League's impotence that mitigated its inegalitarian structure. On that score, Weinschel posits that, "[w]hile there was no equality of representation in the Council, yet the legal equality of the Members of the League was really not impaired, because they were not bound by decisions in which they did not participate or, in other words, were not bound without their own consent—which is the cardinal principle in the equality of states."⁷³

67. Charnovitz, *supra* note 66, at 60–61.

68. See Treaty of Peace with Germany, June 28, 1919, S. TREATY DOC. No. 85 (1919); see also Lorna Lloyd, "A Springboard for the Future": A Historical Examination of Britain's Role in Shaping the Optional Clause of the Permanent Court of International Justice, 79 AM. J. INT'L L. 28, 29–30 (1985) (describing the principal organs of the League of Nations, as established by the Covenant of the League of Nations).

69. Lloyd, *supra* note 68, at 29; *Taishō Period*, in ENCYC. BRITANNICA, <https://www.britannica.com/event/Taisho-period> [<https://perma.cc/SX4P-VKEW>].

70. Sakurai Ryōju, *Japan's Post-World War I Foreign Policy: The Quest for a Cooperative Approach*, NIPPON (Aug. 20, 2014), <https://www.nippon.com/en/in-depth/a03301/> [<https://perma.cc/4262-USQY>].

71. Kelsen, *supra* note 4, at 212.

72. Weinschel, *supra* note 49, at 423.

73. *Id.* at 426–27.

4. The United Nations

The League of Nations, of course, failed to prevent World War II (WWII) and was eventually disbanded.⁷⁴ Its functions were transferred to a new organization formed in the aftermath of WWII—the United Nations (U.N.).⁷⁵ In 1945, the Charter of the United Nations (U.N. Charter) was signed in San Francisco⁷⁶ with the aim of “preventing ‘the scourge of war’ and peacefully settling all major disputes between States.”⁷⁷ Although the U.N. Charter established the six major organs of the United Nations (the Economic and Social Council, the General Assembly, the International Court of Justice, the Secretariat, the Security Council, and the Trusteeship Council),⁷⁸ its primary organs are the General Assembly and the Security Council.⁷⁹

The General Assembly consists of all U.N. Member States, each of which has one vote in the General Assembly.⁸⁰ The resolutions, recommendations, declarations of the General Assembly, however, are not binding except in matters pertaining to the “internal life” of the United Nations (largely institutional and procedural matters).⁸¹

The true power of the United Nations lies in the Security Council which is composed of 15 Members, five of which—the United States, the United Kingdom, France, China, and Russia—are perma-

74. See Chigozie, *supra* note 46, at 9; see also John J. Mearsheimer, *The False Promise of International Institutions*, 19 INT'L SEC. 5, 33 (1995) (noting that the international system became increasingly unstable during the 1930s, and the League of Nations was “effectively useless by the late 1930s, when the great powers were making the critical decisions that led to World War II.”). World War II (WWII) was an international conflict between the Axis powers (Germany, Italy, and Japan) and the Allied Powers (France, Great Britain, the United States, and the Soviet Union). *Learn About Allied and Axis Leaders, the Allied Invasion of Normandy, and the Dropping of Atomic Bombs*, ENCYC. BRITANNICA, at 1:04, <https://www.britannica.com/video/205882/World-War-II-questions> [<https://perma.cc/SSW5-6Q5N>]. It began in 1939 when Germany invaded Poland and ended in 1945 when the last of the Axis powers were militarily defeated and surrendered. *Id.* at 0:15, 3:40.

75. AUGUSTO LOPEZ-CLAROS ET AL., *GLOBAL GOVERNANCE AND THE EMERGENCE OF GLOBAL INSTITUTIONS FOR THE 21ST CENTURY* 24 (2020).

76. ANTONIO CASSESE, *INTERNATIONAL LAW* 39 (2d ed. 2005).

77. *Id.* at 40; see also 48 C.J.S. *International Law* § 63 (2022) (“The United Nations is an organization created in 1945 by an international agreement which is, in effect, a treaty entered into by the President of the United States pursuant to the power vested in the President by the United States Constitution. On October 24, 1945, the Charter of the United Nations came into being when the Union of Soviet Socialist Republics deposited its instrument of ratification, and it came into force with respect to the United States on that date. The purpose of the United Nations generally is to maintain international peace and security, to develop friendly relations among nations, and to achieve international cooperation.”).

78. Kimberly D. Barnes, Note, *International Law, the United Nations, and Intervention in Civil Conflicts*, 19 SUFFOLK TRANSNAT'L L. REV. 117, 126–27 (1995).

79. CASSESE, *supra* note 76, at 321.

80. *Id.*

81. *Id.*

ment members (known as the “P5”).⁸² The U.N. Charter assigned the Security Council “a preeminent role” in maintaining international peace and security,⁸³ and, within that substantial sphere of peace and security, it has the ability to make decisions that are legally binding.⁸⁴ Each member of the P5, however, has the power to unilaterally veto decisions by the Security Council.⁸⁵ This power was granted as the pragmatic recognition “that, in order to maintain peace, there must be a consensus among the major powers.”⁸⁶

The inclusion of China and Russia as permanent members on the Security Council (part of the “P5” with the right to veto substantive proposals) is significant. Although Russia was also part of the dominant core group in the Congress System, by 1945 it was no longer politically and ideologically aligned with the Western world. China, in turn, was governed by the Republic of China (ROC)⁸⁷ when it was incorporated as one of the original U.N. Member States in 1945.⁸⁸ When civil war in China resulted in the Communist Party of China (CPC)⁸⁹ establishing the People’s Republic of China (PRC)⁹⁰ in

82. See *id.*; see also Shelby Magid & Yulia Shalomov, *Russia’s Veto Makes a Mockery of the United Nations Security Council*, ATL. COUNCIL (Mar. 15, 2022), <https://www.atlanticcouncil.org/blogs/ukrainealert/russias-veto-makes-a-mockery-of-the-united-nations-security-council/> [<https://perma.cc/T38T-RRPG>] (referring to the five permanent members of the U.N. Security Council as the “P5”).

83. Mariano-Florentino Cuéllar, *Reflections on Sovereignty and Collective Security*, 40 STAN. J. INT’L L. 211, 211 (2004).

84. See CASSESE, *supra* note 76, at 321.

85. See U.N. Charter art. 27(3).

86. Joseph P. Bialke, *United Nations Peace Operations: Applicable Norms and the Application of the Law of Armed Conflict*, 50 AIR FORCE L. REV. 1, 6 (2001).

87. The Republic of China (ROC) was the designation of the government of China until the Chinese Civil War, which ended on October 1, 1949, when Chinese Communist leader Mao Zedong declared the creation of the People’s Republic of China (PRC). See Richard C. Bush, *Thoughts on the Republic of China and Its Significance*, BROOKINGS INST. (Jan. 24, 2013), <https://www.brookings.edu/on-the-record/thoughts-on-the-republic-of-china-and-its-significance/> [<https://perma.cc/AY2Q-4KS2>]. Since that time, its administration has been restricted to Taiwan. See John C. Copper, *Taiwan*, in ENCYC. BRITANNICA, <https://www.britannica.com/place/Taiwan> [<https://perma.cc/V8EP-V5BN>].

88. *Founding Member States*, UNITED NATIONS: DAG HAMMARSKJÖLD LIBR., <https://research.un.org/en/unmembers/founders> [<https://perma.cc/TJ82-L8ZH>].

89. *Background: History of the Communist Party of China*, EMBASSY OF CHINA IN THE REPUBLIC OF S. AFR. (Nov. 6, 2012), http://za.china-embassy.gov.cn/eng/zt/18thpartycongress/12/201211/t20121106_7705273.htm [<https://perma.cc/495U-5VN3>] (describing the Communist Party of China (CPC) as “the vanguard of the Chinese working class, the faithful representative of the interests of the Chinese people of all ethnic groups, and the core of leadership of the Chinese socialist cause,” and noting that, “[a]fter the People’s Republic of China was founded in 1949, the CPC became the ruling party, leading the country in its political life and social activities.”).

90. The People’s Republic of China (PRC) is the ruling political authority of modern China. See generally James T.C. Liu et al., *The Establishment of the People’s Republic of China*, in ENCYC. BRITANNICA, <https://www.britannica.com/place/China/Establishment-of-the->

1949, a sort of schism occurred within the United Nations because the PRC and the Taiwan-based Republic of China both claimed to be the legitimate Chinese government.⁹¹ In 1971, the PRC was recognized as “the only legitimate representative[] of China to the United Nations” and replaced the ROC in the United Nations.⁹² The changing of political ideologies within the core powers of the new international order meant that, even as it cohered, the international system was already pregnant with the seeds of discord.⁹³ The dominant core of the current international order would include countries that might initially accede to more powerful countries, but which would remain generally in opposition to many core tenets of Western liberalism—and that opposition would not remain latent forever.

B. *Liberal vs Authoritarian Forces: The Sino-Russian Counter-Normativity Effort*

As a result of this history, an inevitable and existential conflict exists within the core of the international order. Commentators note that “China and Russia . . . pose the greatest challenge to the relatively peaceful and prosperous international order created and sustained by the United States.”⁹⁴ Notably, Yan Xuetong posits that “[t]he U.S.-led unipolar order is fading away, its demise hastened by China’s rise and the United States’ relative decline. In its place will come a multipolar order, with U.S.-Chinese relations at its core.”⁹⁵ Likewise, “[s]ince the turn of the century, the Russian government has become the most prominent defender of the Westphalian model

Peoples-Republic [<https://perma.cc/2ECB-RUF7>] (discussing the Chinese Communist Party’s establishment of the People’s Republic of China in 1949 and its subsequent control of the country through that institution to this day).

91. Sigrid Winkler, *Taiwan’s UN Dilemma: To Be or Not To Be*, BROOKINGS INST. (June 20, 2012), <https://www.brookings.edu/opinions/taiwans-un-dilemma-to-be-or-not-to-be/> [<https://perma.cc/D98Y-5MEP>].

92. G.A. Res. 2758 (XXVI), Restoration of the Lawful Rights of the People’s Republic of China in the United Nations (Oct. 25, 1971).

93. See, e.g., François Godement, *The United Nations of China: A Vision of the World Order*, CHINA ANALYSIS ECFR/252, 3 (Apr. 2018), https://ecfr.eu/wp-content/uploads/the_united_nations_of_china_a_vision_of_the_world_order.pdf [<https://perma.cc/TNL8-5LH8>] (stating that “China claims to defend the UN above all, but the limitations and constraints it puts on the UN’s role, as well as its use of coalitions within the G77 group of so-called developing countries, may well be neutering a more effective role for the organisation” and that China exercises increasing control over the organization as a result of “[d]isunity – or lack of interest – among key members of the UN”).

94. Robert Kagan, *The Twilight of the Liberal World Order*, in BROOKINGS BIG IDEAS FOR AMERICA 267, 268 (Michael E. O’Hanlon ed., 2017).

95. Xuetong, *supra* note 22, at 42.

in response to the Western-led shift to a post-Westphalian conception of sovereignty.”⁹⁶ This state of affairs has resulted in a fractured world order in which liberal and authoritarian forces exist in almost coequal opposition. It has also created an environment in which the institutions which comprise the international order are vulnerable to opportunistic exploitation by authoritarian governments that wish to reshape the world to better accommodate their illiberal objectives.⁹⁷ In an era of diminishing U.S. power, such authoritarian forces will be better positioned to achieve such ends. This means a likely reversal of liberal, post-Westphalian progress to a more regressive system in which sovereignty shields states from responsibility for international legal transgressions, including infringements on human rights.⁹⁸ An overview of Russian and Chinese foreign policies and international activity illustrates why this is the case.⁹⁹

1. China

China articulates its foreign policy as constituting “an independent foreign policy of peace” by which China seeks to safeguard Chinese independence and state sovereignty, largely through “creat[ing] a favorable international environment for implementing its reform and opening to the outside world and modernization drive, safeguard[ing] world peace and promot[ing] common development.”¹⁰⁰ The stated Chinese foreign policy is based on the following main elements: maintaining its own independence and

96. Ruth Deyermond, *The Uses of Sovereignty in Twenty-First Century Russian Foreign Policy*, 68 EUR.-ASIA STUD. 957, 962 (2016).

97. See, e.g., Paweł Paszak, *China's Growing Influence in International Organizations*, WARSAW INST.: CHINA MONITOR (Oct. 14, 2020), <https://warsawinstitute.org/chinas-growing-influence-international-organizations/> [https://perma.cc/V6GN-UNPJ] (discussing the ways in which China is exerting increasing influence over multiple international organizations).

98. See Lindsay Maizland, *Is China Undermining Human Rights at the United Nations?*, COUNCIL ON FOREIGN RELS. (July 9, 2019, 12:05 PM), <https://www.cfr.org/in-brief/china-undermining-human-rights-united-nations> [https://perma.cc/A96Z-WX2S] (discussing the ways in which China has leveraged its power over international institutions to undercut human rights protections, including by promoting the principles of state sovereignty and non-intervention).

99. See generally Ian J. Lynch, *The Façade of Chinese Foreign Policy Coherence*, STRATEGY BRIDGE (Sept. 29, 2020), <https://thestrategybridge.org/the-bridge/2020/9/29/the-facade-of-chinese-foreign-policy-coherence> [https://perma.cc/3U6C-QSGB] (“[S]tates, in general, are far more fragmented, decentralized, and internationalized than traditional treatments of rising powers recognize, and this subnational disaggregation of governance impacts their foreign policies.”).

100. *China's Independent Foreign Policy of Peace*, MINISTRY OF FOREIGN AFFS. OF CHINA (Sept. 19, 2003), https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zjg_663340/zcyjjs_663346/xgxw_663348/200309/t20030919_493899.html [https://perma.cc/YTH8-3J2P].

that of other nations; safeguarding world peace and opposing hegemonism; working toward a just and rational international world order; developing friendly relations and cooperation with all countries, and especially with developing countries; and what it calls its “opening” policy (by which it seeks to “promote common prosperity on the basis of the principle of equality and mutual benefit”).¹⁰¹

Chinese foreign policy objectives have been largely grounded in domestic priorities and calibrated to “secure and legitimize one-party rule in China.”¹⁰² China’s key strategic priorities, therefore, are as follows: “maintain[ing] political control and ensur[ing] social stability;” “promot[ing] continued economic development;” “advanc[ing] science and technology;” and “strengthen[ing] and moderniz[ing China’s] national defense.”¹⁰³ In pursuing these strategic objectives, China views itself as a leader of “the ‘rising rest’ in opposition to the West,”¹⁰⁴ and its policy views are tinged with the belief that “its rise to great-power status entitles it to a new role in world affairs—one that cannot be reconciled with unquestioned U.S. dominance.”¹⁰⁵ Likewise, commentators have noted that since the PRC’s ascendance to the Security Council, China has consistently “espouse[d] strict conceptions of sovereignty and noninterference.”¹⁰⁶

China, however, is an increasingly visible player in world affairs. Though the late Deng Xiaoping formerly adopted a strategic approach to achieving Chinese goals exemplified by the proverb “hide your strength, bide your time,” China has pursued its policy objectives more aggressively and shown a willingness to wield its national power in far more visible ways in recent years.¹⁰⁷ Its Belt and Road

101. *Id.*

102. Connor Fiddler, *The 3 Pillars of Chinese Foreign Policy: The State, the Party, the People*, DIPLOMAT (Feb. 3, 2021), <https://thediplomat.com/2021/02/the-3-pillars-of-chinese-foreign-policy-the-state-the-party-the-people/> [<https://perma.cc/3ZQM-SS7Z>].

103. Andrew Scobell, *Something Old, Something New: Continuity and Change in China’s Foreign Policy 2, Testimony before the U.S.-China Economic and Security Review Commission* (Sept. 9, 2020), in RAND CORP., RAND: TESTIMONIES, https://www.rand.org/content/dam/rand/pubs/testimonies/CTA700/CTA774-1/RAND_CTA774-1.pdf [<https://perma.cc/8ZG8-R3ZM>].

104. Jacob Mardell, *Beijing’s Foreign Policy Priorities*, INTERNATIONALE POLITIK Q. (Mar. 30, 2021), <https://ip-quarterly.com/en/beijings-foreign-policy-priorities> [<https://perma.cc/3T5Q-6RSP>].

105. Xuetong, *supra* note 22, at 40.

106. Jonathan E. Davis, *From Ideology to Pragmatism: China’s Position on Humanitarian Intervention in the Post-Cold War Era*, 44 VAND. J. TRANSNAT’L L. 217, 226 (2011).

107. See Richard Javad Heydarian, *Hide Your Strength, Bide Your Time*, AL JAZEERA (Nov. 21, 2014), <https://www.aljazeera.com/opinions/2014/11/21/hide-your-strength-bide-your-time> [<https://perma.cc/3RYW-AW9L>]; *How a Rising China Has Remade Global Politics*, WORLD POL. REV. (July 18, 2022), <https://www.worldpoliticsreview.com/how-a-rising-china-has>

Initiative¹⁰⁸ serves to reorient the economies of developing countries to increase dependency on China.¹⁰⁹ At the same time, its “Made in China 2025” program seeks to aggressively dominate key market sectors as follows:

Through its program formerly known as “Made in China 2025,” the CCP aims to dominate the most important technologies of the twenty-first century by the middle of this decade. The follow-up program is “China Standards 2035,” which lays out a blueprint for China’s government and leading tech companies to set global standards for emerging technologies. Xi’s goal is for China to have a world-class military by 2035. By 2049, the one hundredth anniversary of the CCP’s assumption of power in Beijing, he aims for China to be a global superpower, and to make the world safe for the CCP’s brand of repressive autocracy.¹¹⁰

Through such programs, China will continue to exert its national power to shape the international environment in a way that is “favorable to its rise, pushing back against the notion that Western political values have universal appeal and validity.”¹¹¹

2. Russia

The Russian Federation (Russia) has re-emerged as “a global power with a multifaceted and often contentious relationship with the United States.”¹¹² It is the world’s largest country by territory, a nuclear power, a leading producer and exporter of oil and natural gas, and it holds a permanent seat on the U.N. Security Council.¹¹³ Russia is, therefore, a powerful country, but also one that can be accurately characterized as nationalist, revisionist, authoritarian, and “territorially expansionist.”¹¹⁴ “Communism has been replaced by

remade-global-politics [<https://perma.cc/DGE3-4NKQ>] (“Meanwhile, China’s ‘quiet rise’ has given way to more vocal expressions of great power aspirations and a more assertive international posture, particularly regarding China’s territorial disputes in the South China Sea. Combined with Beijing’s military modernization program, that has put Asia, as well as the United States, on notice that China’s economic power will have geopolitical implications.”).

108. Mardell, *supra* note 105.

109. Lynch, *supra* note 99.

110. Matthew Kroenig & Jeffrey Cimmino, *Global Strategy 2021: An Allied Strategy for China*, 2021 ATL. COUNCIL STRATEGY PAPERS 1, 17, <https://www.atlanticcouncil.org/wp-content/uploads/2021/07/Global-Strategy-2021-An-Allied-Strategy-for-China.pdf> [<https://perma.cc/8WWU-TYX9>].

111. Xuotong, *supra* note 22, at 42.

112. ANDREW S. BOWEN & CORY WELT, CONG. RSCH. SERV., R46761, RUSSIA: FOREIGN POLICY AND U.S. RELATIONS 1 (2021).

113. *Id.*

114. James Kirchick, *Russia’s Plot Against the West*, POLITICO (Mar. 17, 2017, 10:41 AM), <https://www.politico.eu/article/russia-plot-against-the-west-vladimir-putin-donald-trump-europe/> [<https://perma.cc/W9M4-EHE4>].

a mix of nationalist, authoritarian, and state-capitalist ideas as an alternative to the West's notion of liberal democratic capitalism."¹¹⁵ Commentators note that such attributes place Russia in a naturally antagonistic position vis-a-vis liberal democracies.¹¹⁶

The key goals of Russian foreign policy have been relatively consistent since the breakup of the Soviet Union in 1991.¹¹⁷ Julia Gurganus and Eugene Rumer describe "the Troika of Russian Foreign Policy" as follows:

Contemporary Russian foreign policy displays the unmistakable presence of three centuries-old drivers of Moscow's posture on the world stage. Chief among these drivers is Russia's quest for strategic depth and secure buffers against external threats, which, considering the country's geography and absence of natural protective barriers between it and neighboring powers, has guided its geographic expansion. Along with physical insecurity and expansion, the second key driver of Russian foreign policy has been its ambition for recognition as a great power, which the Kremlin has long seen as necessary for legitimizing its geographic conquests and geopolitical ambitions. The third driver, related to the first two, is Russia's complicated relationship with the West, which combines rivalry with the need for cooperation.¹¹⁸

Russia, therefore, seeks to reestablish itself as "the center of political gravity for the post-Soviet region and to minimize the influence of rival powers, particularly NATO and the European Union (EU)," and to "assert Russia's role as one of a handful of dominant powers in global politics, capable in particular of competing—and, as necessary, cooperating—with the United States."¹¹⁹

Notably, Russian authorities have demonstrated both the capacity and willingness to aggressively pursue Russian foreign policy goals—often in ways that are counter to international norms and even through the use of force.¹²⁰ Examples include the invasion of Crimea (discussed further below), its support of the Syrian regime, its facilitation of malicious cyber operations, its willingness

115. Julia Gurganus & Eugene Rumer, *RUSSIA'S GLOBAL AMBITIONS IN PERSPECTIVE 9* (Carnegie Endowment for Int'l Peace Feb. 2019), <https://carnegieendowment.org/2019/02/20/russia-s-global-ambitions-in-perspective-pub-78067> [<https://perma.cc/G6ZJ-9BNY>].

116. See Kirchick, *supra* note 114.

117. BOWEN & WELT, *supra* note 112, at 1.

118. Gurganus & Rumer, *supra* note 115, at 3.

119. BOWEN & WELT, *supra* note 112, at 1.

120. *Id.* at 15–33 (discussing Russia's pursuit of its foreign policy goals through use of force and noting that some of Russia's actions have been condemned by the international community as "a violation of international law and of Russia's own international commitments").

to interfere in the political affairs of other countries (for example, its interference in U.S. elections),¹²¹ and its “wide-ranging and often brazen operations against perceived opponents, including assassinations and the use of chemical weapons.”¹²² Through such activity, Russia seeks to enhance its own security, challenge U.S. primacy in world affairs, and “enhance [its] position as both a regional power and a significant power in an emergent multipolar order.”¹²³

3. Coopting the International System

The Sino-Russian counter-normativity effort is not entirely exogenous to the international system. Otherwise stated, the attacks are not simply through actions that blatantly violate existing rules and externally challenge institutions. To the contrary, China and Russia seek to assert influence through international institutions—exploiting the principle of sovereign equality to assure an equal voice for illiberal and authoritarian policies.¹²⁴ Both China and Russia have been disruptive forces in the U.N. Security Council, stymying international cooperation on a range of issues.¹²⁵ Both countries also have taken advantage of their membership in

121. *Id.* at 16–17, 23–25, 35–40.

122. *Id.* at summary.

123. Deyermond, *supra* note 96, at 958.

124. See Richard Goldberg, *Biden Needs an International Organizations Strategy*, FOREIGN POL’Y (June 29, 2021, 11:02AM), <https://foreignpolicy.com/2021/06/29/biden-china-russia-international-organizations-strategy-czar-united-nations-multilateral-agencies-control/> [<https://perma.cc/R5FY-SG63>] (stating that multilateral agencies “are frequently blocked or manipulated by authoritarian regimes and increasingly incapable of protecting either U.S. or global interests” and discussing the many instances in which China and Russia have perpetrated such manipulation); Daniëlle Flonk, *Emerging Illiberal Norms: Russia and China as Promoters of Internet Content Control*, 97 INT’L AFFS. 1925, 1926–27 (2021) (discussing the ways in which authoritarian states, in particular Russia and China, rely on “[n]otions of sovereignty and non-interference [to] protect [themselves] from unwanted interference in their regimes and prevent sanctions and demands for reform” and to “increase the legitimacy of authoritarian practices”); see, e.g., Paul Stronski & Richard Sokolsky, *Multipolarity in Practice: Understanding Russia’s Engagement with Regional Institutions*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Jan. 8, 2020), <https://carnegieendowment.org/2020/01/08/multipolarity-in-practice-understanding-russia-s-engagement-with-regional-institutions-pub-80717> [<https://perma.cc/Q6BB-8KHT>] (“The Russian approach to multilateral engagement is geared primarily to shoring up Russian sovereignty and Russia’s privileged role in the world as a great power. Russia’s preferred multilateral institutions are those where member states treat each other equally and pledge neither to impinge on each other’s sovereignty nor bind each other in ways that are detrimental to member state interests.”).

125. See, e.g., Magid & Shalomov, *supra* note 82 (discussing Russia’s use of its veto power to block the adoption of a Security Council resolution that would have required it to withdraw its troops from Ukraine and noting that all five permanent members of the Security Council have frequently vetoed resolutions that conflict with their national and foreign policy interests).

international organizations to influence international norms in a way that runs counter to liberal aspirations.¹²⁶ China has been notably aggressive as follows:

[O]n issues in which Beijing diverges from the norms of the current system, such as human rights, it seeks to undermine those values and create alternative institutions and models. In areas where norms and institutions are still being established, such as internet governance, China works with other authoritarian powers such as Russia to create standards that reflect their interests.¹²⁷

The Munich Security Report in 2020 poignantly noted the following:

For quite some time, China in particular has invested in “parallel” institutions that partly complement, but partly challenge institutions traditionally dominated by the West. Beijing may become also more successful in securing key posts in international institutions and thus shifting the international agenda according to its values and priorities. To be sure, it is only fair if hitherto underrepresented countries and regions catch up—and the West could actively support candidates from non-Western democracies. Yet, more often than in the past, international institutions are being instrumentalized by autocratic states. One of the most prominent examples is the abuse of Interpol’s “red notice” system to persecute civil society activists or critical journalists.¹²⁸

This assertion of control over institutions of global governance serves to “deepen[] divides with other countries, particularly democracies that are committed to existing norms and institutions,”¹²⁹ and serves to potentially “create two distinct systems of global governance, badly undermining multilateral cooperation.”¹³⁰ In the competition between liberal and illiberal forces, the principle of sovereign equality (which is useful and important for so many reasons) becomes a vulnerability to be exploited by authoritarian regimes to remake international law and international standards so that they better accommodate illiberal/authoritarian objectives.¹³¹

126. See Goldberg, *supra* note 124.

127. Yanzhong Huang et al., *China’s Approach to Global Governance*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/china-global-governance/> [<https://perma.cc/FV5M-MRAC>] (last visited Nov. 11, 2022).

128. Bunde et al., *supra* note 1, at 16 (citations omitted).

129. See Huang et al., *supra* note 127.

130. *Id.*

131. See Flonk, *supra* note 124, at 1927 (“From an instrumental perspective, illiberal international norms counter the diffusion of democracy. Notions of sovereignty and non-interference protect autocracies from unwanted interference in their regimes and prevent sanctions and demands for reform. From an ideational perspective, shared international norms can increase the legitimacy of authoritarian practices.”).

Sovereign equality, thus, becomes something akin to the culvert in the outer wall of Helm's Deep—a structural feature that served a needed function at the fortress's establishment, but which unfortunately could be leveraged for malign purposes by strategic adversaries.¹³²

There are myriad examples of this assault on existing norms. One can look to China's infringement on fundamental freedoms in Hong Kong,¹³³ Russian assassinations of political dissidents living overseas,¹³⁴ the "gray zone" warfare activities of both countries,¹³⁵ and so forth. Two specific areas are especially illuminative of how the Sino-Russian counter-normativity effort is undermining international legal norms: (1) authoritarian territorial expansion efforts and (2) the deliberate undermining of the international regime to counter cybercrime.

i. Territorial Expansion

China and Russia have moved aggressively in recent years to expand their territorial claims¹³⁶ in violation of the fundamental prohibition in international law against taking territory from another sovereign without that sovereign's consent.¹³⁷ This foundational

132. See J.R.R. TOLKIEN, *THE TWO TOWERS* 151–53, 155 (Ballantine Books 2018) (1954).

133. See *Hong Kong: Beijing Dismantles a Free Society*, HUM. RTS. WATCH (June 25, 2021, 8:00 AM), <https://www.hrw.org/news/2021/06/25/hong-kong-beijing-dismantles-free-society> [<https://perma.cc/Z3PT-7639>] ("Chinese authorities are decapitating the pro-democracy movement by arresting prominent leaders, pressing Hong Kong people – including schoolchildren – to publicly express loyalty to the Chinese government and the Communist Party, and increasingly turning the police and judiciary into tools of Chinese state control rather than independent and impartial enforcers of the rule of law.")

134. See generally All Things Considered, *Russian Government Killed Former KGB Agent, Says European Court of Human Rights*, NPR (Sept. 21, 2021, 4:41 PM), <https://www.npr.org/2021/09/21/1039393881/russian-government-killed-former-kgb-agent-says-european-court-of-human-rights> [<https://perma.cc/9ZYU-GWHW>] (discussing alleged political assassinations by the Kremlin).

135. See *Gray Zone Project*, CTR. FOR STRATEGIC & INT'L STUD., <https://www.csis.org/programs/gray-zone-project> [<https://perma.cc/L6X9-X4WJ>] (explaining that the "gray zone" refers to the indirect and non-military methods of combat that "lie in the contested arena somewhere between routine statecraft and open warfare"); Brian Petit et al., *An Irregular Upgrade to Operational Design*, WAR ON THE ROCKS (Mar. 19, 2021), <https://warontherocks.com/2021/03/an-irregular-upgrade-to-operational-design/> [<https://perma.cc/4BA8-3CME>] (asserting that "China and Russia are advancing their interests in the gray zone"); Omer Dostri, *The Reemergence of Gray-Zone Warfare in Modern Conflicts: Israel's Struggle Against Hamas's Indirect Approach*, MIL. REV., Jan.–Feb. 2020, 120, 121, <https://www.armyupress.army.mil/Portals/7/military-review/Archives/English/JF-20/JF-20-Book.pdf> [<https://perma.cc/2TSM-UXLV>] (noting that "an increasing number of aggressive nations—mainly China, Russia, and Iran—are making extensive use of gray-zone strategies").

136. See Kroenig & Cimmino, *supra* note 110, at 29; Bowen & Welt, *supra* note 112, at 15.

137. See Richard Hanania, *Norms Governing the Interstate Use of Force: Explaining the Status Quo Bias of International Law*, 27 EMORY INT'L L. REV. 829, 900 (2013).

rule—the “territorial integrity norm”¹³⁸—holds that that “no sovereign state has the right to take territory from another.”¹³⁹ This rule is reflected in Article 2(4) of the U.N. Charter, which states, “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”¹⁴⁰ Commentators note that “[the] ban on aggression, taken from Article 2(4) of the U.N. Charter, is regarded as the heart of the U.N. Charter and the basic rule of contemporary public international law.”¹⁴¹ Even these basic principles, however, have been challenged in the past decade as China and Russia have sought to advance their political objectives at the expense of the rules-based international order.

a. *Russian Territorial Expansion*

Russia has been actively using military force (and other means) to expand territorially for years.¹⁴² For example, in the 2008 Russo-Georgian War, Russia used military force to assert dominance over South Ossetia and Abkhazia—provinces that are officially part of Georgia, but which have separate governments and are now recognized by Moscow as “independent.”¹⁴³ Russia continues to effectively claim territory in Georgia through the practice of “encroaching occupation.”¹⁴⁴

Russia, likewise, has been illegally annexing Ukrainian territory for years. Prior to Russia’s recent invasion, Russia’s counter-normative territorial expansion included the illegal seizure of the Crimean

138. See generally Mark W. Zacher, *The Territorial Integrity Norm: International Boundaries and the Use of Force*, 55 INT’L ORG. 215 (2001) (discussing the development of the norm of territorial integrity).

139. Hanania, *supra* note 137, at 900.

140. U.N. Charter art. 2(4).

141. RYAN DOWDY ET AL., THE JUDGE ADVOC. GEN.’S LEGAL CTR. & SCH., U.S. ARMY, LAW OF ARMED CONFLICT DESKBOOK 30 (5th ed. 2015), <https://tile.loc.gov/storage-services/service/ll/llmlp/LOAC-Deskbook-2015/LOAC-Deskbook-2015.pdf> [<https://perma.cc/ZK6E-9C9K>] (“An integral aspect of Article 2(4) is the principle of non-intervention, which provides that States must refrain from interference in other States’ internal affairs. Put simply, non-intervention stands for the proposition that States must respect each other’s sovereignty.”).

142. See, e.g., Michael Kofman, *The August War, Ten Years On: A Retrospective on the Russo-Georgian War*, WAR ON THE ROCKS (Aug. 17, 2018), <https://warontherocks.com/2018/08/the-august-war-ten-years-on-a-retrospective-on-the-russo-georgian-war/> [<https://perma.cc/9AWX-93QP>] (discussing Russia’s use of force to exert control over separatist territories of Georgia in 2008).

143. *Id.*

144. All Things Considered, *Near Russian-Controlled Areas of Georgia, People Are Watching What Happens in Ukraine*, NPR, at 02:28 (Mar. 25, 2022), <https://www.npr.org/2022/03/25/1088879145/people-in-russia-controlled-georgia-are-watching-whats-happening-in-ukraine-clos> [<https://perma.cc/84Z9-56KG>].

Peninsula in 2014.¹⁴⁵ Observers note that the Russian seizure of Crimea began with a series of popular protests that erupted in the Ukraine in response a decision by then-Ukrainian President Viktor Yanukovich to not sign the Association Agreement with the European Union (E.U.) under the E.U.'s Eastern Partnership program.¹⁴⁶ These protests eventually garnered force and, in February 2014, resulted in the pro-Russian president's ouster.¹⁴⁷ In response to this perceived threat to Russian interests, Russia moved forward with a complex hybrid operation utilizing a web of political, intelligence, criminal, and military operatives.¹⁴⁸ Russia's operation was "a carefully staged process which quickly created facts on the ground"¹⁴⁹ Radical pro-Russia groups (such as the "Russian Front") rallied and demanded that Crimea secede from Ukraine so that it could become part of Russia.¹⁵⁰ Unidentified armed operatives entered the Crimean parliament and demanded a special session "to determine the region's future,"¹⁵¹ while so-called "little green men," carrying Russian weaponry, seized strategic locations on the Crimean Peninsula.¹⁵² Steven Pifer describes the illegal invasion as follows:

Things moved quickly. By early March, Russian troops had secured the entire peninsula. On March 6, the Crimean Supreme Council voted to ask to accede to Russia. The council scheduled a referendum for March 16, which offered two choices: join Russia or return to Crimea's 1992 constitution, which gave the

145. See Steven Pifer, *Crimea: Six Years After Illegal Annexation*, BROOKINGS INST. (Mar. 17, 2020), <https://www.brookings.edu/blog/order-from-chaos/2020/03/17/crimea-six-years-after-illegal-annexation/> [<https://perma.cc/3C4Z-VCJU>].

146. MICHAEL KOFMAN ET AL., LESSONS FROM RUSSIA'S OPERATIONS IN CRIMEA AND EASTERN UKRAINE 1 (2017), https://www.rand.org/content/dam/rand/pubs/research_reports/RR1400/RR1498/RAND_RR1498.pdf [<https://perma.cc/AN5M-TMJT>].

147. See *id.* at xi, 1.

148. Gwendolyn Sasse, *Revisiting the 2014 Annexation of Crimea*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Mar. 15, 2017), <https://carnegieeurope.eu/2017/03/15/revisiting-2014-annexation-of-crimea-pub-68423> [<https://perma.cc/HFK6-PQEG>].

149. *Id.*

150. Wojciech Konończuk, *Russia's Real Aims in Crimea*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Mar. 13, 2014), <https://carnegieendowment.org/2014/03/13/russia-s-real-aims-in-crimea-pub-54914> [<https://perma.cc/M88S-CDQS>].

151. *Id.*

152. Linda Thomas-Greenfield, U.S. Representative to the U.N., Remarks at a UN Security Council Arria-Formula Meeting on the Situation in Crimea (Mar. 12, 2021) (transcript available at *Remarks by Ambassador Linda Thomas-Greenfield at a UN Security Council Arria-Formula Meeting on the Situation in Crimea*, U.S. MISSION TO THE UNITED NATIONS (Mar. 12, 2021), <https://usun.usmission.gov/remarks-by-ambassador-linda-thomas-greenfield-at-a-un-security-council-arria-formula-meeting-on-the-situation-in-crimea> [<https://perma.cc/46DV-BWEQ>]). See also U.N.S.C., High-Level Arria-Formula Meeting: Crimea: 7 Years of Violations of Ukraine's Sovereignty and Territorial Integrity, Remarks by Ambassador Linda Thomas-Greenfield, U.S. Representative to the U.N., at 01:23:15 (Mar. 12, 2021), <https://media.un.org/en/asset/k13/k139oqwnjs> [<https://perma.cc/K4AF-Y2Q7>].

peninsula significant autonomy. Those who favored Crimea remaining part of Ukraine under the current constitution had no box to check.¹⁵³

In March 2014, despite efforts by the United States and allies to prevent it, President Vladimir Putin signed a law formalizing Russia's annexation of Crimea from Ukraine.¹⁵⁴ The basis put forward by Russia to legitimate this action was "that Crimea was incorporated in 2014 after the vast majority of local residents voted for joining Russia weeks after the ouster of Ukraine's former Russia-friendly president, even though most of the world rejected the referendum as illegitimate."¹⁵⁵ In the words of then-Vice President Joseph Biden, however, "Russia has offered a variety of arguments to justify what is nothing more than a land-grab."¹⁵⁶ Indeed, as commentators have noted, "[b]y annexing a neighboring country's territory by force, Putin overturned in a single stroke the assumptions on which the post-Cold War European order had rested."¹⁵⁷ Ambassador Linda Thomas-Greenfield, the U.S. Ambassador to the United Nations, succinctly and aptly described the situation: "[W]hen Russia invaded its neighbors, it did not just violate another country's sovereignty and territorial integrity, it violated international law and the very norms by which modern countries engage with one another."¹⁵⁸

The response of the United Nations to this blatant violation of international law by Russia has been muted—a reflection of Russian and Chinese power within that institution. The U.N. General Assembly has passed nonbinding resolutions in which it has "condemned the temporary occupation of Crimea and urged the Russian Federation, as the occupying power, to uphold all its obligations under applicable international law,"¹⁵⁹ and has "condemned

153. Pifer, *supra* note 145.

154. See *Ukraine: Putin Signs Crimea Annexation*, BBC NEWS (Mar. 21, 2014), <https://www.bbc.com/news/world-europe-26686949> [<https://perma.cc/CD5X-T8HS>].

155. *Group of Seven Slams Russia Annexation of Crimea, 7 Years On*, ASSOC. PRESS NEWS (Mar. 18, 2021), <https://apnews.com/article/ukraine-crimea-moscow-russia-26d1c8cbf518562bf137e3febd55b164> [<https://perma.cc/GZW6-NMX4>].

156. Shaun Walker & Ian Traynor, *Putin Confirms Crimea Annexation As Ukraine Soldier Becomes First Casualty*, GUARDIAN (Mar. 18, 2014, 11:37 PM), <https://www.theguardian.com/world/2014/mar/18/putin-confirms-annexation-crimea-ukrainian-soldier-casualty> [<https://perma.cc/B2J7-3GJE>].

157. Daniel Treisman, *Why Putin Took Crimea: The Gambler in the Kremlin*, FOREIGN AFFS., May/June 2016, at 47, 47.

158. Thomas-Greenfield, *supra* note 152 (recording at 01:22:36).

159. Joint Statement on the Occasion of the Seventh Anniversary of the Adoption of UN General Assembly Resolution 68/262 "Territorial Integrity of Ukraine," (Mar. 26, 2021), <https://usun.usmission.gov/joint-statement-on-the-occasion-of-the-seventh-anniversary-of-the-adoption-of-un-general-assembly-resolution-68-262-territorial-integrity-of-ukraine> [<https://perma.cc/85J5-VHE3>] (citing various General Assembly resolutions).

efforts by the Russian Federation to legitimize its attempted annexation of Crimea, through the automatic imposition of Russian citizenship, illegal election campaigns and suppression of national identity.”¹⁶⁰ Unsurprisingly, such non-binding condemnations have had no impact. At an address before the U.N. General Assembly in 2021, Ukrainian President Volodymyr Zelenskyy “criticized the international community’s ineffective response to Russian aggression in Ukraine.”¹⁶¹ Zelenskyy referred to the United Nations as a “retired superhero,” and forcefully described the likely long-term outcome of Russian actions: “This can lead to the collapse of the entire architecture of international relations. We will no longer have any rules other than might is right. It will be [sic] world where, instead of collective efforts, selfishness will dominate; a world with more and more dictatorships, less equality, less democracy and freedom.”¹⁶²

President Zelenskyy was, of course, prescient. In November 2021, Russia began amassing its armed forces—roughly 100,000 troops and an array of heavy weaponry¹⁶³—at the Ukrainian border.¹⁶⁴ This provocative action (positioning for a military invasion of Ukraine) was coupled with a range of irregular warfare activities, including

160. Press Release, General Assembly, General Assembly Adopts 59 Third Committee Texts on Trafficking in Persons, Equitable Access to COVID-19 Vaccines, as Delegates Spar over Language, U.N. Press Release GA/12396 (Dec. 16, 2021).

161. Peter Dickinson, *Zelenskyy Slams UN Inaction over Putin’s Ukraine War*, ATL. COUNCIL (Sept. 23, 2021), <https://www.atlanticcouncil.org/blogs/ukrainealert/zelenskyy-slams-un-inaction-over-putins-ukraine-war> [<https://perma.cc/M5DW-V598>].

162. *Id.* Zelenskyy explained the super hero in retirement: “The UN’s decision not to join the inaugural Crimea Platform summit, which took place in Kyiv on August 23, was targeted for specific criticism. The Crimea Platform initiative seeks to put the ongoing Russian occupation of Ukraine’s Crimean peninsula back on the international radar. A total of 46 countries and international organizations participated in the initial summit last month, but the United Nations was not among them.” *Id.*

163. See Samir Puri, *Why Is Russia Amassing Troops at Its Border with Ukraine?*, INT’L INST. FOR STRATEGIC STUD.: ANALYSIS (Dec. 3, 2021), <https://www.iiss.org/blogs/analysis/2021/12/why-is-russia-amassing-troops-at-its-border-with-ukraine> [<https://perma.cc/7RUJ-EWRX>]; Alberto Nardelli & Jennifer Jacobs, *U.S. Intel Shows Russia Plans for Potential Ukraine Invasion*, BLOOMBERG, <https://www.bloomberg.com/news/articles/2021-11-21/u-s-intel-shows-russian-plans-for-potential-ukraine-invasion> [<https://perma.cc/SU74-CUEY>] (Nov. 22, 2022) (citing U.S. intelligence reports of increased Russian military presence in preparation for an invasion of Ukraine that could involve “about 100 battalion tactical groups – potentially around 100,000 soldiers”); PHILIP G. WASIELEWSKI & SETH G. JONES, *RUSSIA’S POSSIBLE INVASION OF UKRAINE 1* (Jan. 13, 2022), https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/220113_Wasielewski_Jones_RussiaUkraine.pdf [<https://perma.cc/K92L-GU8G>] (noting that Russia’s armaments at the Ukrainian border include “main battle tanks, self-propelled howitzers, infantry fighting vehicles, multiple launch rocket systems, Iskandar short-range ballistic missile systems, and towed artillery”).

164. Puri, *supra* note 163.

information operations, sabotage,¹⁶⁵ and aggressive diplomatic language which portends an imminent invasion.¹⁶⁶ The perilousness of the situation was described by U.S. National Security Advisor Jake Sullivan, who noted, “Russia is laying the groundwork to have the option of fabricating a pretext for an invasion, including through sabotage activities and information operations, by accusing Ukraine of preparing an imminent attack against Russian forces in eastern Ukraine.”¹⁶⁷ Diplomatic efforts sought to prevent a Russian invasion of Ukraine, but Russia stymied effective negotiation with “maximalist and non-starter demands”¹⁶⁸ such as “an end to NATO expansion, a rollback of previous expansion, a removal of American nuclear weapons from Europe, and a Russian sphere of influence.”¹⁶⁹

Russia’s threat of the use of military force against Ukraine to achieve unreasonable policy objectives was otherworldly. It was the echo of what Oona Hathaway and Scott Shapiro have termed the “Old World Order”—a world before the Kellogg-Briand Pact when nations renounced the use of war as an instrument of policy.¹⁷⁰ Not surprisingly, Russia’s threats were widely condemned.¹⁷¹ For instance, the G7 countries—Canada, France, Germany, Italy, Japan, the United Kingdom, the United States—and the European Union issued a joint statement declaring they are “united in [their] condemnation of Russia’s military build-up and aggressive rhetoric towards Ukraine.”¹⁷² The statement further noted, “[a]ny use of force to change borders is strictly prohibited under international law. Russia should be in no doubt that further military aggression against Ukraine would have massive consequences and severe cost in response.”¹⁷³ Such warnings, however, proved ineffective and no

165. See Jen Psaki, Press Sec’y & Jake Sullivan, Nat’l Sec. Advisor, The White House, Press Briefing, at 13:16 (Jan. 13, 2022), <https://www.youtube.com/watch?v=6jm7TZL0Mf8&list=PLRjNahZxtqH9HovoVAK601PgqtL4EIKmH&index=177> [<https://perma.cc/A5HQ-9UXU>].

166. WASIELEWSKI & JONES, *supra* note 163 (“Putin has complemented this buildup with blunt language that Ukraine is historically part of Russia and that Kiev needs to return to the Russian fold.”).

167. Psaki & Sullivan, The White House, *supra* note 165, at 13:16.

168. Telephone Interview by Mary Louise Kelley with Antony J. Blinken, U.S. Sec’y of State (Jan. 13, 2022), <https://www.state.gov/secretary-antony-j-blinken-with-mary-louise-kelley-of-npr-all-things-considered> [<https://perma.cc/GTP7-FGPC>].

169. WASIELEWSKI & JONES, *supra* note 163, at 2.

170. See OONA A. HATHAWAY & SCOTT J. SHAPIRO, *THE INTERNATIONALISTS: HOW A RADICAL PLAN TO OUTLAW WAR REMADE THE WORLD* xv–xviii (2017).

171. See, e.g., *G7 Foreign Ministers’ Statement on Russia and Ukraine*, U.S. DEP’T OF STATE (Dec. 12, 2021), <https://www.state.gov/g7-foreign-ministers-statement-on-russia-and-ukraine/> [<https://perma.cc/YZ5T-T77X>].

172. *Id.*

173. *Id.*

international rule or institution could chain the dogs of war.¹⁷⁴ On February 24, 2022, Russia launched a full-scale military invasion of Ukraine.¹⁷⁵ Other violations of the law of armed conflict by Russian forces shortly followed, such as “indiscriminate attacks . . . deliberately targeting civilians,” and “other atrocities.”¹⁷⁶ Noted international law expert Michael N. Schmitt, the G. Norman Lieber Distinguished Scholar at the United States Military Academy at West Point and Professor of Public International Law at the University of Reading, aptly summarized the situation:

Russia’s “special military operation” in Ukraine has become a horrific demonstration of the many ways a State can violate international humanitarian law (IHL) and how individual soldiers and their commanders can commit war crimes. To counter condemnation of its outrages, Russia has engaged in a reprehensible disinformation campaign and expelled human rights organizations. But by now, it is undeniable that Russian forces are directly targeting civilians, mounting attacks designed to terrorize the civilian population, and engaging in indiscriminate attacks in violation of IHL.¹⁷⁷

b. *Chinese Territorial Expansion*

China, similarly, has undertaken a range of efforts to expand territorially. Notably, since 2014, China has been building military bases in the South China Sea—a valuable trade passage and fishing ground—even though Brunei, the Philippines, Malaysia, Vietnam, and Japan also have competing territorial claims.¹⁷⁸ To support its expansion effort, China established “Sansha City” in 2012 to “administer the Paracel and Spratly islands, Macclesfield Bank,

174. See generally Michael N. Schmitt, *Russia’s “Special Military Operation” and the (Claimed) Right of Self-Defense*, ARTICLES OF WAR (Feb. 28, 2022), <https://lieber.westpoint.edu/russia-special-military-operation-claimed-right-self-defense> [https://perma.cc/3XVW-N9RA] (explaining Russia’s invalid justifications for starting a war in Ukraine and discussing the failed negotiation attempts to arrange a cease fire).

175. See *id.*

176. Press Statement, Anthony J. Blinken, Sec’y of State, War Crimes by Russia’s Forces in Ukraine (Mar. 23, 2022), <https://www.state.gov/war-crimes-by-russias-forces-in-ukraine> [https://perma.cc/U2DH-FHNL].

177. Michael N. Schmitt, *Ukraine Symposium - Weaponizing Civilians: Human Shields in Ukraine*, ARTICLES OF WAR (Apr. 11, 2022), <https://lieber.westpoint.edu/weaponizing-civilians-human-shields-ukraine> [https://perma.cc/5G72-56JZ].

178. See Eleanor Ross, *How and Why China Is Building Islands in the South China Sea*, NEWSWEEK (Mar. 29, 2017, 11:08 AM), <https://www.newsweek.com/china-south-china-sea-islands-build-military-territory-expand-575161> [https://perma.cc/R5WJ-7Y7C]; Joshua España & Anne Uy, *Brunei, ASEAN and the South China Sea*, LOWY INST.: THE INTERPRETER (Aug. 3, 2020), <https://www.lowyinstitute.org/the-interpreter/brunei-asean-south-china-sea> [https://perma.cc/62B9-WQV9].

Scarborough Shoal, and their surrounding waters,"¹⁷⁹ and has artificially added thousands of acres of land to existing maritime features.¹⁸⁰

To address this counter-normative behavior, in 2013, the Philippines brought the issue before the Permanent Court of Arbitration at the Hague.¹⁸¹ The claims by the Philippines were based on the 1982 U.N. Convention on the Law of the Sea (UNCLOS), to which both the Philippines and China are parties.¹⁸² In 2016, the Permanent Court of Arbitration ruled in favor of the Philippines and emphasized that China's activities infringed on Philippine sovereignty through various activities, including its building of artificial islands within the exclusive economic zone (EEZ) of the Philippines as follows¹⁸³:

In its final award, the tribunal interpreted and analyzed numerous key provisions of UNCLOS and reached several legal conclusions. First, submerged features in the South China Sea are not entitled to any maritime entitlements (e.g., a territorial sea). Second, low-tide elevations cannot be appropriated as land, are not entitled to territorial seas of their own, and can increase the breadth of the territorial sea of a nearby high-tide elevation only if they are located within the territorial sea of that high-tide elevation. Third, a State cannot enhance through "human modification" the legal status or entitlements of a geographic feature beyond what that feature is naturally entitled. Fourth, a non-archipelagic State may neither draw straight baselines around a South China Sea island group nor claim special status to the waters within the group.¹⁸⁴

The effect of this ruling was to reject China's claims to the areas determined to be part of the Philippines' EEZ and continental shelf.¹⁸⁵ China, however, immediately disavowed the ruling of the Permanent Court of Arbitration and has since continued to militarily reinforce its strategic positions in the South China Sea.¹⁸⁶

179. Zoe Haver, *China Reclaims Land, Fortifies Coast of S China Sea Base to Prevent Erosion*, RADIO FREE ASIA (Jan. 21, 2021), <https://www.rfa.org/english/news/china/southchinasea-woody-01212021155023.html> [<https://perma.cc/QMR6-9JCG>].

180. Imogen Saunders, *Artificial Islands and Territory in International Law*, 52 VAND. J. TRANSNAT'L L. 643, 644 (2019).

181. See Jonathan G. Odom, *The Value and Viability of the South China Sea Arbitration Ruling: The U.S. Perspective 2016–2020*, 97 INT'L L. STUD. 122, 125, 157 (2021).

182. *Id.* at 125.

183. Jennifer Hansler & Brad Lendon, *US Warns China It Stands Behind South China Sea Ruling and Is Committed to Philippine Defense*, CNN (July 12, 2021, 2:49 AM), <https://www.cnn.com/2021/07/12/asia/us-philippines-south-china-sea-intl-hnk/index.html> [<https://perma.cc/TP5S-XXJZ>].

184. Odom, *supra* note 181, at 126–27.

185. See *id.* at 126–128.

186. See Communiqué, Ministry of Foreign Affs. of China, Statement on the Award of

Similar Chinese efforts to claim territory on its land borders have also created international tension. In 2020, China deployed troops to areas around the Line of Actual Control (LAC)—the ill-defined and contested demarcation that separates Indian and Chinese-controlled territory that has been the situs of border clashes between the two countries for decades.¹⁸⁷ The history and sensitivity of the LAC makes the 2020 Chinese activity even more noteworthy as it also involved various incursions into Indian territory.¹⁸⁸ Subsequent fighting in the region resulted in the deaths of at least four Chinese soldiers and twenty Indian soldiers.¹⁸⁹ High-level talks resulted in an agreement to disengage troops in February 2021, but tensions remain high in the region.¹⁹⁰

Relatedly, in January 2022, the U.S. State Department released a *Limits in the Seas* study which examines China's expansive maritime claims in the South China Sea and concludes that those claims "are inconsistent with international law as reflected in the 1982 United Nations Convention on the Law of the Sea."¹⁹¹ According to that study:

The overall effect of [China's] maritime claims is that the PRC unlawfully claims sovereignty or some form of exclusive jurisdiction over most of the South China Sea. These claims, especially

12 July 2016 of the Arbitral Tribunal in the South China Sea Arbitration Established at the Request of the Republic of the Philippines (July 12, 2016), https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/2649_665393/201607/t20160712_679470.html [<https://perma.cc/6G3B-Y8Y5>]; see also Hansler & Lendon, *supra* note 183 ("Beijing has disavowed the tribunal ruling and continued to build up and militarily reinforce its positions in the South China Sea.").

187. See Archana Chaudhary, *Why Chinese and Indian Troops Clash in the Himalayas*, BLOOMBERG (Feb. 11, 2021, 6:14 AM), <https://www.bloomberg.com/news/articles/2021-02-11/why-chinese-and-indian-troops-clash-in-the-himalayas-quicktake> [<https://perma.cc/A6A7-LQJU>].

188. See ARZAN TARAPORE, *THE CRISIS AFTER THE CRISIS: HOW LADAKH WILL SHAPE INDIA'S COMPETITION WITH CHINA 2* (2021), https://www.lowyinstitute.org/sites/default/files/TARAPORE%20Crisis%20after%20the%20Crisis%20PDF%20FINAL%2005_05_2021%282%29.pdf [<https://perma.cc/7SMU-JTCZ>] ("In May 2020, China launched several near-simultaneous incursions across the Line of Actual Control (LAC) in Ladakh, into territory hitherto controlled by India. Both sides reinforced their positions with tens of thousands of troops, engaged in a deadly skirmish, and reportedly came close to war. An agreement to disengage troops was announced in February 2021, but implementation has been halting. Regardless of how disengagement progresses, the crisis poses significant challenges for India's long-term strategic competition with China.").

189. *China Admits It Lost Four Soldiers in 2020 India Border Clash*, AL JAZEERA (Feb. 19, 2021), <https://www.aljazeera.com/news/2021/2/19/china-admits-it-lost-four-soldiers-in-2020-india-border-clash> [<https://perma.cc/FCH7-SKZK>].

190. See TARAPORE, *supra* note 190, at 3.

191. U.S. DEP'T OF STATE, BUREAU OF OCEANS & INT'L ENV'T & SCI. AFFS., *LIMITS IN THE SEAS NO. 150, PEOPLE'S REPUBLIC OF CHINA: MARITIME CLAIMS IN THE SOUTH CHINA SEA 1* (2022), <https://www.state.gov/wp-content/uploads/2022/01/LIS150-SCS.pdf> [<https://perma.cc/V9GS-JK96>].

considering their expansive geographic and substantive scope, gravely undermine the rule of law in the oceans and numerous universally recognized provisions of international law reflected in the Convention.¹⁹²

ii. Cyber Convention

Another example of how an asymmetrically multipolar world may impact international law can be seen in Russian and Chinese efforts to shape the norms governing cyberspace, and notably the regime of international law governing the investigation and prosecution of cybercrime. At the international level, China and Russia have advocated for norms that favor “a more authoritarian model with expanded state control” in contrast to Western countries “who have historically supported an open, free, and secure [I]nternet.”¹⁹³ Specifically, China and Russia seek to undermine the Convention on Cybercrime of the Council of Europe (the “Budapest Convention”), which “lays out common standards on cybercrime investigations and aims to boost cooperation among criminal justice systems around the globe.”¹⁹⁴ The Budapest Convention facilitates a free and open Internet in a number of ways, including by requiring governments to provide for conditions and safeguards in cybercrime investigations that are adequate for protection of human rights,¹⁹⁵ by specifying both the substantive offenses and the procedural tools which law enforcement may employ,¹⁹⁶ by permitting a party to the convention to refuse a request for mutual legal assistance where the request violates domestic law or is related to a political offense,¹⁹⁷ and by emphasizing lawful process through warrants and court orders.¹⁹⁸ Such provisions amalgamate foundational aspects of the liberal world order with the international law governing cyberspace. For instance, Article 15 of the Budapest Convention reads:

Each Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in

192. *Id.* at 30.

193. Joyce Hakmeh & Allison Peters, *A New UN Cybercrime Treaty? The Way Forward for Supporters of an Open, Free, and Secure Internet*, COUNCIL ON FOREIGN RELS. (Jan. 13, 2020, 11:35 AM), <https://www.cfr.org/blog/new-un-cybercrime-treaty-way-forward-supporters-open-free-and-secure-internet> [<https://perma.cc/22RK-7MCW>].

194. Alisson Peters, *Russia and China Are Trying to Set the U.N.'s Rules on Cybercrime*, FOREIGN POL'Y (Sept. 16, 2019, 4:29 PM), <https://foreignpolicy.com/2019/09/16/russia-and-china-are-trying-to-set-the-u-n-s-rules-on-cybercrime> [<https://perma.cc/LM3N-J2YX>].

195. See Council of Europe, Convention on Cybercrime art. 15(1), Nov. 23, 2001, T.I.A.S. No. 13,174, E.T.S. No. 185.

196. *Id.* at ch. 2.

197. *Id.* at arts. 25(4), 27(3)–(4).

198. *Id.* at art. 15(2).

this Section are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights and liberties, including rights arising pursuant to obligations it has undertaken under the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights, and other applicable international human rights instruments, and which shall incorporate the principle of proportionality.¹⁹⁹

On the other side, China and Russia, two countries that have long been pressing for a new global cybercrime treaty at the United Nations that reflects their opposing vision which would separate the international law governing cyberspace from liberal moorings. In essence, China and Russia—adopting a “data sovereigntist”²⁰⁰ or “techno-authoritarian” approach²⁰¹—seek to replace “the only global treaty that exists with a common vision for trying to facilitate international cooperation on cybercrime that also aims to protect the rule of law and an open [I]nternet,”²⁰² with an alternative treaty that “would allow countries to solidify their hold over information and communications technology within their borders, enabling some countries to further restrict activities and speech on the Internet, while also stressing governments’ sovereignty in cybercrime investigations” as follows²⁰³:

[T]he Russian resolution and their draft convention raise serious human rights concerns that require urgent attention. Perhaps most critically, the language in the resolution regarding what constitutes the use of information and communications technol-

199. *Id.* at art. 15(1).

200. Jennifer Daskal & Debrae Kennedy-Mayo, *Budapest Convention: What Is It and How Is It Being Updated?*, CROSS-BORDER DATA F. (July 2, 2020), <https://www.crossborderdataforum.org/budapest-convention-what-is-it-and-how-is-it-being-updated> [<https://perma.cc/6J67-5GDF>] (describing China and Russia’s “data sovereigntist approach” to the regulation of cybercrime as “a means of asserting control over the internet and the data needed for basic governmental functions, including law enforcement” and contrasting that approach with the Cybercrime Convention Committee’s proposal, which “envisio[n]s a world in which data continues to flow across borders, and seeks to adjust jurisdictional rules to meet these rules – rather than exercise control over the technology to meet pre-established jurisdictional limits”).

201. See Joseph W. Sullivan, *Russia’s New Prime Minister Augurs Techno-Authoritarianism*, FOREIGN POL’Y (Jan. 20, 2020, 11:21 AM), <https://foreignpolicy.com/2020/01/20/russia-incoming-prime-minister-techno-authoritarianism> [<https://perma.cc/CF2K-PB2B>] (indicating that China is the “epicenter of techno-authoritarianism” and that Russia is developing its own brand of techno-authoritarianism); see also *Techno-Authoritarianism: Platform for Repression in China and Abroad: Hearing Before the Cong.-Exec. Comm’n on China*, 107th Cong. 7 (2021) (statement of Samantha Hoffman, Senior Analyst, Australian Strategic Pol’y Inst.) (defining “techno-authoritarianism” as the attachment of technology “to existing methods of political and social control, and economic management”).

202. Peters, *supra* note 194.

203. *Id.*

ogies (ICTs) for criminal purposes is extremely vague and the Russian draft convention is similarly as vague. Any discussion by a committee of experts on a new treaty based on vague guidelines of what is criminal behavior is likely to provide cover to authoritarian governments to persecute their political opponents.²⁰⁴

As one former U.S. State Department official has noted, the Russian and Chinese effort is a “platform to advance measures trying to restrict content, including political speech, rather than addressing computer crimes.”²⁰⁵ It is also notable that the Sino-Russian countereffort would likely also dilute effective international cooperation into cybercrime—a result that would be consistent with Russia’s prolific role in facilitating state-backed illegal cyber intrusions.²⁰⁶

Even so, consistent with what one might expect to see in an asymmetrically multipolar world, U.S. efforts to counter this initiative have not met with great success. Russia (with support from China) has successfully advanced toward the objective of legitimizing an alternative to the Budapest Convention in the General Assembly.²⁰⁷ In May 2021, the General Assembly passed a resolution forming an Ad Hoc Committee which “will convene at least six sessions of 10 days each, to commence in January 2022, and submit a draft convention on countering cybercrime to the General Assembly at its seventy-eighth session in 2023.”²⁰⁸ In 2021, at the U.N. Security Council’s first formal public meeting on cybersecurity, Vassily Nebenzia, Russia’s U.N. envoy, called for a new cybercrime convention to be created by 2023.²⁰⁹ Interestingly, in

204. Hakmeh & Peters, *supra* note 193.

205. Sean Lyngaas, *UN Cybercrime Proposal Could Help Autocrats Stifle Free Speech, Rights Group Says*, CYBERSCOOP (May 5, 2021), <https://www.cyberscoop.com/un-cyber-russia-china-us-hacking> [<https://perma.cc/Z49T-ZVQL>].

206. See Hakmeh & Peters, *supra* note 193 (arguing that “a new [cybercrime] treaty may distract and stall progress on international cybercrime cooperation at a time when the threat is at an all-time high”); Frank Bajak, *Microsoft: Russia Behind 58% of Detected State-Backed Hacks*, AP News (Oct. 7, 2021), <https://apnews.com/article/technology-business-china-europe-united-states-e13548edf082992a735a0af1da39b6c8> [<https://perma.cc/RWG4-4RZP>] (noting that “Russia accounted for most state-sponsored hacking detected by Microsoft over the past year, with a 58% share, mostly targeting government agencies and think tanks in the United States,” and that “China’s ‘geopolitical goals’ in its recent cyberespionage [are] especially notable, including targeting foreign ministries in Central and South American countries where it is making Belt-and-Road-Initiative infrastructure investments and universities in Taiwan and Hong Kong where resistance to Beijing’s regional ambitions is strong.”).

207. See Hakmeh & Peters, *supra* note 193; Peters, *supra* note 194.

208. Press Release, General Assembly, General Assembly Adopts Resolution Outlining Terms for Negotiating Cybercrime Treaty amid Concerns over ‘Rushed’ Vote at Expense of Further Consultations, U.N. Press Release GA/12328 (May 26, 2021).

209. See Philippe Rater, *U.S., Russia at Odds as UN Council Confronts Threat of Cyberattacks*, MOSCOW TIMES (June 30, 2021), <https://www.themoscowtimes.com/2021/06/29/us-russia-at-odds-as-un-council-confronts-threat-of-cyberattacks-a74380> [<https://perma.cc/XXQ6-XXBZ>].

his call for this convention, Nebenzia alluded to the notion of sovereign equality,²¹⁰ underscoring how this otherwise important principle can be nevertheless opportunistically exploited to advance illiberal agendas.

III. CONCLUSION

As China and Russia ascend in power, “autocratic and illiberal projects [will] rival the U.S.-led liberal international system.”²¹¹ As unipolarity gives way to asymmetric multipolarity, a progressively more liberal world order will no longer be the inevitable *telos* of international affairs. Authoritarian regimes like China and Russia will increasingly oppose rules and institutions that they view as potential constraints their actions (such as international human rights)²¹² and will advance efforts that permit their governments to implement authoritarian policies without external hindrance (such as the Sino-Russian effort for a new global cybercrime convention). China and Russia will seek to achieve these objectives by using and exploiting key international institutions such as the United Nations.²¹³ International rules and institutions that cannot be coopted will be rejected or ignored, and such flagrant violations will be framed as “rejecting Western interference and defending each other’s security interests.”²¹⁴ China and Russia will also rush to fill the vacuum left by the recession of U.S. power in strategically significant regions, thereby displacing the United States and Western influence and shifting power dynamics to favor their geostrategic objectives.²¹⁵ In

210. See *id.* (“If the threats posed to global cybersecurity have made us all equal, then we must ensure that debate takes place with all UN member states, and not within a tight circle of technologically developed states.”).

211. Alexander Cooley & Daniel H. Nexon, *How Hegemony Ends: The Unraveling of American Power*, FOREIGN AFFS., July/Aug. 2020, 143, 144.

212. See Anastasia Lyrchikova, *Putin and Xi Cement Partnership in Face of Western Pressure*, REUTERS (Dec. 15, 2021, 12:41 PM), <https://www.reuters.com/world/china/russia-says-xi-backs-putin-push-western-security-guarantees-2021-12-15> [https://perma.cc/XT-B2-ZNF9] (quoting Xi Jinping as saying, “[a]t present, certain international forces under the guise of ‘democracy’ and ‘human rights’ are interfering in the internal affairs of China and Russia, and brutally trampling on international law and recognized norms of international relations.”).

213. See, e.g., Yaroslav Trofimov et al., *How China Is Taking Over International Organizations, One Vote at a Time*, WALL ST. J. (Sept. 29, 2020), <https://www.wsj.com/articles/how-china-is-taking-over-international-organizations-one-vote-at-a-time-11601397208> [https://perma.cc/C676-SABV] (discussing how China uses its growing influence at the United Nations to “stifle international scrutiny of its behavior at home and abroad”).

214. See Lyrchikova, *supra* note 212.

215. See, e.g., Bradley Jardine & Edward Lemon, *In Post-American Central Asia, Russia and China Are Tightening Their Grip*, WAR ON THE ROCKS (Oct. 7, 2021), <https://warontherocks.com/2021/10/in-post-american-central-asia-russia-and-china-are-tightening-their-grip>

sum, two countries at the center of the institutional framework of the current world order (as permanent members of the Security Council) are authoritarian regimes that are actively hostile to rules and undergirding ideas that most Western democracies view as essential.

The dominant core group in our international order has, therefore, become too ideologically dissonant. The world is once again divided along a fault between liberal and authoritarian regimes—and the latter are not inclined to countenance the policies of the former. As history instructs, the eventual result will be the dissolution or degradation of the cohesive arrangements that have defined our world order throughout much of the previous century. International institutions—increasingly influenced by sovereigns that are hostile to existing international norms (and the values of the liberal international order)²¹⁶—will cease to serve as viable fora to resolve conflicts or address significant international issues. Multilateral efforts under such auspices will be frustrated as illiberal forces insist on using international institutions as an instrumentality of authoritarianism, foiling legitimate efforts to advance legitimate cooperation on important issues.

The illiberal dawn that threatens to rise is one in which the activities of major international organizations are shaped by powers hostile to democracy and human rights, and in which illiberality will be viewed as an equally advantageous and legitimate option for countries in

[<https://perma.cc/KLX7-ES5R>] (noting that China and Russia's shared interests in Central Asia include limiting terrorist activities and instability and reducing U.S. presence in the region, and, consequently, "[a]s the United States exits the region, Russia and China are ramping up their security assistance"); see also Ashley Townshend et al., *The U.S.-Australian Alliance Needs a Strategy to Deter China's Gray-Zone Coercion*, WAR ON THE ROCKS (Sept. 29, 2021), <https://warontherocks.com/2021/09/the-u-s-australian-alliance-needs-a-strategy-to-deter-chinas-gray-zone-coercion> [<https://perma.cc/EBA6-T76J>]. "The most concrete example of the collective failure to confront China's gray-zone activity is its geostrategic ascendancy in the South China Sea, achieved via illegal land reclamation, unopposed military construction, and the use of coastguards and fishing militias to intimidate other countries into submission. Other asymmetric tactics by Beijing — such as cyberattacks, economic coercion, hostage diplomacy, information warfare, political interference, and the use of commercial actors for undeclared geopolitical activities—continue to erode a favorable balance of power and influence across the Indo-Pacific." *Id.*

216. See Bunde et al., *supra* note 1, at 9 (quoting Interview by Lionel Barber & Henry Foy with Vladimir Putin, President of Russ., in Moscow, Russ. (June 26, 2019) (transcript available at *Transcript: 'All This Fuss About Spies ... It Is Not Worth Serious Interstate Relations'*, FIN. TIMES (June 27, 2019), <https://www.ft.com/content/878d2344-98f0-11e9-9573-ee5c-bb98ed36> [<https://perma.cc/G4PN-JGR4>])) (noting the following comment made by Russian President Vladimir Putin: "There is also the so-called liberal idea, which has outlived its purpose. Our Western partners have admitted that some elements of the liberal idea, such as multiculturalism, are no longer tenable. . . . So, the liberal idea has become obsolete. It has come into conflict with the interests of the overwhelming majority of the population.").

need of international support and assistance. This trend will deepen existing fault lines—especially as countries on either side of those fault lines achieve power parity. With the existing international institutional and legal architecture degraded or corrupted, nation states will increasingly act without regard for existing international norms and, perhaps more problematically, will act in accordance with new norms that have been shaped to permit authoritarianism. Citing to their sovereignty as the basis for their actions, and having less fear of any meaningful international response, nation states will increasingly eschew policies of conflict avoidance in favor of policies and actions that favor achieving political and geostrategic advantages; and “[w]ith increasing military footprints of China and Russia in various parts of the world, interventions will arguably become even riskier in the future.”²¹⁷ This coming world is a more precarious one with a far greater propensity for conflict.

If the liberal world order is to survive in this new environment, those seeking to preserve it must find viable mechanisms for countering this negative, illiberal momentum. This will require cooperation as well as confrontation. Liberal democracies will need to band together and adopt policies expressly aimed at preserving an open, multilateral, and rules-based world order.²¹⁸ As Lissner and Rapp-Hooper note, “[s]hifting balances of military, economic, and technological power mean the United States will be unable to secure its preferred forms of order alone.”²¹⁹ Western powers will also need to reach out to democracies beyond the Western horizon and develop and enhance close partnerships with key emerging powers in Asia and Africa that are inclined to share liberal values.²²⁰ Success in this endeavor will require energizing new coalitions and the use of informal multilateralism among select nation states so that the defenders of the liberal world order can adapt to new threats with more agility, more quickly integrate emerging countries into

217. *Id.* at 16.

218. See Helal, *supra* note 9, at 571–73 (discussing the success of such policies at promoting peace and democracy in the post-World War II period and arguing that similar policies maintain their normative value in the twenty-first century).

219. REBECCA LISSNER & MIRA RAPP-HOOPER, *AN OPEN WORLD: HOW AMERICA CAN WIN THE CONTEST FOR TWENTY-FIRST-CENTURY ORDER* 61 (2020).

220. For instance, policymakers should consider aggressively augmenting U.S. engagement with India. See *id.* at 74 (“India will play a decisive role in the contest between models of twenty-first century order. In many areas, Delhi’s interests accord with Washington’s: it eschews interstate aggression and elevates peaceful dispute resolution, embraces economic integration, encourages open access to the global commons, and emphasizes sovereignty and territorial integrity.”).

international efforts,²²¹ and avoid the obvious obstacles posed by existing international institutions in which authoritarian regimes now have significant influence. Through such efforts, a kind of alternate order can be constructed that enables the advancement of liberalism. But this does not mean abandoning existing institutions. Defenders of the liberal world order must work in a coordinated fashion to save the existing international institutional architecture from corruption by authoritarian regimes like China and Russia who have placed their operatives in multilateral organizations and standard-setting bodies to hijack the very core of the international system.²²² This means viewing robust engagement and investment in international organizations as a national security imperative. On that score, the 2020 Munich Security Report opined, “Defenders of the West would do well to pursue what Thomas Kleine-Brockhoff calls ‘robust liberalism’—a modern liberalism that, being aware of its limits, stays clear of overreach but is more determined to defend the core of the liberal project.”²²³

It is worth noting that the outcome of the conflict in Ukraine will likely be a lynchpin in the defense of the liberal international order. Whether it’s China (with its stated goal of reunification with Taiwan) or another authoritarian regime with the desire to annex neighboring territory, the illiberal forces of the world are watching—and the lessons of Ukraine will be influential in their decision-making. If Ukraine is protected, the outcome of Russia’s illegal war of aggression will be a degraded Russia that wields less power in global affairs, a revitalized NATO alliance, and recalibration of global power in favor of the liberal international order.²²⁴ If Ukraine falls or is effectively severed, however, then the outcome will be bleak.

The future, therefore, depends on how liberal democracies choose to counter the challenges that now confront the liberal world order. Nation states may either recognize the crisis and energize coalitions

221. See Renard, *supra* note 23, at 20.

222. See generally Goldberg, *supra* note 124 (discussing the power that Russia, China, and other authoritarian regimes increasingly exercise over multilateral agencies and asserting that democratic states, in particular the United States, must work to re-establish control over these agencies).

223. Bunde et al., *supra* note 1, at 23.

224. Cf. Ravi Buddhavarapu, *Finland and Sweden Joining NATO Will Help Deter Russia, Says Security Analyst*, CNBC, <https://www.cnbc.com/2022/05/12/finland-and-sweden-joining-nato-will-help-deter-russia-says-security-analyst.html> [https://perma.cc/GQ3C-HWVG] (May 12, 2022, 7:10 AM) (“A decision by Finland and Sweden to join NATO will improve deterrence against Russia in northern Europe and add to the U.S.-led military alliance’s security.”).

of like-minded countries to counter the “illiberal drift,”²²⁵ or risk further regression to a world characterized by a less constrained model of sovereignty—one akin to that which was known in earlier, more conflict-prone eras. The world for which many generations fought and struggled to build—a world of democracy, human rights, and open markets—is by no means predestined. It must be earned.

225. See LISSNER & RAPP-HOOPER, *supra* note 219, at 5 (highlighting India’s “developing-country status and illiberal drift” as reasons that the country is likely to align itself with China on certain policy matters but noting that India is nevertheless likely to pursue closer ties with the United States and its allies in order to undermine China’s efforts at establishing a regional hegemony).

