

Project 2100: Looking Back, Looking Forward
A 2020's Perspective on the International Legal Order

Sir Daniel Bethlehem KC*

Thank you for the kind introduction. It is an honour to have been invited to give this lecture, and not just a little bit daunting. It is a pleasure to see so many friends and colleagues here this evening.

It is more than just a little daunting for two reasons. The first is that the world is in flames at the moment, and has been for some time. But the intensity and ferocity of the blaze just now is overwhelming. We cannot escape it. And we all think that the law has and should have something to say about it, and to be a vehicle for change and for betterment. Law, international law, has a strategic purpose not just a regulatory and operational function. That strategic purpose is to set the structure of the society in which we live, and want to live. It is to embed stability and predictability and to shield us from the Leviathan, from the Livyatan, the mythical, multiheaded sea serpent of the Book of Psalms turned into social contract theory by Thomas Hobbs. But it is also to be an instrument of change, to be a beacon, especially in the darkest days when we struggle to see through the gloom. It is in the darkest days that we must strive hardest to see the light. In words engrained in our collective psyche, it is said that, in the beginning, darkness was over the surface of the deep. But there were lights in the vault of the sky. Not just to give light but also to give direction. But discerning direction, even as we struggle to discern the light, is hard. It is not a skill that comes naturally. It has to be learnt; and it has to be taught. That is the responsibility of leadership. It is born of calm amidst the tumult, from conscious distance, not from the focus on the fray.

The second reason for being daunted is my topic. As everyone who speaks from a podium such as this knows, when one is first invited to speak, and asked for a title, grand notions take hold. I could speak on this; or on that. This is a nice idea. And then, as judgement day approaches, the struggle for content begins. Ideas don't easily take wings. And what is nice and catchy when said in a sentence or two does not quite so easily become an erudite vision of the state of the world. This, though, is a rod of my own making.

Before I turn to my topic, let me say first what I will *not* be talking about. I will not be talking about the Russian invasion of Ukraine and the horrors of that ongoing conflict. I will not be talking about the incomprehensible savagery of the 7 October attacks or the ferocity of the response. I will not be talking about the evil that is being visited on innocents in Sudan in a civil war that has been raging for many months. I will not be talking about the displacement of tens of thousands of people in Myanmar in recent days in the face of heavy clashes between the military regime and its opponents. I will not be talking about the many other manmade tragedies, both unfolding and in recent memory, that should rightly engage our conscious attention. They form an element of the backdrop for my remarks, and provide momentum to them, but these urgently present conflicts are not my subject today.

My focus is on the longer term, looking to 2100, the turn of the next century. I will come to the reason for that horizon in just a moment. I grew up at the feet of an economist and learned

* Twenty Essex, London; <https://www.twentyessex.com/people/daniel-bethlehem/>

early of John Maynard Keynes's much quoted comment that "in the long run we are all dead". The turn of the next century is a long way off, but it is not that far. I have young children. With good health and good fortune, and steady hands of global leadership, they have every chance of seeing that date. My eyes are on the world of their future.

Lawyers tend not to focus on the long term. Speaking 11 years ago in honour of Eli Lauterpacht I concluded a lecture on "The End of Geography" with a reference to *The Little Prince* in which the Little Prince has a conversation with a geographer, "an old gentleman who wrote voluminous books".¹ The geographer says to the Little Prince:

"Geographies are the books which, of all books, are most concerned with matters of consequence. They never become old-fashioned. It is very rarely that a mountain changes its position. It is very rarely that an ocean empties itself of its waters. We write of eternal things."²

In contrast to geography, the law is not about eternal things. It is about the here and now. It is about how we organise and manage our society. We hope that the law is of consequence, and it is our calling to work to this end. But the law can become old-fashioned. Mountains may only rarely change their position, and oceans only very rarely empty themselves of water. The law, though, and its institutions, are both more vulnerable and more adaptable. My thesis is that we need a longer vision for the kind of society we want. The law and its institutions are the tent under which we live, the standard to which we hold ourselves and hold others. Lawyers need to be visionaries as well as craftsmen.

When I first started thinking about what I have called Project 2100, in the early days following Russia's invasion of Ukraine, I was struck by two thoughts. The first was how loudly the Russia – Ukraine conflict resonated in the West. It is of course a brutal war in Europe. But there was something more, and something more than geography and the direction of the flow of the displaced, that resonated so loudly in the West. My sense is that for the West this conflict brought a loss of innocence. Something that we, the West, had built was being torn down. What was being assailed was the post-War edifice of aspirational multilateralism rooted in the rules-based international system that the West had fashioned out of the ashes of war.³

My second thought was to return to the realisation that the college of international law does not engage in long-term thinking. This is a generalisation, of course, as there are many who devote effort and energy to attempting to look through the gloom. And there are many notable long-term endeavours that attract the attention and engagement of our community. This said, unlike economists or accountants or actuaries or climate scientists or evolutionary biologists or astronomers or predictive analysts or government policy planners, international lawyers tend not to peer into the future to make assessments about where we are headed and to ask questions about whether international law and institutions are fit for purpose. But we can't easily retool when we arrive. This has to be done before we get there. If not, the systemic lag in our laws and institutions will itself be a source of dysfunction.

¹ Daniel Bethlehem, "The End of Geography: The Changing Nature of the International System and the Challenge to International Law", *EJIL* (2014), Vol. 25 No. 1, 9–24 (doi:10.1093/ejil/chu003).

² *Ibid.*, p.24.

³ Daniel Bethlehem, "Project 2100—Is the International Legal Order Fit for Purpose?", *EJIL:Talk!*, 29 November 2022 (<https://www.ejiltalk.org/project-2100-is-the-international-legal-order-fit-for-purpose/>).

In the midst of the Second World War, on 14 August 1941, on a warship off the Newfoundland coast, President Roosevelt and Prime Minister Churchill issued the Atlantic Charter. It is brief – eight points. It was issued when Britain was standing alone against Nazi Germany, only a few months after the Battle of Britain and the Blitz. The United States had not yet entered the war. Seen in the context of the raging conflict, in which the outcome was still uncertain, and brutality was all around, it was a remarkable statement. Let me recall three of the points which would benefit from restatement today with only the smallest of modifications.⁴

“...they [the U.S. and the UK] will endeavour, with due respect for their existing obligations, to further the enjoyment by all States, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity;”

“... after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all lands may live out their lives in freedom from fear and want;”

“... they believe that all of the nations of the world, for realistic as well as spiritual reasons must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea or air armaments continue to be employed by nations which threaten, or may threaten, aggression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such nations is essential. ...”

The Atlantic Charter was followed by the Declaration by the United Nations.⁵ The firmer roots of the United Nations then followed in the Moscow Four-Nation Declaration of October 1943 in which the United States, the United Kingdom, the Soviet Union and China declared that

“they recognize the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security.”⁶

Other meetings followed, notably at Dumbarton Oaks in mid-late 1944,⁷ and the institutional framework of the United Nations was largely agreed in Yalta in February 1945⁸ and the Charter signed in San Francisco on 26 June 1945.⁹

⁴ The Atlantic Charter, 14 August 1941, points 4, 6 and 8 (<https://avalon.law.yale.edu/wwii/atlantic.asp>).

⁵ Declaration by the United Nations, 1 January 1942 (https://avalon.law.yale.edu/20th_century/decade03.asp).

⁶ Moscow Conference, Joint Four-Nation Declaration, October 1943, point 4 (<https://avalon.law.yale.edu/wwii/moscow.asp>).

⁷ The Dumbarton Oaks Conversations, 1944 (<https://www.doaks.org/newsletter/news-archives/2015/the-dumbarton-oaks-conversations-1944>).

⁸ Yalta Conference, 4 – 11 February 1945 (<https://www.britannica.com/event/Yalta-Conference>).

⁹ UN Charter, 26 June 1945 (<https://www.un.org/en/about-us/un-charter>).

By that point, the Bretton Woods institutions – the World Bank and the International Monetary Fund – had already been established.¹⁰ The central pivot of the IMF, as reflected in the original text of Article IV of its Articles of Agreement,¹¹ was the pursuit of exchange rate stability, aimed at addressing the competitive currency devaluations that had been a contributing cause of the Great Depression. Exchange rate stability was to be achieved by pegging the value of the dollar to gold, with the value of other currencies being linked to the dollar.

The GATT followed in 1947.¹² Together with the IMF and World Bank, this completed the multilateral trade, financial and development framework which, together with the United Nations, stood up the mid-war vision of a post-war world. Addressing its visionary purpose, the President of the Bretton Woods Conference framed the achievements of Bretton Woods in the following terms:¹³

“The actual details of a financial and monetary agreement may seem mysterious to the general public. Yet at the heart of it lie the most elementary bread and butter realities of daily life. What we have done here in Bretton Woods is to devise machinery by which men and women everywhere can exchange freely, on a fair and stable basis, the goods which they produce through their labour ...

...

... the only genuine safeguard for our national interests lies in international cooperation. We have come to recognise that the wisest and most effective way to protect our national interests is through international cooperation—that is to say, through united effort for the attainment of common goals.”

And so was set the architecture of liberal internationalism.

Other institutions were established and brought under the UN umbrella, becoming the UN specialised agencies. More were added along the way, with the addition of a legislative component in the form of important multilateral treaties. This is the rules-based international system that emerged from that mid-war vision of a post-war world, a vision of multilateralism based on law.

On many issues, this was more aspiration than achievement, but there were also significant achievements. The emergence, development and embedding into consciousness of the legal and institutional framework for the international protection of human rights, centred around the Universal Declaration of Human Rights, the Genocide Convention, the International Covenants and their regional parallels and multilateral offshoots, is one example. The articulation and almost universal acceptance, though not always observance, of rules of international humanitarian law, centred around the 1949 Geneva Conventions and their 1977 Protocols, is another. The emergence and development of a legal framework governing international investment is a further

¹⁰ Bretton Woods–GATT, 1941–1947 (<https://history.state.gov/milestones/1937-1945/bretton-woods>). IMF and World Bank Articles of Agreement at UNTS, Volume 2, Nos. 20(a), at p.40, and 20(b), at p.134 (<https://treaties.un.org/doc/Publication/UNTS/Volume%202/v2.pdf>).

¹¹ IMF Articles of Agreement, Article IV (original text), *ibid*, at p.46.

¹² General Agreement on Tariffs and Trade, 1947 (https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm).

¹³ Henry Morgenthau, Jr., US Secretary of the Treasury, and President of the Bretton Woods Conference, Closing Address, July 1944 (https://fraser.stlouisfed.org/files/docs/historical/martin/17_07_19440701.pdf, at pp. III – IV).

example. The conclusion of the WTO Agreement in 1995, the first major multilateral breakthrough on trade since the GATT in 1947, was also significant.

There were also significant setbacks. The Bretton Woods fixed exchange rate system collapsed in the early 1970s. The Cold War saw the UN security apparatus largely unable to take effective action to address threats to and breaches of international peace and security. While there was a brief golden age of multilateral engagement and cooperation from December 1989 to the NATO military action against the Federal Republic of Yugoslavia in March 1999, this period also witnessed unprecedented horrors and atrocities in Rwanda, the Former Yugoslavia, Sierra Leone, Liberia and elsewhere.

And then came the new millennium, ushered in by the fracturing of international consensus over Kosovo. While there was a brief coming together after the 9/11 attacks, the past two decades have not been an auspicious augury of well-oiled international architecture capable of addressing the challenges of the times.

*

So, we come to Project 2100.

Following the Atlantic Charter, the five years from 1944 to 1949 saw the mid-war vision of a post-war world rooted in law and institutions that were articulated, embedded and built upon. It was a vision of multilateralism that sought a balance between sovereignty and non-interference, on the one hand, and individual rights, on the other. It established a governance architecture of constitutional dimensions. It set out core substantive rules. It was designed to be an enduring edifice of international engagement and cooperation. It was a remarkable legislative and constitutional moment. Amongst the many hundreds of treaties and instruments that were adopted during this period were the following:

- The Bretton Woods instruments – the IMF and World Bank Articles of Agreement
- The UN Charter and ICJ Statute¹⁴
- The GATT
- The Universal Declaration on Human Rights¹⁵
- The Genocide Convention¹⁶
- The four Geneva Conventions¹⁷
- A host of agreements establishing the UN Specialised Agencies,¹⁸ including:
 - International Civil Aviation Organisation,
 - United Nations Educational, Scientific and Cultural Organisation,
 - World Health Organisation,

¹⁴ United Nations Charter (<https://www.un.org/en/about-us/un-charter>); Statute of the International Court of Justice (<https://www.icj-cij.org/statute>).

¹⁵ Universal Declaration of Human Rights (<https://www.un.org/en/about-us/universal-declaration-of-human-rights>).

¹⁶ Convention on the Protection and Punishment of the Crime of Genocide, 9 December 1948 (<https://ihl-databases.icrc.org/en/ihl-treaties/genocide-conv-1948>).

¹⁷ The Geneva Conventions of 12 August 1949 (<https://www.icrc.org/en/doc/assets/files/publications/icrc-002-0173.pdf>).

¹⁸ UN Specialised Agencies (<https://www.un.org/en/about-us/specialized-agencies>).

- Inter-Governmental Maritime Consultative Organisation, which was subsequently renamed the International Maritime Organisation,
- and others.

By the conclusion of the 1940s, the architecture and core principles of what we have today had been laid down. There was a vision for the future.

We are now, in late 2023, almost exactly halfway between that legislative moment and the start of the next century. The question we need to ask, I suggest, is whether the visionary system that was put in place 78 years ago is adequate to take us through to the next century. Is it fit for purpose? Is there anyone who, with hand on heart, can say with conviction that the current institutional architecture, the current edifice of law, the current procedures of decision-making, the current processes of change and renewal, the current profile of representation and of responsibility, are capable of carrying us through to the long term?

My response is that the current governance and legislative system is not fit for purpose. There is a sclerosis in the international system that needs urgent attention. And it is not just patchwork surgery or palliative care that is required. A more radical overhaul is necessary.

We need, though, to have a vision of where we are headed, or would like, with a sense of realism and expectation, to be, before we can envision not simply the overhaul that is necessary but also how it might realistically be achieved.

I do not suggest a focus on 2100 as a reasonable window of prediction. The drafters of the Charter could not conceivably have envisioned the world of 2023. To go from Kitty Hawk to Apollo 11 took less than 66 years. World population went from 4 billion to 8 billion in 48 years. This is the same time it took to go from the first integrated circuit (in 1959) to the first iPhone (in 2007). The Internet went from the Tim Berners-Lee's creation of HTML and URLs to widespread public usage almost overnight. To try at this point to envision the world of 2100 would be a feat that would challenge Isaac Asimov.

Framing the enquiry around 2100 is not intended to focus attention on the point of arrival. It is intended to focus attention *away* from the here and now – away from the challenges of 2023. Away from issues of acute care and chronic care. Away from how we might better address Russia – Ukraine or Israel – Palestine. Away from debates about whether the UN Security Council impasse over the veto can be addressed by empowering the General Assembly.

Of course, to reach the longer term we have to survive and traverse the near term and the medium term. But a radical reconceptualization can take place in parallel with more incremental steps. And, if we are to get to the higher ground of the longer term, we need a sense of direction that is focused on the horizon.

*

In March 2021, the U.S. National Intelligence Council published its most recent Global Trends report.¹⁹ This is a report published every four years in which the NIC attempts to look into the future. It does not look very far into the future; only to 2040. This is a less ambitious window

¹⁹ U.S. National Intelligence Council, Global Trends, *A More Contested World*, March 2021 (https://www.dni.gov/files/ODNI/documents/assessments/GlobalTrends_2040.pdf).

than other exercises of this nature. PWC, for example, published a report in February 2017 entitled “The Long View: How will the global economic order change by 2050?”²⁰

The Global Trends report, entitled “A More Contested World”, makes interesting reading. It is intended as an exercise of assessment, of observation, and anticipation. It is not tasked with policy formulation. It begins with an analysis of structural forces observable today that are laying the foundations for tomorrow – demographics, environment, economics, technology – leading to an assessment of what is described as “a world that is increasingly out of balance and contested at every level, but [that] this trajectory is not set in stone.” Looking across possible trajectories, the Report sets out five plausible scenarios for charting the possible future amid the uncertainty. These are as follows:

The **first scenario** is termed “renaissance of democracies”. It contemplates rapid technological advances, fostered by public-private partnerships, which transform the global economy, raising incomes, and improving quality of life. This rising tide of economic growth and technological achievement enables responses to global challenges.

The **second scenario** is termed “a world adrift”. It contemplates an international system which is directionless, chaotic, and volatile as international rules and institutions are largely ignored. OECD countries are plagued by slower economic growth, widening societal divisions, and political paralysis. China’s international influence is expanding but global challenges, such as climate change, remain largely unaddressed.

The **third scenario** is termed “competitive coexistence”. It contemplates benign coexistence between the U.S. and China around trade and economic interdependence but alongside competition over political influence, governance models, technological dominance, and strategic advantage.

The **fourth scenario** is termed “separate silos”. It contemplates a world that is fragmented into economic and security blocs focused on self-sufficiency, resiliency, and defence. Global problems, such as climate change, are insufficiently addressed.

The **fifth scenario** is termed “tragedy and mobilisation”. Following a global food catastrophe caused by climate events and environmental degradation, it contemplates a global coalition and revitalised multilateral institutions acting to implement far-reaching changes designed to address climate change, resource depletion, and poverty.

These scenarios are not truth, and they are not themselves siloed. And this is only a 20-year timeline. There are nonetheless important elements across the scenarios which tell us what we largely know already about the future into which we are headed. Major, societal threatening, existential global challenges dominate – climate change, resource depletion, food insecurity, poverty. The differences across the scenarios is how, if at all, the world comes together to address them.

The growing influence of China is another constant. If the conception of the American Century is appropriate to describe the dominance of the United States in the period following the Second World War, it seems clear that the century to come will be very different. Most of all, as we look across the scenarios, is the huge challenge to multilateral mobilisation and multilateral institutions, and the risk of international structural fragmentation.

²⁰ PWC, *The Long View – How will the global economic order change by 2050?*, February 2017 (<https://www.pwc.com/gx/en/world-2050/assets/pwc-world-in-2050-summary-report-feb-2017.pdf>).

The PWC forward look, more narrowly focused on economic growth, points in a similar direction. Heavy western dominance of the global economy *today*, seen through the lens of the G7 plus EU, dwarfs what PWC terms the E7, a grouping of the largest emerging economies—Brazil, China, India, Indonesia, Mexico, Russia and Turkey. By 2050, this dominance is completely reversed. Just looking at China and India, in comparison to the U.S. and EU, as a percentage of world GDP, the scale is projected to tip from 31% versus 25% of the global economy in 2016, in favour of the U.S. and EU, to 35% versus 21% in favour of China and India by 2050. Spain moves from 16th in global GDP rankings in 2016 to 26th by 2050; Australia from 19th to 28th. In contrast, Pakistan is projected to move from 24th to 16th in global GDP rankings, and Vietnam from 32nd to 20th. This is a major structural economic realignment.

There are other envisionings of the future which are more driven by policy priorities and a direction of travel. Perhaps the most significant is that from China. In a major international address on 21 April 2022, President Xi Jinping laid out a vision of the future which was compelling in its motherhood and apple pie appeal for international cooperation and security. Proposing a Global Security Initiative, President Xi expressed commitment to the respect for sovereignty and territorial integrity, for non-interference in internal affairs, for the freedom for States to choose political and development paths, for abiding by the principles of the Charter, for the rejection of unilateral sanctions and long-arm jurisdiction, and for global cooperation to address terrorism, climate change, cybersecurity and biosecurity.²¹

In a document published on 26 September 2023,²² China elaborated its “blueprint for the future”. The opening sentences of the blueprint describe the terrain of the debates to come.

“Standing at a crossroads, humanity is faced with two opposing options. One is to revert to the Cold War mentality that deepens division and antagonism and stokes confrontation between blocs. The other is to act for the common wellbeing of humanity, strengthen solidarity and cooperation, advocate openness and win-win results, and promote equality and respect. The tug of war between these two options will shape the future of humanity and our planet in a profound way.”

Over the 23 paragraphs that follow, China sets out its vision for “a new approach to international relations”, “new features of global governance”, “new prospects for international exchanges”, and “a new vision for building a better world”. This new vision rests on conceptions such as “dialogue and consultation”, “win-win cooperation” and “exchanges and mutual learning”.

In the weeks that followed, China showcased its vision in a high-profile Belt and Road Forum event in Beijing in mid-October attended by UN Secretary-General Guterres, Russia’s Vladimir Putin and some two dozen other world leaders.²³

Reporting on China’s new international vision, one observer commented:

²¹ President Xi Jinping, 21 April 2022
(https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/202204/t20220421_10671083.html).

²² *A Global Community of Shared Future: China’s Proposals and Actions*, 26 September 2023
(https://www.mfa.gov.cn/eng/zxxx_662805/202309/t20230926_11150122.html).

²³ Belt and Road Forum, President Xi Jinping, 18 October 2023
(<http://www.beltandroadforum.org/english/n101/2023/1018/c124-1175.html>).

“Xi’s vision — though cloaked in abstract language — encapsulates the Chinese Communist Party’s emerging push to reshape an international system it sees as unfairly stacked in favour of the United States and its allies.

...

For many observers, this campaign has raised concern that a world modelled on Beijing’s rules is also one where features of its iron-fisted, autocratic rule — like heavy surveillance, censorship and political repression — could become globally accepted practices.”²⁴

China’s articulation of a vision for the future must be seen for what it is – part statement that stakes out elements of policy priority and parameters for engagement; part initiative to lay claim to leadership; part a diplomatically-driven hearts and minds campaign to capture support; and part a sleight of hand to obscure less benign motives.

The UK Parliamentary Intelligence and Security Committee, for example, in a substantial report published on 13 July 2023 into China’s activities in the UK, observed that “China sees almost all of its global activity in the context of its struggle with the US” and that its “ruthless targeting is not just economic: it is similarly aggressive in its interference activities, which it operates to advance its own interests, values and narrative at the expenses of those in the West.”²⁵

This mirrors the most recent U.S. Annual Threat Assessment, which includes the following observation:²⁶

“...China has the capability to directly attempt to alter the rules-based global order in every realm and across multiple regions, as a near-peer competitor that is increasingly pushing to change global norms and potentially threatening its neighbours.

...

Beijing will try to expand its influence abroad and its efforts to be viewed as a champion of global development via several initiatives—including the Belt and Road Initiative (BRI) and Xi’s new flagship policies—the Global Development Initiative and the Global Security Initiative. Beijing has attempted to use these programs and initiatives to promote a China-led alternative to often U.S. and Western-dominated international development and security forums and frameworks. The [Intelligence Community] assesses that the Government of China will use these programs and

²⁴ Simone McCarthy, CNN, 19 October 2023 (<https://edition.cnn.com/2023/10/19/china/china-bri-forum-key-takeaways-intl-hnk/index.html>).

²⁵ Intelligence and Security Committee of Parliament, *China*, HC 1605, 13 July 2023, at paragraphs 2 and 10 (<https://isc.independent.gov.uk/wp-content/uploads/2023/07/ISC-China.pdf>).

²⁶ Office of the Director of National Intelligence, *Annual Threat Assessment of the U.S. Intelligence Community*, 6 February 2023, at pp. 4 and 7 (<https://www.dni.gov/files/ODNI/documents/assessments/ATA-2023-Unclassified-Report.pdf>).

initiatives to promote modifications to international norms to favour state sovereignty and political stability over individual rights.”

China’s efforts to reconceptualise the international system are evident, also, in the recent decision of the BRICS forum – Brazil, Russia, India, China and South Africa – to expand its membership to include Saudi Arabia, Iran, Ethiopia, Egypt, Argentina and the UAE, an initiative that was heavily pushed by China as a counterweight to Western influence.²⁷

This approach has attracted support from the UN Secretary-General. Speaking at the BRICS Summit in Johannesburg in late August 2023, Secretary-General Guterres is quoted as having echoed calls for the reform of the UN, the IMF and the World Bank, saying:

“Today’s global governance structures reflect yesterday’s world. For multilateral institutions to remain truly universal, they must reform to reflect today’s power and economic realities.”²⁸

Guterres’s comments followed publication, on 18 April 2023, of the report of the Secretary-General’s High-Level Advisory Board on Effective Multilateralism entitled “A Breakthrough for People and Planet: Effective and Inclusive Global Governance for Today and the Future”.²⁹ This, in turn, built on the Secretary-General’s 2021 Report entitled *Our Common Agenda*, which opened with the following lines:³⁰

“We are at an inflection point in history.

In our biggest shared test since the Second World War, humanity faces a stark and urgent choice: a breakdown or a breakthrough.

The coronavirus disease (COVID-19) is upending our world ...

Conflicts continue to rage and worsen.

The disastrous effects of a changing climate – famine, floods, fires and extreme heat – threaten our very existence.

For millions of people around the world, poverty, discrimination, violence and exclusion are denying them their rights to the basic necessities of life ...

...

²⁷ Reuters, “BRICS welcomes new members in push to reshuffle world order”, 25 August 2023 (<https://www.reuters.com/world/brics-poised-invite-new-members-join-bloc-sources-2023-08-24/>).

²⁸ Ibid.

²⁹ High-Level Advisory Board on Effective Multilateralism (<https://highleveladvisoryboard.org/>), Report, *A Breakthrough for People and Planet*, 18 April 2023 (<https://highleveladvisoryboard.org/breakthrough/>).

³⁰ Report of the Secretary-General, *Our Common Agenda*, (https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf).

... our challenges are interconnected, across borders and all other divides. These challenges can only be addressed by an equally interconnected response, through reinvigorated multilateralism and the United Nations at the centre of our efforts.”

The report of the High-Level Advisory Board is an attempt to chart a pathway towards “reinvigorated multilateralism”. The opening sentences of the Preface to the Report reflects a sense of anxiety and of urgency about the global outlook.

“On the 75th anniversary of the United Nations, Member States pledged to strengthen global governance to deliver for present and coming generations. They requested the UN Secretary-General to offer a pathway for the multilateral system to address this challenge. *Our Common Agenda* is the answer to that request and issues a stark warning to us all: On our current trajectory, we face a collective breakdown. We are failing to address the triple planetary crisis of climate change, biodiversity loss, and pollution. We are hurtling from one emergency to the next, unable to address global shocks from new technologies, pandemics, rapidly changing economies, and accelerating poverty and inequalities. We are putting the existence of future generations at risk.”

To reinvigorate multilateralism, the Report proposes what it describes as “six transformative shifts that can help tackle the challenges facing us today and those on the horizon.” These are as follows:

Shift One: Rebuild trust in multilateralism through inclusion and accountability.

Shift Two: Regain balance with nature and providing clean energy for all.

Shift Three: Ensure sustainable finance that delivers for all.

Shift Four: Support a just digital transition that unlocks the value of data and protects against digital harms.

Shift Five: Empower equitable, effective collective security arrangements.

Shift Six: Strengthen governance for current and emerging transnational risks.

*

So this is where we are in the strategic debate. The post-War legal and institutional architecture conceived and driven by the West is in the firing line. Key components of it have stalled. China is attempting to capture the high ground by scripting a way forward that would co-opt the institutional and State-centric elements of the system but downplay its personal and libertarian aspects. It is looking to extend its influence.

The West is looking to buttress the system through rule innovation, the strengthening of institutions and proposals for reform, and what is described as “our innovative edge in science and technology”. A statement of principles by President Biden and Prime Minister Johnson of 10 June

2021, entitled *The New Atlantic Charter*, is cast in terms of revitalising the original Atlantic Charter by “building on the commitments and aspirations set out eighty years ago”.³¹

There are important elements of the Western and Chinese visions of the international system that are shared – addressing climate change, eradicating poverty, ensuring stability, and more. The door is not closed, therefore, on the possibility that we might see the emergence of the third scenario set out in the U.S. Global Trends report, “competitive coexistence”, which contemplates benign coexistence alongside strategic competition.

This said, the dissonance between the two visions of the future is considerable. And it is more than just about command and control and competing influence and vision. It is also about whether the laws and institutions of global governance should be prescriptive and controlling, and simply the instruments of States, or whether these institutions and laws should be guardrails, enabling, facilitating and protecting of transnational participation that goes beyond States. It is about whether we go back, whether there is a retreat from liberal internationalism, or whether we go forward, seeking to develop and adjust the model we have already.

As the two camps circle each other, skirmishing and preparing for the possibility of wider combat, the UN is hoping to reconceive effective multilateralism with what it has termed the Summit of the Future, scheduled for September 2024,³² the outcome of which is planned to be a *Pact for the Future*,³³ a declaration intended to leave the world “better prepared to manage the challenges we now face.”

The UN has considerable convening power, and we can expect the *Pact for the Future* to be a well-conceived and thoughtful aspirational statement of what should be done to address the malaise in which we find ourselves. I hope it succeeds, even if I have doubts about whether the vehicle and the approach is the best way to effectively address the challenges that we face.

*

Let me conclude with some thoughts about where Project 2100 should take us. I have a number of framing remarks and some more concrete thoughts.

First, my purpose in framing what I have said so far in Project 2100 terms is to sound a call to action to the college of international law to engage in the debate about what the rules-based international system should look like in the longer term. Although there are a growing number of books and articles that address the remaking of international law and issues of institutional and legal reform, we seem largely to have ceded the field of strategic thinking to others. We are not good, as a profession, at looking into the deep future and considering whether change is required. We too often retreat into a defensive posture. As a friend and a colleague has written recently:

“Words like ‘reimagining’ are in fashion in various contexts, even in the field of law, where one might think that reimagination has little place. The practice of law is not like that of a novelist or a painter, and it is not at all obvious that lawyers should be in the business of ‘reimagining’ or ‘reconceiving’ law. Moreover, even though

³¹ The New Atlantic Charter, 10 June 2021 (<https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/10/the-new-atlantic-charter/>).

³² United Nations, *Summit of the Future*, 22 – 23 September 2024 (<https://www.un.org/en/summit-of-the-future>).

³³ Scope of the Summit of the Future, A/77/L.109, 30 August 2023 (<https://documents-dds-ny.un.org/doc/UNDOC/LTD/N23/252/95/PDF/N2325295.pdf?OpenElement>).

‘reimagine’ is, in fact, a rather neutral term, it seems to be used as if it inherently implies a better outcome, suggesting that the present law needs radical revision. The mental exercise of ‘reimagining’ international law calls, therefore, for caution.”³⁴

This is not my view. I believe that we need to reimagine and reconceive, and that radical revision is required.

Second, I recall what I said earlier. By casting the issue in terms of a date, the turn of the next century, I do not intend to suggest that we hold ourselves to the task of trying to predict 77 years into the future. Framing the inquiry in these terms is intended to draw our focus away from the near and medium term and challenge us to think about what the international system should look like in a timespan that will serve our children and their children.

Third, though, we have to get to the future, so some tangible stepping stones to the long term will be necessary.

Fourth, it requires emphasis that there is much in the present international system—institutions and laws—that must be maintained: because they are an essential part of the fabric over our heads; because they are necessary and work well; or because, even if flawed, they are important and can be fixed. I do not think, for example, that we should be tinkering with the prohibition on the threat or use of force, other than to make it stronger. I do not think that we should compromise on a commitment to core human rights on the ground that it will make it easier to engage with others if we do so. I do not think we should accept that sovereignty trumps all.

But, fifth, this said, the world into which we are moving will be different from that which we have been inhabiting over the past 78 years, and some accommodation to the new reality will be necessary. A hegemonic liberal agenda, whether in law-making or institutional engagement or unilateral action, will not work. It will simply tear down the house. If there is to be global coalescence around a common approach to existential challenges, it will require constructive engagement on our part as well.

Sixth, as a practical matter, an everything but the kitchen sink approach will not work. The UN, in its anticipation of The Summit of the Future, and its outcome document, the *Pact for the Future*, says that it will build on the Sustainable Development Goals Summit that took place in September this year.³⁵ The Political Declaration that emerged from that Summit spans 77 paragraphs.³⁶ It is a noble statement of aspirational intent with which we may all be able to agree. But, apart from the very dedicated and the very expert, I cannot imagine that it will impact the consciousness of most. As we move forward, it is action rather than simply expressions of aspiration that will be needed. Those who climb mountains know that you do so, especially on the highest ridges, by placing one foot in front of the other, methodically and with due deliberation, not in leaps and bounds.

Let me turn to some more concrete thoughts, and start with a question.

There is an assumption that multilateralism is a universal good. In part, this is the notion of democracy and legitimacy in the international system – sovereign equality and everyone gets a vote.

³⁴ Michael Wood, “Reimagining international law: What might have been, what might be”, Chapter 3 of Popovski, V., and Malhotra, A. (eds.), *Reimagining the International Legal Order*, Routledge (2024).

³⁵ SDG Summit 2023 (<https://www.un.org/en/conferences/SDGSummit2023>).

³⁶ Political declaration of the high-level political forum on sustainable development convened under the auspices of the General Assembly, A/HLPF/2023/L.1, 15 September 2023 (<https://www.un.org/en/conferences/SDGSummit2023/political-declaration>).

It is the pull of universalism. In part it is also structural – on what basis might one differentiate. And in part it is a recognition that many of the most intractable challenges that we face are global in nature and require multilateral solutions. Climate change is the best example. Our approach to the oceans and the common heritage of mankind likewise attracts this response. Addressing global poverty, which impacts billions, is another. The issues of global health and how we address the electromagnetic sphere also fall into this category.

But engaging multilaterally also brings significant challenges – of herding cats, delay, cost, the loss of focus, the kitchen sink, a lowest common denominator, challenges of implementation, and more.

The High-Level Board Report recognises the need for more effective decision-making but ties this to what it describes as an “overreliance on decisions by consensus”. Its response is that key processes should be shifted to qualified majority or some other form of majority voting system.

I make no objection of principle to this proposal but think we should question the default to global multilateralism; that everyone needs to be around every table.

Let’s take climate change, for example. The overwhelming mass of rainforest is found in a small number of countries—the countries of the Amazon basin, the Congo basin, Australasia and the Sundaland rainforest islands of Borneo, Sumatra and Java. Just three countries, Brazil, the DRC and Indonesia, account for about 50% of the world’s rainforest.

On the other side of the equation, three countries account for over 50% of the world’s carbon emissions—China, the United States, and India.

COP 28, just around the corner, will give important impetus to the global focus on efforts to address climate change. The entire world will be there. Good! But what about an initiative for the common good that brings together the Climate 6—the three States that represent the lungs of the earth and the three States that represent the global polluters. Why not put Brazil, the DRC and Indonesia in a room with China, the U.S. and India, with the task of coming up with a way forward that will allow us all to breathe more easily. Is global multilateralism the most effective way of significantly advancing initiatives to address climate change? Would a more focused approach bring better results?

The same approach might also be readily applied to the challenges of biodiversity.

The Artemis Accords is a good example of variable geometry in the negotiation and agreement of international instruments.³⁷ For those who may be unfamiliar with it, the Accords is a U.S.-inspired non-binding instrument that sets out *Principles for Cooperation in the Civil Exploration and Use of the Moon, Mars, Comets, and Asteroids for Peaceful Purposes*. It is a framework agreement that has the purpose of setting a baseline for the civil exploration and use of outer space.

The Accords was initially signed, on 13 October 2020, by the national space agencies of eight countries. That number has now risen to 32. China and Russia, regrettably, have not signed, but virtually all other States which have or would like to have an active space programme have signed up, as well as many others. Had the pursuit of such an endeavour begun as an exercise in global multilateralism, we would no doubt still be waiting to see its fruits.

I do not want to make too much of this as there is already a good deal of variable geometry in international law-making, in bilateral, regional and self-selecting endeavours. But the point is

³⁷ Artemis Accords, *Principles for Cooperation in the Civil Exploration and Use of the Moon, Mars, Comets, and Asteroids for Peaceful Purposes*, 13 October 2020 (<https://www.nasa.gov/wp-content/uploads/2022/11/Artemis-Accords-signed-13Oct2020.pdf>).

important if for no other reason than that the focus of the High-Level Board report is on enhancing effective multilateralism. It is of course a UN report, and the UN is the quintessential multilateral organisation. But, as we think of how best to engage on issues that require urgent attention, we ought to conceive of, and take forward, a workable model of variable geometry in which we do multilaterally what can be done multilaterally but are also prepared—proactively, not simply as a last resort—to do regionally or bilaterally or thematically or sectorally what can be done by such means. In a highly contested multipolar world, different tools are going to be necessary to address global challenges.

Let me come to some more concrete thoughts and start with the point that a Project 2100 initiative, if at all, would need a brains-trust to bring together a manageably small group of diverse experts to address cascading trajectories and structural, institutional and legislative initiatives that might be taken to best address the looming challenges. I am not suggesting leadership by theocracy or by the Science Fiction and Fantasy Writers Association, along with their lawyers. Nor am I suggesting that a small, non-governmental gathering can script a wider journey. I am suggesting that considered thinking for the longer term cannot be undertaken effectively through the medium of political declarations crafted for purposes of gathering the endorsement of 193 plus Heads of State and Government.

Let me set out some ideas to get the ball rolling. I'll start at the science fiction end and work backwards.

There is every chance that, by 2100, we will be an inter-planetary species, with the potential for resource exploration and exploitation of the Moon and Mars. The Artemis Accords envisage that. The Accords, in Section 10(2), address the extraction and utilisation of space resources in the following terms:

“The Signatories emphasize that the extraction and utilization of space resources, including any recovery from the surface or subsurface of the Moon, Mars, comets, or asteroids, should be executed in a manner that complies with the Outer Space Treaty and in support of safe and sustainable space activities. The Signatories affirm that the extraction of space resources does not inherently constitute national appropriation under Article II of the Outer Space Treaty, and that contracts and other legal instruments relating to space resources should be consistent with that Treaty.”

Article II of the 1966 Outer Space Treaty provides that “Outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.”³⁸ Other provisions of the treaty set out other principles governing the activities of States in the exploration and use of outer space.

Well in advance of it becoming physically and commercially viable, the international community came together to address deep seabed mining. A legal framework was agreed; institutions were established. Although not all States are party to UNCLOS, there is a wide recognition that its deep seabed mining principles occupy the legal and regulatory space applicable to these issues.

³⁸ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 19 December 1966 (<https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/outerspacetreaty.html>).

We have experience of resource colonisation. It is not a happy one. Before celestial resource exploitation becomes viable, before we know what's out there, we ought to give active consideration to how best to address what is to come, and avoid, on an interplanetary scale, the mistakes we have made at home. If you will excuse the pun, this is not rocket science.

I turn to governance and institutions. We live in a world of what Thomas Friedman, in his book *The World is Flat*,³⁹ called Globalisation 3.0, in which global activity is dominated by corporations and individuals, with their ability to collaborate and compete globally without State intermediation. But these actors are largely excluded from global governance structures and participate in global institutions and law-making only as observers and non-governmental stakeholders. This is not a sustainable governance model. And it is not sufficient to say that non-governmental stakeholders should work through their States of nationality or incorporation. We need to find ways to address this – for reasons of legitimacy, for reasons of ideas, for reasons of accountability, and more.

The Secretary-General's High-Level Board observes that the “we the people” opening intonation of the Charter needs to be better addressed in the multilateral system. I agree, but I hold back from the breadth of that idea pending concrete initiatives for implementation. I do not think that a Western European Union or European Parliament approach will be the right way to go. The High-Level Board proposes a greater voice for civil society and a role for cities and subnational regions in multilateralism, as well as a channel for engagement for virtually every grouping with a distinctive voice and message. Again, who can object to participatory democracy, but I reserve judgement, pending concrete initiatives for implementation.

It is acute, though, that some individuals and corporations have an outsized influence on global events. One person has the power to turn on, or off, Ukrainian communications in the middle of a war at will. Put together with other levers he controls, he has a disproportionate influence on who can speak to whom, when, and over what medium.

One consequence of defending Westphalia is that those with an ability to influence and those who are most affected fall outside the global governance framework. That has to change.

Writing 10 years ago in *The End of Geography*, I identified six areas of challenge to the international system:

- the international environment, shared spaces, the atmosphere, and the global commons;
- the movement of people, both forcibly displaced and voluntarily migrant;
- the challenges to human, animal and plant life and health, and to global food security;
- the interconnectedness of global trade and financial flows and the potential for systemic vulnerability in the global economic system;
- the dramatic increase in the use of the electromagnetic sphere and the challenges, risks and opportunities that this presents; and
- transboundary challenges to security.

Returning to these issues 10 years on, the list seems still relevant, perhaps with more explicit references to the challenges associated with global poverty and the cascadingly damaging effects of the use of armed force.

³⁹ Thomas L. Friedman, *The World Is Flat 3.0* (July 2007) (<https://www.thomasfriedman.com/the-world-is-flat-3-0/>).

How do we reconceive the rules-based international system to address these issues.

In the same *End of Geography* piece, I highlighted a number of areas that seemed to be ripe for reform. I don't reprise them all here, as some are less relevant to a Project 2100 agenda. But I note two: the overwhelming importance of wider international institutional reform and the equal importance of law-making and legal reform.

On the issue of institutional reform, questions of representation, decision-making, financial contribution, accountability, focus, and more, require serious attention. On the issue of law-making and legal reform, law-making through treaties and custom is egregiously cumbersome. There are no adequate rules of change. We struggle often with a dead-hand on the law-making tiller.

I would like to conclude with two thoughts – the first on UN reform; the second on leadership.

Significant reform of the UN is essential if it is to play a meaningful role in the future. And I do not mean only reform of the Security Council and the veto. This, of course, is important but it needs to go much wider. The UN human rights machinery has no credibility when Iran can assume a leadership role in the Human Rights Council. Cynical manoeuvres of one-upmanship, whether in the Council or the Assembly, in the face of appalling humanitarian catastrophes, diminish the Organisation and its claim to global leadership. The Council's credibility as the guardian of international peace and security is in tatters. The Assembly, though, is neither fit nor able to take its place. The Council is tied by its veto. The Assembly is tied by its soapbox. And even if sober leadership could emerge, operationalising effective peace-enforcement would need more than words. Organs of responsible and effective governance are required.

Charter amendment is likely to remain elusive. While we should not give up on this, there are other elements that might usefully attract our focus. The Charter prescribes the membership of the Council and voting within it. It does not address who can participate in its work. And I mean here not simply participation in its public meetings but also participation in its closed meetings and in the work of its committees and working groups. These aspects could be significantly reformed simply by a vote of the Council itself.

Similarly, Chapter IV of the Charter governs the functions and powers of the General Assembly. It does not govern what comes to the floor, when, and in what form. The Committees and standing bodies of the Assembly are matters for decision by the Assembly itself, in accordance with its Rules of Procedure, of which it is the author. There are often loud voices in the Assembly that rail against inaction in the Council. But the Assembly is too comfortable in its role of voice without responsibility. Physician, heal thyself, it might be said.

It should also be said that not everything should or needs to go through the Council. It has often been the case, both for reasons of Council impasse and of regional engagement and legitimacy, that issues and international peace and security have been addressed in other forums. We should consider whether such an approach could and might usefully be placed on a principled footing, for example, on a *solange* basis – the principle of German constitutional law that affords flexibility in assessing competence depending on the ability to act.

I come to my final point – leadership.

In a recent piece co-authored with Don McRae on “The International Trading System—Looking to 2100”, in which we concluded that the international trading system was in need of

radical overhaul—you will detect a theme here—we concluded our discussion of what is required with the following:⁴⁰

“The fairy-dust in all this, both elusive and enabling, will be leadership. There is an absence of conceptualizing voices on these issues, in the way in which John Maynard Keynes, Cordell Hull and others conceptualized the vision that led to Bretton Woods and the GATT. We are, it appears, some way from a new Bretton Woods moment at present. It took a great depression followed by a world war to galvanize visionary action in 1944. The economic shock of the global financial crisis of 2007–8, followed by the acute economic challenges posed by the COVID pandemic, which will be testing for some time to come, might have provided the impetus for a re-conceptualization of the international trading system. The resort to populist national agendas, however, including in the field of international trade, and the challenges of a ‘more contested world’, suggest that the conditions are not quite so auspicious now for such an endeavour. Despite this, or because of it, there is work to be done, with the international trade law community amongst the first conscripts in this endeavour.”

There is a vacuum of visionary leadership at present. The leadership there is is focused on the near term and the medium term but not on longer term challenges. That needs to change. The rules-based international system is facing seismic challenges. There is a battle for hearts and minds. There are significantly divergent visions of the governance structure of the international system to come. Leadership is necessary.

⁴⁰ Daniel Bethlehem and Donald McRae, “The International Trading System—Looking to 211”, Chapter 41 in Bethlehem, D., McRae, D., Neufeld, R., and Van Damme, I. (eds), *The Oxford Handbook of International Trade Law* (2nd ed., 2022), at page 1072 (<https://academic.oup.com/edited-volume/45221/chapter-abstract/387211931?redirectedFrom=fulltext>).