

The Liberal World Order in Survival Mode

Philip Allott



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About the Danube Institute

The Danube Institute, established in 2013 by the Batthyány Lajos Foundation in Budapest, serves as a hub for the exchange of ideas and individuals within Central Europe and between Central Europe, other parts of Europe, and the English-speaking world. Rooted in a commitment to respectful conservatism in cultural, religious, and social life, the Institute also upholds the broad classical liberal tradition in economics and a realistic Atlanticism in national security policy. These guiding principles are complemented by a dedication to exploring the interplay between democracy and patriotism, emphasising the nation-state as the cornerstone of democratic governance and international cooperation.

Through research, analysis, publication, debate, and scholarly exchanges, the Danube Institute engages with centre-right intellectuals, political leaders, and public-spirited citizens, while also fostering dialogue with counterparts on the democratic centre-left. Its activities include establishing and supporting research groups, facilitating international conferences and fellowships, and encouraging youth participation in scholarly and political discourse. By drawing upon the expertise of leading minds across national boundaries, the Institute aims to contribute to the development of democratic societies grounded in national identity and civic engagement.

About the Author



Philip Allott is Professor Emeritus of International Public Law at the University of Cambridge, a Fellow of Trinity College Cambridge (from 1973), and a Fellow of the British Academy. From 1960 to 1973 he was a legal adviser in the British Foreign and Commonwealth Office. He was Assistant Agent of the United Kingdom in the Northern Cameroons Case (ICJ, 1961). From 1965 to 1968 he was First Secretary and Legal Adviser, British Military Government Berlin. He was the first Legal Counsellor in the UK Permanent Representation to the European Economic Community at the time of Britain's accession. He was adviser to Arabian Department in the Foreign and Commonwealth Office at the time of Britain's withdrawal from the Persian Gulf and the creation of the United Arab Emirates. He attended various annual sessions of the Sixth Committee of the UN General Assembly. He was an Alternate Representative in the UK Delegation to the UN Law of the Sea Conference. He was Bertha Wilson Distinguished Visiting Professor, Dalhousie Law School (1992) and a member of the Hauser Global Law School Program at New York University Law School (from 1995). In 1996 he held the Ganshof van der Meersch Chair at the Université Libre de Bruxelles.

Philip Allott's latest publication is Eutopia. New Philosophy and New Law for a Troubled World, published in 2016, five hundred years after the publication of Thomas More's Utopia in 1516. It is a further step in his project of changing our understanding of the human world from a collection of states to a society of all human societies and all human beings.

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Abstract

The liberal world order was once anchored by international institutions—the United Nations, the World Bank, the International Criminal Court—which claimed universal legitimacy. Today, these structures appear increasingly impotent, irrelevant, or openly contested. As geopolitical multipolarity and ideological fragmentation leads to a rise in state sovereignty, global institutionalism has correspondingly declined. As the liberal world order enters survival mode, what will be the future of multilateral bodies or international law?

*Entrance of the World Trade Organization headquarters, Geneva.
(Shutterstock).*



Introduction: Judging the Performance of Intergovernmental Institutions

Why do human beings create societies? The answer is that they make a *pragmatic calculation of the cost and the benefit* of doing so. The main cost is an abridgment of their freedom flowing from the obligations of their membership. The main benefit is participation in the collective power of the society, with a corresponding abridgment of the freedom of the other members. The government of a state makes such a pragmatic calculation when it takes part in creating an intergovernmental institution (IGI).

The treaty establishing the intergovernmental institution sets out how the IGI and its organs are to achieve its purposes. That is to say, the treaty determines the IGI's *potentiality* as a particular instance of human self-socialising. The everyday activity of the IGI is its *performance* in seeking to achieve its potentiality. The differential between its *potentiality on paper* (POP) and its *performance in practice* (PIP) is a measure of its success as a society.

The intergovernmental institutions created with so much intelligence and foresight after 1945 must be judged in this way. In most cases, their POP-PIP *differential* is troubling. They have failed to achieve a large part of their potentiality.

The actual performance of every institution and its constituent organs is a reflection of the current *international relations situation* (IRS) in which it operates. That is to say, the constantly changing real-world state of international relations when the IGI is created and thereafter throughout its life. The relationship between these factors may be illustrated by the equation: POP x IRS = PIP.

A special factor in the international situation is *inequality* among the members, the different levels of political and economic power of its members. Some institutions confer exceptional legal powers on their more powerful members. The more powerful members, who may also contribute substantially more to the budget of the institution, have a dominant effect on its daily life. Responsibility for the overall performance-in-practice of an IGI should accordingly be attributed, in many cases, primarily to the actions of their most powerful members.

This is reflected in the dire performance of the United Nations Security Council. The UN General Assembly has performed better in practice, through its Uniting for Peace

Resolution, its use of Advisory Opinions of the International Court of Justice (ICJ) and its capacity to express a modest form of global public opinion or a diffuse General Will of humanity in its debates and resolutions. For example, consider Resolution 1514 (XV) on the Granting of Independence to Colonial Countries and Peoples (14 December 1960). However, despite some success, its General Debate in September is an occasion for self-serving rhetoric by governments rather than a serious contribution to the forging of a global General Will.

The POP-PIP differential of the ICJ is also troubling. The limited acceptance of compulsory jurisdiction, often with substantial conditions attached, the relative infrequency of submission of disputes to the Court, and failure to accept and implement judgments in some notorious cases reflect an inherent reluctance of governments to submit to proceedings which are beyond their control. They see *arbitration* as a much preferable option, where they take part in appointing more than one of the arbitrators, while the proceedings and the arbitral decision may be confidential.

Something similar may be said of the World Trade Organisation (WTO) and its impressive dispute settlement system. It is a striking example of an IGI whose disappointing performance in practice, is unequally determined by the unequal power of its members.

There has been much criticism of the performance of the World Bank and the International Monetary Fund (IMF), especially in relation to the policies, terms and conditions that they have imposed, such as the so-called Washington Consensus. Though dominated by countries which are the largest stakeholders of these policies the social and economic effects of the World Bank and IMF are most impactful for so-called developing countries.

The POP-PIP differential of the International Criminal Court is dramatic. Admittedly, the Rome Statute which established the Court in 2002 made its potentiality vulnerable to the weaknesses which have emerged in practice. The *pragmatic calculation* of the governments of China, India, Russia and the United States has led them to reject participation. There has also been criticism of some of the Court's actions.

The US Government has failed to ratify scores of multilateral

treaties, including the Vienna Convention on the Law of Treaties, the International Covenant on Social, Economic and Cultural Rights, and the Kyoto Protocol. Its non-ratification of the UN Law of the Sea Convention and the Vienna Convention on the Law of Treaties Convention is only partially mitigated by the belief of the US Government that important parts of those treaty-texts are declaratory of customary international law.

There are examples of IGIs whose POP-PIP differentials are not so negative. The potentiality on paper of the European

Union (EU) was a modification of the sovereignty of its member states through the legally binding insertion of the common interest of all members into the national interests of each member state (*direct effect* and *supremacy* of EU law)—the peace treaty aspect of European self-socialising. This has been achieved in practice to a remarkable extent, but the Union's performance-in-practice is still haunted by traditional nationalistic attitudes on the part of governments of member states, and what seems to be an inability to form a powerful foreign policy.

*General view of the hemicycle during a plenary session, Brussels.
(Shutterstock)*



The Changing International Relations Situation

So it is that any judgment of the performance of international governmental institutions in practice requires us to take account of the real-world changes in the international relations situation.

In 1945 the United States emerged as an imperial power in a unipolar world. Its economy had developed strongly during the War, it was the only nuclear power, and European empires were straggling to their demise, in some cases painfully. After the First World War, President Woodrow Wilson had sounded their death knell with his Principle of Self-Determination. Britain had been destroyed by the Second World War and would take decades to recover.

With remarkable energy and intelligence, the United States set about making a new world order. It had not been a member of the League of Nations, concerned that it might lead the country in wars. The UN Charter with its dramatic Article 2(4) prohibiting the use of force in international relations and the Universal Declaration of Human Rights (1948) were to be pillars of the new world political order. The General Agreement on Tariffs and Trade (1948), with Most Favoured Nation (MFN) as its universal rule prohibiting the protectionist use of tariffs and trade rules, was to be the foundation of a new world economic order after the economic chaos of the nineteen-thirties. It became an IGI when it was transformed into the World Trade Organisation in 1995.

A feature of many of these new organisations was a privileged form of membership for the US in addition to its naturally dominant role stemming from its overwhelming political and economic power. This meant that the performance in practice of the organisations is subject to the whims and wiles of US foreign policy giving effect to the whims and wiles of US internal politics.

In the case of treaties, the Senate is uniquely powerful, when US ratification is subject to its approval. There is also a strange phenomenon in the history of American foreign policy over the course of time, as it alternates between isolationism and internationalism, between idealism (making a better world) and realism (Hans Morgenthau's idea of the primary duty of a state to exert its power in its own self interest).

US government officials participate with great efficiency in the negotiation of multilateral treaties, often dominating the negotiations. Their work is then repudiated by the Senate if

it does not match the current swing of the pendulum in Washington.

In the bipolar world of the Cold War (some forty years until the dissolution of the Soviet Union in 1991), strategic and ideological confrontation determined the conduct of international relations. For a while thereafter, the US dominated another unipolar world until, in recent decades, the rise of other states, especially the BRICS countries, brought a multipolar world, leading perhaps to a new world in the future dominated by the US and China.

Accordingly, the United States must bear primary responsibility for the disappointing performance in practice of many intergovernmental institutions. The current swing of the pendulum in Washington is towards the isolationist, nationalist, realist or protectionist end of the spectrum.

However, it would not be right to conclude that IGI's will not play an important part in international relations in the future. They represent a fundamental feature of human nature, namely cooperation through socialisation.

Thomas Hobbes said that, in their natural state, individual human beings were at war with each other.

"During the time men live without a common power to keep them all in awe, they are in that condition which is called war; and such a war as is of every man against every man...In this state, life is solitary, poor, nasty, brutish and short."

Thomas Hobbes, Leviathan.

The Hobbesian "state of nature" is a mere hypothesis or fiction. We do not know of a time when human beings were not living in a society. Even Neanderthals, our immediate evolutionary predecessors, evidently lived in small groups. Nevertheless, we may credit Hobbes with suggesting the profound idea that every human society is a triumph of peace-making. A society's social contract is a peace-treaty, as it were, whose terms organise the distribution of physical and legal power in that society.

A brilliant perception of Socrates and Plato is that there is a necessary structural element of a society. Namely, a *collective idea* of that society in the minds of its members. The society tells a fictional philosophical story—a *noble lie*—about itself designed to explain and justify the allegiance of its rulers and its members to its social contract. A liberal democracy, for

example, practices the philosophical concept of liberal democracy.

“How then, said I, might we contrive one of those opportune falsehoods...so as by one noble lie [gennaion pseudos] to persuade if possible the rulers themselves, but failing that the rest of the city.”

Plato, Republic.

Émile Durkheim further speaks of the collective consciousness of a society.

“The totality of beliefs and sentiments common to the average members of a society forms a determinate system with a life of its own. It can be termed the collective or common consciousness.” “For a society is not made up merely of the mass of individuals who compose it, the ground which they occupy, the things which they use and the movements which they perform, but above all it is the idea which it forms of itself.”

Émile Durkheim, The Elementary Forms of Religious Life.

An intergovernmental institution contains both structural elements of a society—a social contract which is a virtual peace treaty and the collective consciousness of its members determining its purposes and its potentiality.

There is no reason to think that, in the future, governments will not make the pragmatic calculation leading them to form further IGIs to deal collectively with such things as climate catastrophe, new pandemics, rivalry in the use of space and other planets, mutual defence against war,

terrorism (non-state and state-proxy), antibiotic resistance, plastic pollution, over-fishing, artificial intelligence (AI), and gross global social and economic inequality. Nine nations are currently known to possess nuclear weapons. Many others have the technical capacity to make them. New collective activity to deal with nuclear proliferation is urgently required.

In relation to climate change, it should be noted that solar and wind power are unlimited. They are being applied in many places already. We are on a race to apply them at scale and terminate the use of energy from fossil fuels before the world’s climate becomes uninhabitable.

In humanity’s favour is an unrelated phenomenon. Global mass media and global social media mean that Durkheim’s collective consciousness is coming close to being a collective consciousness of the human race as a single society with a capacity to act socially for the common good of all-humanity. We will have to face Carl Jung’s daring hypothesis of a collective human unconscious, acting as a coherent motivation for human action at the global level which is liable to reflect the troubled psychologies of leading politicians as it does at the national level.

Responding to global challenges socially may depend on whether or not the US Government is in an idealist or collectivist mood in its foreign policy at the relevant time and/or whether other great powers in a multipolar world dominate the making of the pragmatic calculation in favour of socialisation. The relative decline of the global power of the United States in recent years may reduce their dominating influence.



Members of the 115th congress and their families mingle on the house floor, Washington.
(Shutterstock)

Conclusion: International Law

To adapt a saying attributed to Mark Twain, reports of the demise of international law are not only exaggerated. They are wrong. The most one could say is that international law is going through hard times.

In the first place, it is important to remember that, like the proverbial iceberg, nine-tenths of international law is normally out of sight of the public mind. Masses of treaties—both bilateral and multilateral—and the rules of customary international law are applied and respected, or violated and ignored, every day in the ongoing life of the world, unnoticed and without causing any public interest or reaction.

International law appears on the front-page of newspapers and rolling twenty-four-hour TV news programmes when some egregious violation, actual or alleged, occurs. In such crucial situations public opinion may reach intense levels of condemnation in social media and protests in the streets, referencing international law in general terms. These occasions may lead to anguished discussion about the effectiveness of international law, even about its very survival.

There are four current crucial situations today in which these discussions are applicable. Namely, the war in Ukraine, the Israeli-Palestinian conflict in Gaza, the weaponisation of tariffs, and the US bombing of Iran. In each of these areas, several observations are apparent.

1. The paradox of law-breaking. Public discussion of law-breaking has created a Hegelian dialectical effect of affirming the existence and relevance of international law.

2. The complicating narrative. In each of the four crucial situations there has appeared a narrative that complicates judgments of illegality. Ukraine—provocation by NATO's encircling of Russia. Gaza—self-defence against terrorists, that is, against a non-state actor. Weaponised tariffs—the economic world order created by the General Agreement on Tariffs and Trade, and the WTO, specifically the MFN policy is out-of-date and harmful to the interests of the United States. The bombing of Iran—stopping uranium enrichment serves the global common good, not merely the self-interest of Israel.

3. A sinister formula. Over recent decades a new form of words has mysteriously entered the discourse of international relations. *A rules-based international order*. How does

it relate to what is traditionally known as international law? Some critics suggest that it refers to the rules that the United States and its allies choose to recognise.

4. The responsibility of academic international lawyers. There are academic international lawyers who have joined the party of those who believe that international law has lost its effectiveness or even that it has ceased to exist. This is as unfortunate as it would be if public lawyers at the national level were to pronounce the death of the golden principle of the Rule of Law (all public power is under the law administered by independent courts) because of the recent increase in the number of autocracies undermining or rejecting the principle of the Rule of Law. It would be better if international lawyers were to see that international law has the possibility of an exciting new future as the legal system of a human society—of all human societies and all human beings—united by the new human collective consciousness, superseding the legal system of a collection of so-called states.

With two significant exceptions, international law continues to play its traditional role in international relations. As is found to be the case in relation to intergovernmental organisations, international law is at the mercy of governments in the everyday conduct of their international relations. International law has its own ever-changing differential between potentiality and performance.

As with IGIs, international law is subject to the unequal power of those who participate in international relations. It is subject to the dominating influence of the most powerful states, including the long-term oscillating dynamic of the foreign policy of the United States and the short-term whims and wiles, referenced above, of its foreign policy at a given time.

The first exception to the traditional functioning of international law is that the current government of the United States is in what seems to be at the isolationist, realist, nationalist, and protectionist swing of its international relations pendulum. This is a less important phenomenon than it would have been when the United States dominated a unipolar world.

The members of the new multipolar world, especially small states, and China as a dominant member of that world, seem to be standing firm in their support of traditional international law. The ideal of law in all its forms is that it should

tend to protect the weak against the strong where there is gross inequality of social power.

The second exception to the traditional status of international law is that there is a new tendency in the behaviour of some governments in recent years. They simply and explicitly refuse to abide by international law in some situation, even if their violation has been affirmed by the decision of a national or international court or a treaty-based dispute settlement system.

These two exceptions might support the view of those commentators who see a current weakness in the effectiveness of international law—but they certainly do not justify the view that international law no longer exists.



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