

COUNCIL OF COUNCILS

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Sixth Regional Conference

Panelist Papers

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COUNCIL OF COUNCILS

An Initiative of the Council on Foreign Relations



Session One

Summitry and Diplomacy in the Arctic



Panelist Paper: Summitry and Diplomacy in the Arctic

Council of Councils Sixth Regional Conference
September 28-30, 2014
Centre for International Governance Innovation

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In 1987 Mikhail Gorbachev, General Secretary of the Communist Party of the Soviet Union, delivered a speech in Murmansk proposing that the Arctic become a zone of peace and co-operation. He also called for the development of “an integrated comprehensive plan for protecting the natural environment of the north.”¹ In response, Finland initiated a meeting of all eight Arctic states² in Rovaniemi in early 1989, with subsequent meetings in Yellowknife in 1990 and in Rovaniemi again in 1991. This Finnish Initiative resulted in the *Arctic Environmental Protection Strategy* (AEPS), a process overseen by biennial meetings of environment ministers of the Arctic states. A primary goal of the AEPS was to assist the Soviet Union, through scientific cooperation, to address serious Arctic environmental issues.

The collapse of the Soviet Union in 1991 provided additional opportunities to advance normalization of relations with the new Russia Federation. Even as the AEPS was being negotiated, Canada promoted the Arctic Council³ in a speech by Prime Minister Mulroney in Leningrad in November 1989. Canada’s objective was to create a body with a broader mandate that would take into account the so-called “human dimensions” of the Arctic, as well as sustainable development issues.⁴

The *Declaration on the Establishment of the Arctic Council* was signed in Ottawa on September 19, 1996, to create a high level forum to provide a means for promoting cooperation, coordination, and interaction among the Arctic States on common Arctic issues, in particular issues of sustainable development and environmental protection. Four AEPS working groups and their ongoing environmental programs were subsumed under the new Arctic Council. Permanent Participants, international organizations that represent Arctic indigenous peoples, were accorded a role in all discussions in the Council.⁵

Canada was the first Arctic state to chair the Council from 1996 to 1998. In May 2013, Canada took on the Council chairmanship for a second time. Much has changed in the intervening years. The Arctic has emerged from the periphery of domestic and global politics to become a mainstream issue for the 21st century. Two primary forces are at work in this transformation: climate change and globalization. The Arctic today is perceived to be a tightly-coupled component of highly dynamic global biophysical, geopolitical, and socio-economic systems.

As this transformation has unfolded, the media have broadcast a common story line, sometimes with scant attention to important facts:

- Climate change is causing Arctic sea ice and glaciers to melt.

- Arctic natural resources are becoming more accessible.
- Arctic nations are scrambling to claim Arctic seabeds.
- New inter-ocean shipping channels are opening.
- The EU & China, and others, are asserting interests in the Arctic.
- Canada needs to assert its Arctic sovereignty.
- The Arctic has become a potential hot spot for future conflicts.
- Polar bears are threatened.
- Scientists need more time and money to study what is happening.
- Traditional ways of life of northern peoples are disappearing as fast as the ice.
- Arctic governance gaps, if not a vacuum, appear to exist.
- The Arctic states might be incapable of managing the emerging issues.

This short paper attempts to: 1) put the Arctic into perspective; 2) address the 4 guiding questions for this session; and 3) offer some observations about the future. The paper contends that the Arctic Council is at a critical turning point in its brief eighteen-year history.

The Arctic Region

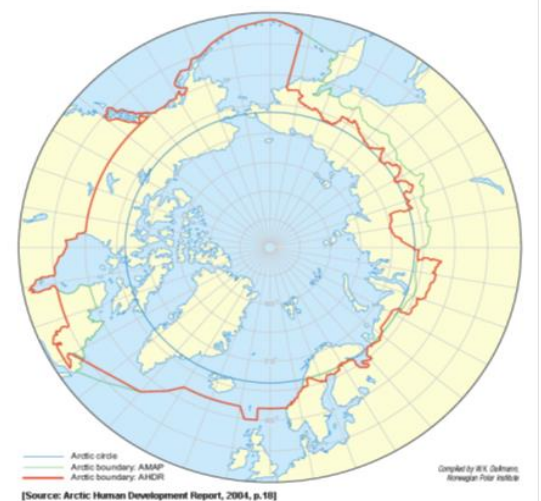
In the absence of a broadly accepted definition, it is important to know what area we are talking about when we invoke the term “Arctic”. It is arguable that overarching ambiguity as to what is, or is not, “the Arctic” is a key factor that creates misconceptions about Arctic governance, about how Arctic states are managing, what role non-Arctic states should play, and what the Arctic Council should or should not do. In addition, these misconceptions can obscure the lessons the Arctic holds for diplomacy and global affairs generally.

Some commentators appear to view the Arctic primarily as ocean space. The Arctic Ocean, the core of the region, is the smallest of the world’s five oceans. It covers an area of approximately 14 million square kilometers (about 1.5 times the size of the United States) with a maximum depth of approximately 5,500 meters (18,040 feet).

The Arctic Ocean has the widest continental shelf of all the oceans. The shelf is wide and shallow off Europe and Asia, all the way from the Barents Sea in the west to the Bering Strait.⁶ In some areas along this coast, the continental shelf extends a significant distance towards the North Pole. The corresponding continental shelves off Alaska, Canada, and Greenland are significantly narrower.⁷ Norway, Russia, the United States, Canada, Iceland, and Denmark (Greenland) all have an Arctic continental shelf. Arctic Russia embraces by far the largest area.⁸

Others more accurately conceive of the Arctic as encompassing vast areas of marine and terrestrial space. Map 1 is taken from the Arctic Council’s *Arctic Human Development Report* (2004). It depicts three different Arctic regions and illustrates that indeed for some purposes the definition of “Arctic” appears to extend to lands and seas in relatively southern latitudes. Clearly in these definitions the majority of the Arctic region is territory within the exclusive sovereignty of the eight Arctic states. What then do we mean by the phrase “Arctic Commons”?

Map 1: The Arctic Region

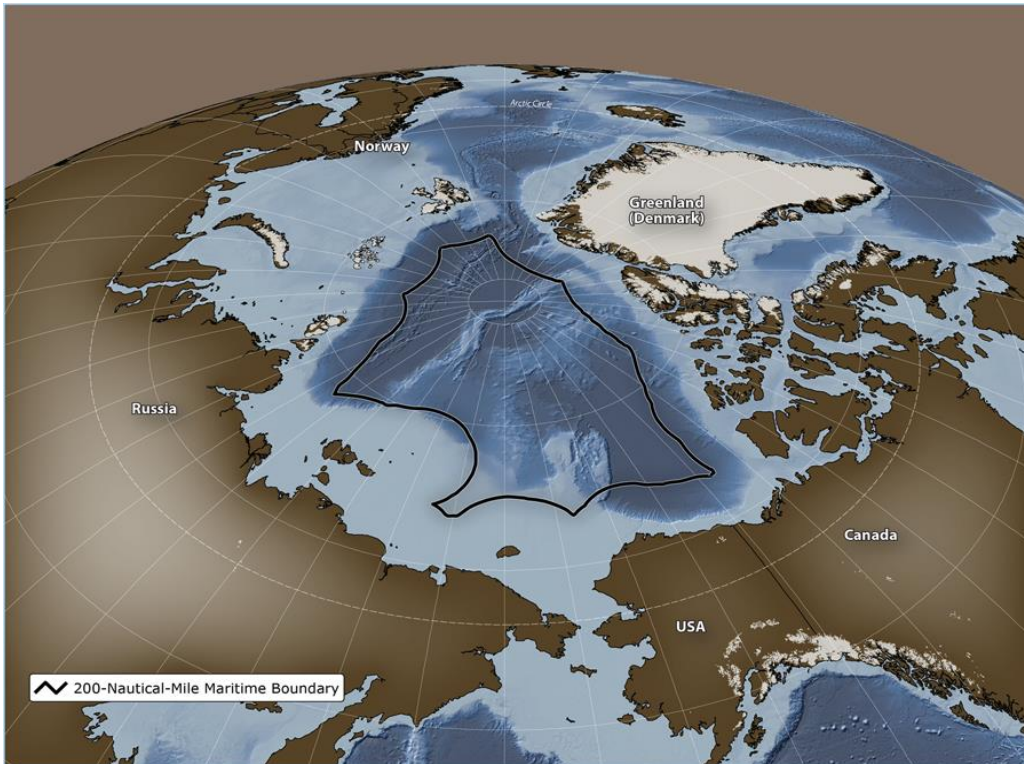


The “Arctic Commons”

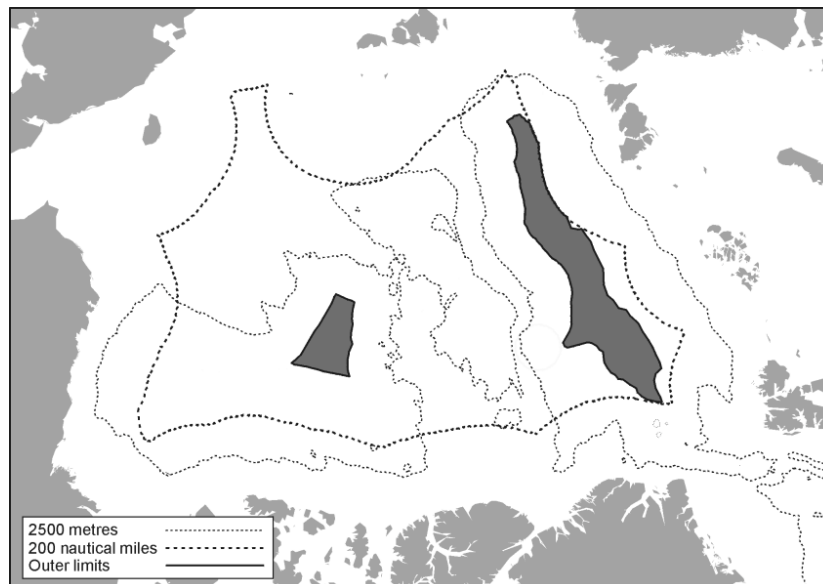
There is also considerable ambiguity as to what constitutes the “Arctic commons”. If we take the Arctic Commons to be the area of the high seas beyond the 200 nautical mile Exclusive Economic Zones of the littoral Arctic states, it would comprise approximately 2.8 million square kilometers of the central Arctic Ocean [see Map 2⁹]. The subsea lands beyond the limits likely to be claimed by the five littoral Arctic states, through the Commission on the Limits of the Continental Shelf (CLCS), will constitute a considerably smaller area [see Map 3¹⁰].

Map 2: ARCTIC COMMONS: WATERS OF THE CENTRAL ARCTIC OCEAN?

[The area within the black line constitutes an ocean space of about 2.8 million square kilometers]

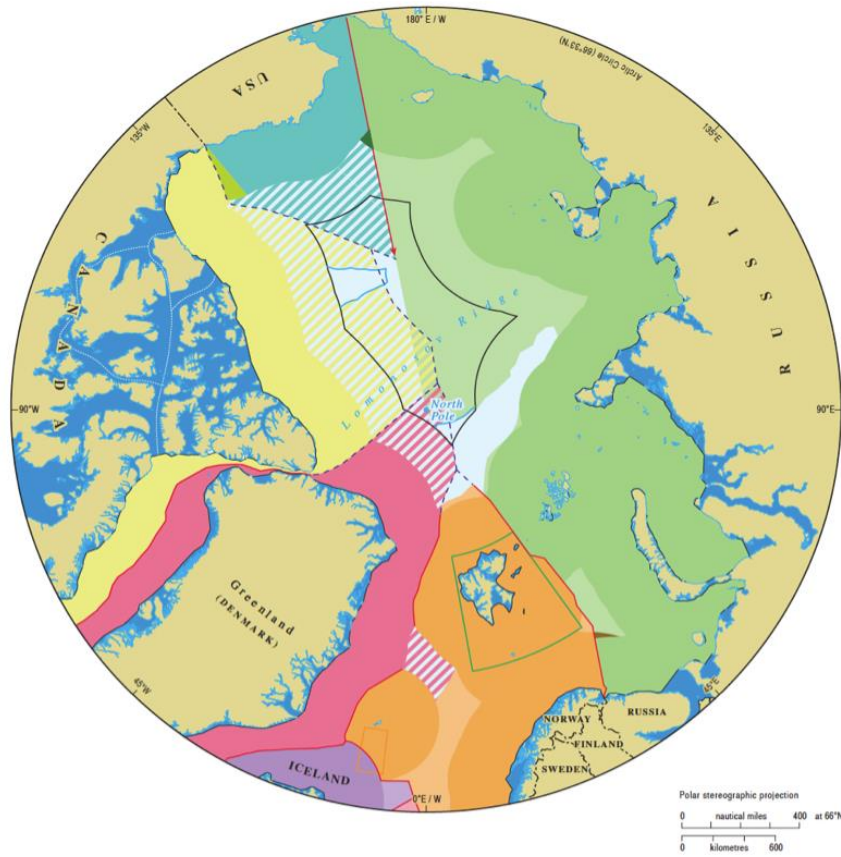


MAP 3: POTENTIAL ARCTIC FUTURE COMMONS



**Hypothetical Maritime Arctic
(After UNCLOS Arctic 76)**

MAP 4: POTENTIAL MARITIME JURISDICTION AND BOUNDARIES IN THE ARCTIC REGION¹¹



<ul style="list-style-type: none"> — Straight baselines — Agreed boundary - - - Median line — 350 nm from baselines (note 1) — 100 nm from 2500 m isobath (beyond 350 nm from baselines) (note 1) — Svalbard treaty area (note 8) 	<ul style="list-style-type: none"> Internal waters Canada territorial sea and exclusive economic zone (EEZ) Potential Canada continental shelf beyond 200 nm (see note 1) Denmark territorial sea and EEZ Denmark claimed continental shelf beyond 200 nm (note 2) Potential Denmark continental shelf beyond 200 nm (note 1) Iceland EEZ Iceland claimed continental shelf beyond 200 nm (note 2) Norway territorial sea and EEZ / Fishery zone (Jan Mayen) / Fishery protection zone (Svalbard) 	<ul style="list-style-type: none"> Norway claimed continental shelf beyond 200 nm (note 3) Russia territorial sea and EEZ Russia claimed continental shelf beyond 200 nm (note 4) Norway-Russia Special Area (note 5) USA territorial sea and EEZ Potential USA continental shelf beyond 200 nm (note 1) Overlapping Canada / USA EEZ (note 6) Eastern Special Area (note 7) Unclaimed or unclaimable continental shelf (note 1)
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Arctic Interests: Four Conceptualizations

Many overlapping and competing interests are at play in the Arctic. These interests, while not mutually exclusive, can be grouped under four broad conceptualizations: homeland, laboratory, frontier, and wilderness.¹²

Homeland: The Arctic is home to between 4 and 10 million people, including indigenous peoples, depending on which geographical definition we use for the region. Renewable resource harvesting remains an important component of many indigenous cultures and economies. Arctic residents generally have an obvious interest in the design and implementation of systems for managing political and economic affairs in the region. The conceit that these matters should be decided remotely by others outside the region can be overwhelming for Arctic residents. After all, the Arctic is where they live and make their homes.

Laboratory: The Arctic is an important laboratory for scientific research and cooperation. Recent research activity spiked during the International Polar Year (2007-2009). Scientists have a range of interests and views relating to the study of the region and the implications of their research. Scientific methods have not always accommodated or respected local priorities or local and traditional knowledge, although this situation has been improving significantly.

Frontier: For many nation-state governments, and other national and multinational actors, the Arctic is a “frontier” with opportunities for exploitation of marine transportation routes and important natural resources to feed domestic and global demands for energy, fish, and minerals. The region also has high potential for tourism. Balancing frontierist interests with the interests of the other three categories continues to be a challenge.

Wilderness: Some stakeholders, including environmental and conservation interests, see the Arctic region and its flora and fauna as “wilderness” to be preserved in parks and protected areas. Their interests are often directed at stopping or limiting development in the Arctic.

While this way of characterizing Arctic interests is an over-simplification, it can provide a useful framework for understanding some of the values and goals of various stakeholders. Attempts to balance and reconcile these often-competing interests, through bilateral and multilateral diplomacy and in forums like the Arctic Council, is an ongoing dynamic of Arctic affairs with implications at the local, national, regional, and international levels. As climate change, transboundary contaminants, resource demands, expansion of international transportation routes, thermohaline circulation changes, loss of biodiversity, ecosystem changes, and other issues illustrate, many of the most profound influences in relation to Arctic change cannot be confined by clear geographical lines. It is precisely this situation that has both attracted external attention to the Arctic Council and placed pressure on it to provide leadership and responsive attention to Arctic-relevant issues.

In many cases these issues are not actually challenges arising from management of the Arctic Commons. In other words, the Arctic sea ice is not melting primarily because of activities taking place in the Arctic, nor are significant ecosystem changes being driven by activities in the Arctic. Fundamental Arctic change is occurring today, *in advance of major development!* The prospect of high levels of activity in the high-seas areas of the central Arctic Ocean has been greatly exaggerated. The Arctic will not become immediately accessible as sea ice disappears, nor is the region’s wealth of natural resources readily available for development.¹³

Indeed, this paper argues that the more important category of activities to consider are those that primarily take place *outside* the Arctic but have significant impacts on Arctic marine and terrestrial environments. The major drivers of Arctic change today appear to be the economic and industrial activities associated with meeting the needs of the planet’s burgeoning human population in non-Arctic latitudes.

Consequently, to the extent that the changing Arctic invites us to ask “How should we think about Arctic governance?”, I would recommend that perhaps we should think less about regulatory gaps in the Arctic, and think far more about the difficult and urgent lessons the Arctic is teaching us in relation to how we govern everywhere else on the planet. Paradoxically, the Arctic story today is not really about the Arctic at all...it’s about the populous regions of the planet. This constitutes a solid rationale for more meaningful dialogue among Arctic and non-Arctic states on Arctic-relevant issues and it suggests, for example, that Arctic diplomacy should focus on the development of mechanisms to realize practical engagement of non-Arctic state Observers in Arctic Council activities.

Responses to Guiding Questions:

1. As the United States takes over the chair of the Arctic Council, what should be the key items on the agenda?

The U.S. Chairmanship of the Arctic Council will commence in late April 2015 and the United States has been working diligently for several years to develop the goals and major themes for its two-year term. Initiatives that are apparently under consideration include 1) addressing climate change, especially the problems involving black carbon; 2) protection of the Arctic environment; 3) management of natural resources; 4) strengthening the roles of indigenous peoples in the Council; 5) improving the effectiveness of the Council through restructuring of Working Groups and Task Forces; and 6) examining and improving the role of Observer states. In the coming months the United States can be expected to put forward its plans to Senior Arctic officials in more detail.

This framework, if it materializes, seems well-balanced and timely. Understandably, issues arising from climate change are complex and there will be limitations as to what a regional body like the Arctic Council can accomplish in relation to this global issue, given the mandates of other international fora.

The program of work for each chairmanship is usually agreed to by a consensus of the eight Arctic states in a Declaration issued at the end of one chairmanship period and the beginning of the next, in this case at the Ministerial Meeting scheduled for Iqaluit on April 24-25, 2015. The outputs or deliverables for Canada’s chairmanship will also be agreed to at this time, provided they are acceptable to all Arctic states.

However, there is nothing automatic about the achievement of harmony among multiple stakeholders. Ongoing tensions arising out of Russian actions in Crimea and Ukraine, and the responses of Canada, the United States, and Western Europe, could have implications for the Arctic Council. An optimistic conventional wisdom seems to have emerged that *Pax Arctica* will prevail. On one hand, it seems convenient and wise to maintain an open Arctic channel of cooperation and diplomacy. On the other, a key feature of Arctic affairs today is the realization that this region is tightly bound to global biophysical, geopolitical and socio-economic systems. If Russia does not participate in the Arctic Council Ministerial meeting in April 2015, for whatever reason, the outcomes of the Canadian Chairmanship and the new U.S. Chairmanship program could be seriously compromised. Rule 7 of the *Arctic Council Rules of Procedure* could provide some relief. It states that “...*In the event that a Ministerial or SAO meeting is held without the attendance of all eight Arctic States, consistent with Rule 3, decisions may be taken by a consensus of all Arctic States present, subject to confirmation in writing by the absent Arctic States within forty-five days after receiving notice of the decision.*” The next six months will tell the tale and the future of the Council, as well as the alignment of Arctic affairs generally, may be dependent upon this next Ministerial meeting.

2. What are the major governance challenges raised by the melting of the polar ice caps, as resources and new trade routes become more readily available?

Governance is a deceptive word. In speaking about governance challenges, it is important to avoid confusion about which dimension of “governance” is really the object of discussion. As the *Arctic Ocean Review Final Report*¹⁴ demonstrates, an extensive framework of international, regional, and national instruments, measures, and arrangements already applies in Arctic marine areas. The Arctic states govern their sovereign territories through a

myriad of statutes, regulations, and policies. Perhaps the major governance challenge or gap for most Arctic states is simply developing their own domestic capacity to monitor, comply with, and enforce all these existing domestic and international Arctic measures. To do so will require substantial investments in infrastructure, equipment, and human capacity.

Recurrent talk, from about 2006 onwards, about governance vacuums, broad-based multilateral governance arrangements, Arctic treaties, and Arctic charters raised concerns in some Arctic states that misconceptions had crept into the Arctic governance storyline. A school of thought still persists that the Arctic Ocean, and perhaps other parts of the Arctic, should be treated as the “common heritage of mankind”.¹⁵ Involvement of other states in matters falling within the jurisdiction of one or more Arctic states is fraught with the same sorts of issues as the reciprocal proposition, namely Arctic state involvement on matters falling within the jurisdiction of one or more non-Arctic states.

In May 2008, Canada, Denmark, Norway, Russia, and the United States adopted the *Ilulissat Declaration* in an attempt to set the record straight, at least from their perspective. The Declaration¹⁶ states, inter alia:

We therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean. We will keep abreast of the developments in the Arctic Ocean and continue to implement appropriate measures.

The Declaration further states:

By virtue of their sovereignty, sovereign rights and jurisdiction in large areas of the Arctic Ocean the five coastal states are in a unique position to address these possibilities and challenges.

...This framework [UNCLOS] provides a solid foundation for responsible management by the five coastal States and other users of this Ocean through national implementation and application of relevant provisions.

The distinction made earlier in this paper between international commons and national space in the Arctic has a significant bearing on how Arctic states view their multilateral activities in the Arctic Council and in other regional and global fora. Stated plainly, each Arctic state jealously protects their national sovereignty, sovereign rights, and jurisdiction, and each approaches with caution those items that it chooses to place on the international buffet of multilateralism.

This is particularly true when grappling with the challenge of engaging non-Arctic states on appropriate issues in relation to the Arctic. The initial response, perhaps understandably, is to conceive of Arctic-specific or Arctic-centred initiatives to be undertaken within the region.¹⁷ However there is also a rationale to take equally strong measures *outside the Arctic* in order to address major governance challenges *outside the Arctic* which have led to the melting of the polar ice caps, and demands for resources and new trade routes.

A UNEP report¹⁸ on multilateral environmental agreements in the Arctic highlights this point:

The Arctic region is characterized by some of the largest continuous intact ecosystems on the planet, but is facing increasingly larger threats. These threats include the full range of stressors known from other parts of the world, namely habitat loss and fragmentation from infrastructure and industrial development, chemical pollution, overharvesting, climate change and invasive species infestations. Many of these pressures are mainly globally driven, including climate change, long-range transported pollution and invasive species infestations. Others, such as harvesting and fragmentation are directly under Arctic governance, though often driven from demands outside of the Arctic region.

In diplomatic statements leading up to its admission as an Observer in the Arctic Council, China was clear that it wanted to discuss trans-regional Arctic issues that are equally important to Arctic states and non-Arctic states. With

twelve non-Arctic states¹⁹ now admitted as Observers, the opportunity to engage on Arctic-relevant issues of a transregional nature continues to present itself. Scientific cooperation, which has been a major success of the Council, can advance policy-relevant dialogue between Arctic states and non-Arctic states. Indeed this pattern slowly emerged among the Arctic states themselves during the evolution of the Council after 1996. Scientific cooperation during the Council's first decade laid the foundation for relationships which led to a more recent series of legally-binding agreements facilitated by the Arctic Council and entered into by the Arctic states in their independent capacities. These include the *Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (2011)* and the *Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic (2013)*.

3. What are the interests of non-Arctic states, like China, in the North and how should they be accommodated in existing or new diplomatic forums?

As suggested above, the Arctic is not a closed system. Significant Arctic change is driven by forces from outside the Arctic and will also have significant environmental, economic, political and social consequences in non-Arctic regions. Consequently, the valid Arctic interests of European states, the European Commission, and Asian countries cannot be discounted. The reciprocal proposition is also true: Arctic states have valid interests in relation to governance and policy matters in non-Arctic regions because activities in these non-Arctic regions are driving some of the most significant changes taking place today in the Arctic.

All efforts to better understand the dynamics of human and natural systems, and their relevance to the Arctic/global relationship, have potential to better inform policy responses in both Arctic and non-Arctic states. All efforts to generate cooperation have the potential to empower collaborative actions.

Arctic States are unable to address all the issues that climate change and globalization create for the Arctic. Participation and cooperation of non-Arctic States is essential in fields such as climate change mitigation, marine environmental protection, shipping safety, sustainable development of marine resources, and scientific research. Where the Arctic Commons is concerned, under UNCLOS Arctic and non-Arctic states have common interests and responsibilities.²⁰ Article 194 also provides that

States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.

As an example, China is a coastal state with a long coastline (approx. 18,000 km) and territory in the northern mid-latitudes. Extreme weather and climate variability affect China with implications for agriculture, infrastructure, and other sectors. Sea level rise associated with melting glacial ice on Greenland will potentially affect large population centres in China's coastal cities and provinces. China will need to be part of any meaningful effort to reduce greenhouse gas emissions. Similarly, reduction of transboundary pollution that finds its way to the Arctic from sources in industrialized states, requires domestic measures in states like China. China's policies and practices with regard to fishing in the Arctic are relevant to Arctic states.

In Article 3 of the *Declaration Establishing the Arctic Council (1996)* it states:

Observer status in the Arctic Council is open to
a) *non-Arctic states; that the Council determines can contribute to its work.*

It is important to distinguish between questions relating to whether or not a particular applicant should be granted Observer status in the Council, and questions relating to a non-Arctic state's participation and contributions following admission. China, Japan, South Korea, India, Singapore, and several European states have been admitted to

the Council as Observers.²¹ They appear eager to contribute to the work of Council. It is anomalous to require Observers to contribute to Council work, but then create conditions that prevent them from doing so. The Council needs urgently to determine how this existing requirement (namely that Observers contribute to Council work) can be better operationalized.

The Arctic will not be saved by building a wall around it, nor by focusing only on governance within the Arctic region. It is important to acknowledge that the Arctic is a region that can help open a dialogue on how humanity governs itself *outside* the Arctic, and for this to occur the voices of the non-Arctic states must be heard.²²

4. How well equipped is the Arctic Council to deal with these challenges?

Are issues that arise outside the Arctic, but have serious impacts on the Arctic, best addressed in an Arctic forum that has mechanisms for inclusion of non-Arctic states? Is it more appropriate to create a non-Arctic forum that accommodates Arctic stakeholders? Can a regional body dominated by regional interests offer a suitable venue for addressing issues arising from the links between the Arctic as a region and international society as a whole?²³ These are all valid questions. Nonetheless, it is clear that there is an urgent need for some sort of comprehensive forum among Arctic and non-Arctic states for coordinated policy-relevant discussions.

While the Arctic Council is an important intergovernmental forum, it is fair to say that the Council has been inward looking for much of its existence. The mandate of the Council is extremely broad and Arctic states could agree to move it in whatever direction they choose. Its role in both Arctic and global affairs is therefore still evolving, just as the regional and global contexts are rapidly changing. In these changing contexts, it is arguable that the Arctic Council's flexibility and lack of legal status are actually strengths. Although not entirely a governance body, the Council has recently begun to catalyze and facilitate various Arctic-specific functional agreements. It is not difficult to imagine ways that mechanisms could be quickly developed in the Council to include trans-regional issues.

The United States has been considering hosting a Heads of Government meeting during its chairmanship to mark the 20th anniversary of the Arctic Council. Such a meeting, chaired by U.S. President Obama, could be a valuable opportunity to launch a new phase of the Council, including a more meaningful partnership with non-Arctic states on Arctic relevant issues.

¹ General Secretary Gorbachev's speech is available at www.barentsinfo.fi/docs/Gorbachev_speech.pdf

² At that time, Canada, Denmark, Finland, Iceland, Norway, Soviet Union, Sweden and USA

³ See: John English, *Ice and Water: Politics, Peoples and the Arctic Council* (Toronto: Allen Lane, 2013)

⁴ A Task Force on Sustainable Development and Utilization was established in 1993 under the AEPS in an attempt to address this gap.

⁵ The AEPS had also accommodated three indigenous organizations as Permanent Participants following the Nuuk Ministerial meeting in 1993.

⁶ Arctic Council, Sustainable Development Working Group, *Economy of the North Report* (ECONOR), 2006; available at: <http://www.sdwg.org/media.php?mid=454>

⁷ Ibid

⁸ Ibid

⁹ Map source: Pew Charitable Trusts at <http://www.pewtrusts.org/en/projects/arctic-ocean-international>; accessed 10 September 2014.

¹⁰ Map source: Ron McNabb, 2000

¹¹ Map source: <https://www.dur.ac.uk/resources/ibru/resources/Arcticmap.pdf>; accessed 10 September 2014.

¹² See: Funston, Bernard. *Sustainable Development of the Arctic: the challenges of reconciling homeland, laboratory, frontier and wilderness*, in UNESCO. 2009. *Climate Change and Arctic Sustainable Development*: Paris, pp. 278-284

¹³ For a commentary on these issues see: World Economic Forum, Global Agenda Councils. *Demystifying the Arctic* (Davos, Switzerland, 22-25 Jan. 2014).

¹⁴ This report is available at: <http://www.pame.is/index.php/projects/the-arctic-ocean-review-aor>

¹⁵ See for example the speech of Dr. Joe Borg, Member of the European Commission Responsible for Fisheries and Maritime Affairs, on the European Union's strategy of sustainable management for the Arctic, found at http://europa.eu/rapid/press-release_SPEECH-09-9_en.htm?locale=en; accessed 10 Sept 2014.

¹⁶ *The Ilulissat Declaration*, Arctic Ocean Conference, Ilulissat, Greenland, 27 – 29 May 2008. Available at: http://www.oceanlaw.org/downloads/arctic/Ilulissat_Declaration.pdf; accessed 10 Sept 2014

¹⁷ UNEP. *Protecting Arctic Biodiversity, Limitations and Strengths of Environmental Agreements*, 2010, p.18. Available at: http://www.grida.no/files/publications/arctic-biodiv/arcticMEAreport_screen.pdf

¹⁸ *Ibid.* p.8.

¹⁹ China, France, Germany, India, Italy, Japan, Netherlands, Poland, Singapore, South Korea, Spain, and United Kingdom

²⁰ Article 192, UN Convention on the Law of the Sea

²¹ The European Union is currently in a purgatory that permits attendance at some Arctic Council meetings pending a final determination on its application for observership.

²² See Funston, Bernard. *The Arctic in World Affairs* (eds. Young, J.D. Kim and Y.H. Kim, 2012), pp. 315-326.

²³ See Young, Oran. "The Evolution of Arctic Ocean Governance" in *The Arctic In World Affairs*, (eds. Young, J.D.Kim, Y.H. Kim), 2013, p. 267-298.



Panelist Paper: Summitry and Diplomacy in the Arctic

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In 2014, lines of confrontation on the world stage shifted significantly, while confrontation itself notably increased. In light of such trends, the specifics of the Arctic region predetermine two basic scenarios of its development: Either the increased disagreement elsewhere in the world will be transferred to the Arctic region, which would significantly complicate the work of the Arctic Council; Or the Arctic region will become some kind of "polygon of conciliation," where methods of recovery and rearrangement of cooperation will be tested in the new environment. (Fortunately, the strictly "Arctic" issues of controversy within the regional community are not of a fatal nature.) In this case, initiative may come from many international relations players, but forming a policy would only be possible through the Arctic Council.

We already have evidence enough to indicate the first scenario could develop, though nothing irreversible has happened yet. In mid-March, the former U.S. Secretary of State Hillary Clinton, speaking in Montreal, called for the creation of a "united front" against the Russian militarization of the Arctic; she presented the increasing military activity of Moscow in the Arctic region and recent events in the Crimea as two links in the same chain. And in the course of this year the Kremlin has more than once confirmed the thesis of militarization. Earlier this month the Russian Defense Ministry announced the establishment of the Joint Strategic Command "Sever" ("North"), which is aimed precisely at protecting the country's interests in the Arctic.

The increase of tensions has directly affected the work of the Arctic Council. Already in April, the United States and Canada refused to participate in the Moscow meeting of the Council's Task Force on the issues of black carbon and methane release. Representatives of the United States also ignored the August meeting of the Arctic Council in the Russian town of Naryan-Mar. Cooperation on the Arctic between Europe and North America on the one hand, and Russia on the other hand, has also been largely curtailed along other bilateral channels.

The logic of these actions is quite obvious: "violation of the international law that leads to disruption of global stability is followed by either retribution or widespread isolation." Such an approach is comprehensible, but seems to be unproductive, both in terms of strengthening global stability, as well as from the point of view of regional interests.

In this sense, the upcoming American chairmanship of the Arctic Council becomes a test for the "Greater West". Excesses may continue and could get worse, and the Arctic could turn into a new zero-sum game for the West and its

opponents. Moreover, the sum in these foreign policy practices will, in the first place, relate to the needs of development of the region.

On the other hand, the American chairmanship provides the United States and the "Greater West" with a chance to establish themselves in the capacity of organizers of global collaboration and initiators of mutual motion toward common goals. Whether this chance will be taken remains the key question for the next biennium of the Arctic Council.

Another significant theme is related to the transformation of the Arctic Council. For years, the Council held the doors to new observers "half-closed". Given that the interests of the population of the Arctic should be held at the forefront of the Council's activity, such approach seemed quite reasonable. Although to some extent this contradicted both the trend of global development, as well as the specifics of the region itself, which many see as "universal human heritage".

The Council has since developed a sufficiently successful framework for the inclusion of observers, which has been tested in practice and was secured in a special document. The time that has elapsed since the Kiruna session—during which six countries including Japan, China, and India received observer status—has shown that the will to increase the presence of non-littoral countries and countries that are not related to the region historically, is justified. The efficiency of the Council was not harmed at all; on the contrary, it was enhanced.

We believe that under the American chairmanship, this trend should continue, and the number of observers should be increased by the number of current candidates. However, in the near future it would be worth avoiding possible attempts to change the status of observers, to fundamentally expand their authority and use their potential for artificial exaggeration of the necessity to change the system of legal regulation in the region.

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An Initiative of the Council on Foreign Relations



Session Two

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Panelist Paper: Governance in a Post-Crisis World: The Role of the G20

Council of Councils Sixth Regional Conference
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The Group of Twenty (G20) emerged from the financial crisis poised to become the premier forum for governing the global economy. But since the Toronto summit in June 2010, the group's progress has faltered. To a degree this makes sense. United by the need to act in the face of severe global economic turmoil, the nations of the G20 were able to put aside many of their differences and work together to prevent a worsening crisis. But as the world exited the depth of that crisis, as new economic crises arose in Europe, and as emerging economies have sought to strengthen their position in international institutions, the ability of the group to advance policy reform has weakened and criticism of the G20 as a talk shop rather than a forum for policy action has gained legitimacy. Excessively long communiqués and unrealistic pledges such as the leader's commitment to increase global growth by 2 percentage points over five years have further undermined confidence in the process.

The diminished role of the G20 results from at least three factors. First, the European governance and debt crisis, and more recently the stand-off with Russia over their destabilization of Ukraine, has arguably drawn attention away from the G20 and its financial market reform agenda. Second, the core interests of G20 member nations diverge far more now than they did during the crisis. China and other emerging markets focus their attentions on reforming global institutions like the IMF to allow them more say while the United States emphasizes global growth and tax information sharing. Third, even where there is agreement, the G20 has been unable to commit to reforming the international economic governance architecture to adequately capture a changed power landscape resulting from the rise of the BRICS nations and others. The most pressing example of this is the failure to implement IMF quota reform. Here, the sticking point is the United States Congress, which has refused to act on quota reform in part over concerns that it might diminish U.S. power.¹ In truth, *not* acting on quota reform has already eroded U.S. power through stimulating the creation of the BRICS New Development Bank and China's new Asian Infrastructure Investment Bank, a direct challenge to the Asian Development Bank.

There are a number of ways to address the crisis of confidence in the G20. My colleague, Stewart Patrick, [has recommended adding](#) a foreign ministers track to the G20 that would complement the current finance ministers meetings and help to smooth over divergent political differences. The G20 might also benefit from narrowing its own agenda. A large portion of its immediate post-crisis financial reform agenda still remains to be implemented. A notable example of this is accounting standards harmonization. I agree with Nicholas Véron of Breugel and the Peterson Institute who has also suggested that the G20 can focus its attention on standards for regulated information intermediaries like credit ratings agencies and audit firms, which, because they carry no financial risk, would require little risk sharing among G20 governments.² But a smaller, back-to-basics agenda does not mean that issues must be ignored. Rather, policymakers should seek a reenergized variable geometry of governance where different concerns are voiced in the most appropriate forums.

Policy Recommendations: G20 and Institutional Governance

- Add a foreign ministers track to the G20 so economic negotiations can focus on economics, not politics.
- Narrow the G20 agenda. Get back to the basics.
- Reenergize a variable geometry of governance. Seek the right forums for the right issues.

Emerging Issues in Financial Governance: Sovereign Debt

The difficulties associated with the Greek debt crisis and restructuring, along with Argentina's ongoing legal standoff with holdout creditors, has renewed concerns about the effectiveness of current rules for dealing with sovereign financial distress. To a large extent, the issues that have surfaced in the resultant policy debate are not new. Calls for a standstill mechanism and collective action clauses predate the euro crisis by nearly a decade. More recently, the pressures that led to a Greek restructuring that, in the eyes of many, was "too little, too late" have been examined in recent work by the IMF, CIGI, and others. At the core is a disagreement among official creditors on burden sharing, and the rules of the game for public *and* private sector involvement in a restructuring. But there is little agreement on the way forward. A new statutory framework for sovereign debt restructuring remains politically unacceptable, while the IMF's recent push for more "reprofilings" represents an experiment with debt markets in order to put rules around the Fund's use of its resources and limit official sector pressure on it to lend when debt sustainability is at issue. It is doubtful that any of these approaches will make needed restructurings more efficient or more politically palatable.

But beyond names, the reformists have the case wrong—seeking unwieldy solutions to a debt restructuring process that is flawed but not broken. To a large extent, sovereign debt markets already work well and the current approach of negotiation and exchange-based restructurings in debt crises—often backed by substantial moral suasion from major governments—manages to work itself out in an ad hoc way even in the absence of a standstill mechanism. While there will usually be some free riders, in most cases countries have achieved their macroeconomic objectives. Where problems exist, as in Greece, they often result from inter-official creditor disputes, rather than problems in debt markets per se. Moreover, these official creditors often are unwilling to make the necessary hard calls—for example, in the Eurozone they refuse to address a persistent debt overhang and in Ukraine they are kicking the tough decisions down the road on how to address an unsustainable economic program.

To be sure, sovereign debt policy can be improved. There are some good proposals on the table, but they can only succeed if they are undertaken with strong official support. Countries can be encouraged to address their debt problems more promptly, and IMF analytics can continue to be improved. The International Capital Markets Association (ICMA) has adopted standard aggregated collective action clauses for sovereign debt instruments. While this is a step in the right direction, if these clauses are only applied to new debt, it will take a decade or more for the bulk of the outstanding debt to be covered by them. Rather than waiting, the IMF and official creditors should support and actively encourage aggressive liability management exercises to replace current contracts with the new ICMA clause.

Policy Recommendations: Sovereign Debt

- Confront the hard decisions needed in the Eurozone and Ukraine.
- Strong official support for liability management aimed at replacing old contracts with new aggregate collective action clauses.

Emerging Issues in Financial Governance: Financial Sanctions

Another new challenge is financial sanctions. While financial sanctions have been used extensively since September 11, 2001, to apply pressure to global terrorist networks and countries like Iran and North Korea, they were given a new test in the aftermath of Russia's annexation of Crimea in March. For the first time, coordinated economic and financial sanctions were employed against an economy that was well-integrated into the international financial system. It is precisely this interconnectedness that can make financial sanctions so effective and also—potentially—increases their costs for financial institutions and others in the sanctioning nations.

So far, financial sanctions are having an effect, though not perhaps the one that is politically needed. The ruble is down nearly a fifth on the year, Russian banks are effectively cut off from European and American capital markets, and even Russia's retaliatory sanctions are fueling inflationary price increases. There are likely to be profound long-term costs for the Russian economy from lost investment.

Given their success and a war-weary world, the use of financial sanctions is likely to remain attractive as a foreign policy tool. The interconnected financial networks that span the globe make financial sanctions potentially powerful against large and influential countries. In light of this, a critical governance question concerns the principles that apply when deciding to use sanctions. One of the risks of financial sanction success is the potential to drive countries to insulate themselves from the global financial system out of fear that interconnectedness is more a danger than a benefit. In order to reassure other countries that financial sanctions will not be used at whim, and to maintain the benefits of financial integration, there would appear to be benefits from a strengthened global understanding on financial sanctions. Such an agreement would be negotiated by large economies with the power to levy sanctions that can bite (including against each other) and could take its cues from the Santiago Principles on sovereign wealth funds. It would be best to begin setting the rules of the road for financial sanctions now, rather than at some future moment when the costs of action will be higher.

Policy Recommendations: Financial Sanctions

- Negotiate a global understanding or set of best practices on financial sanctions and their implementation.

¹ There are other objections to IMF reform, though none are entirely persuasive. See Edwin M. Truman, "[IMF Reform is Waiting on the United States](#)," Report PB14-9, Peterson Institute for International Economics, Washington, DC, Revised March 2014.

² Nicholas Véron, "The G-20 Financial Reform Agenda after Five Years," paper presented at the U.S.-China-Europe Economic Reform Agenda Symposium, Beijing, China, May 2014.



Panelist Paper: Governing the Global Financial System

Council of Councils Sixth Regional Conference
September 28-30, 2014
Centre for International Governance Innovation

Domenico Lombardi, Centre for International Governance Innovation

In the realms of trade, finance, and development, global economic governance has made impressive strides since World War II (WWII). Where severe challenges to managing the world economy have arisen, various institutions and governance arrangements have been forged through international agreement to respond to these challenges.

The International Bank for Reconstruction and Development (IBRD) was created to finance the rebuilding of Europe after WWII and later—like the World Bank—to finance international development. The International Monetary Fund (IMF) was created to manage and oversee the fixed but adjustable exchange rate system of the Bretton Woods era. Later, the IMF came to fill the all-important role of international lender-of-last-resort and financial crisis firefighter. The General Agreement on Tariffs and Trade (GATT), succeeded by the World Trade Organization (WTO), was created to facilitate the expansion of world trade and solidify the liberal international trading system. After the Asian financial crisis, the Financial Stability Forum (FSF) was built to help strengthen global financial regulation. And in the wake of the 2008 global financial crisis, the FSF was replaced by a stronger and more ambitious body, the Financial Stability Board (FSB), and the G7/8 gave way to the expanded G20 as the premier forum for global economic cooperation.

In all of these cases, the international community of sovereign states has responded to a common challenge by creating a new institution or governance arrangement designed to strengthen or stabilize the global economy. Yet, in the realm of sovereign debt—including defaults and restructurings, which have been a destabilizing force in the world economy for centuries—no such governance arrangements have been created. The international governance response to the problem of sovereign debt crises—in particular, sovereign debt restructuring—has been insufficient or altogether absent. The failure to produce an international framework for sovereign debt restructuring is not for the want of trying.

There have been several attempts or proposals to create an international mechanism or framework to facilitate necessary sovereign debt restructurings. The first substantive proposal for a mechanism to govern sovereign debt restructuring was made by the Mexican government at the 1933 Pan-American Conference. Similar proposals were put forward by Harry Dexter White—one of the principal architects of the IMF and World Bank—a decade later during the Bretton Woods negotiations. In 1978, the United Nations Conference on Trade and Development (UNCTAD) Secretariat called for the creation of an “independent international forum to facilitate the restructuring of

sovereign debts owed to both private and official creditors” (Helleiner 2008: 104). This proposal was then picked up and championed by the G77, which in 1979 proposed the establishment of an international debt commission made up of prominent international experts on debt and development. Again in the mid-1990s, just after the Mexican peso crisis, two alternative approaches were proposed. The first was Jeffrey Sachs’s proposal to transform the IMF from a lender-of-last-resort into an international bankruptcy court. The second came out of the 1996 G10 “Rey Report,” which supported the more widespread use of “collective action clauses” (CACs). Finally, in November 2001, just as the Argentine crisis was unfolding, then IMF first deputy managing director, Anne Krueger, formally proposed a “sovereign debt restructuring mechanism” (SDRM): a legal mechanism designed to approve payments standstills for sovereign states experiencing severe debt servicing difficulties and facilitate the restructuring and, if necessary, writing down of sovereign debts (Krueger 2002).

By 2003, the SDRM had been put on the shelf, partly because of political opposition and partly because CACs, which were seen by many as a viable alternative to a formal SDRM, were being introduced by a growing number of emerging market borrowers. While the next few years were relatively calm, a series of recent economic and legal developments in Europe and the United States—namely, the Eurozone debt crisis, the Greek debt restructuring, and the litigation surrounding Argentina’s 2001 default—has revived interest and concern over sovereign debt and prompted a rethink of how best to govern sovereign debt restructurings. It has become all too clear that the world faces severe sovereign debt difficulties, and that CACs, while a step in the right direction, do not go far enough to ensure timely and orderly restructuring processes when sovereign debt workouts are needed.¹

Although the recent Greek restructuring enjoyed a high rate of participation amongst bondholders (97 percent), those who refused to participate—the holdout creditors—were successful in recovering their investments in full, which only strengthens the incentive for others to holdout from future deals (Xafa 2014). Indeed, the IMF (2013) notes that the Greek restructuring highlighted the limitations of CACs in addressing non-participating creditors.

The recent U.S. court ruling in favour of Argentina’s holdout creditors also threatens to make the holdout problem more acute going forward (IMF 2013; IMF 2014). By ruling that Argentina’s holdout creditors, many of whom bought their bonds on secondary markets after default and at a deep discount, must be repaid in full if those who accepted restructuring are to be repaid at all, the court’s decision has rewarded recalcitrant creditors—referred to pejoratively as “vulture funds”—and punished cooperative ones, thus creating a perverse incentive for all creditors to holdout from future restructurings.

Beyond the problem of holdout creditors, the Greek debt restructuring was seen as a case of “too little, too late”—a problem that CACs are not equipped to handle (IMF 2013; Gitlin 2014). For many, the persistence and potential worsening of the holdout creditor problem—following the success of Greek holdouts and the U.S. court ruling in favour of Argentina’s holdouts—only reinforces the need to improve the way sovereign debt restructuring is governed beyond the contractual approach of CACs.

The failure to resolve sovereign debt crises in a fair and efficient manner must be viewed in light of contemporary developments in the world of sovereign debt, which suggest that the prospect of future large-scale sovereign debt restructurings is not a distant one.

In advanced economies, the level of central government debt is reaching its highest point in over two hundred years (Reinhart and Rogoff 2013).² Problematically, the normal ways of achieving debt reduction do not look promising. First, growth prospects in Europe and Japan appear too weak for advanced economies in these regions to grow their way out of debt. Second, fiscal adjustment will not be enough to meaningfully reduce debt-to-GDP ratios in a low-growth environment; in fact, austerity may actually increase debt-to-GDP. Third, in the Eurozone, exchange rates and monetary policies are not independent and are therefore not available tools to assist with debt reduction. As a result of these challenges, many governments may be forced to resort to forms of sovereign debt restructuring.³

Sovereign debt difficulties are by no means limited to advanced economies. In Africa, several countries have been accumulating external public debt at an unsustainable pace and, consequently, are facing increasingly difficult debt situations. Traditionally, African countries have borrowed mostly from multilateral lenders and high-income bilateral creditors belonging to the Paris Club. As a result, when African countries have restructured their debts, they have done so through the Paris Club and through specific debt relief initiatives set up by their multilateral creditors. More recently, however, the composition of Africa's creditors has been changing, as more countries turn to international capital markets and new bilateral creditors—principally China and other emerging market governments—for their borrowing needs.

Among other things, this shift implies that the creditor-specific mechanisms used to facilitate past debt restructurings in Africa are fading in relevance and will be of diminished utility in the event of future debt difficulties. At a recent conference entitled “African Perspectives on Sovereign Debt Restructuring,” participants expressed unanimous concern over the recent and sharp rise in government debt throughout the continent and the lack of a satisfactory international framework to help restructure such debt if it becomes unsustainable (Brooks, Boughton, and Lombardi 2014).

On the creditor side, new and powerful actors are emerging and now have a stake in how sovereign debt relations are governed. The case in point is China, which in recent years has become the world's second largest economy and a major international creditor. As a creditor to both the developed and developing worlds, China has considerable exposure to other sovereigns' debt problems. The strength of China's creditor position is also vulnerable to macroeconomic policy changes in advanced economies, mainly the United States. The prospect of reforming the international sovereign debt architecture thus presents new “opportunities for China's own liability management and leadership in international financial fora” (House, Wang, and Xafa 2014).

In the light of such turbulence and tumult in sovereign debt markets and relations, a number of new proposals for handling sovereign debt restructuring have been advanced, including the IMF's recent proposal to reform its own lending framework (IMF 2014). All of these proposals build on, or break from, the established statutory-versus-contractual dichotomy. Recently, the Centre for International Governance Innovation (CIGI) has commissioned New Rules for Global Finance to carry out the first-ever global consultations on sovereign debt restructuring, which will take stock of various stakeholders' views on the problems of, and proposed solutions to, sovereign debt restructuring.⁴

Even more recently, the Argentine government has revealed that the G77 plus China will propose in early September that the UN General Assembly vote in favour of a draft project on creating a regulatory framework for sovereign debt restructuring. What such a framework would look like remains an open question. While many proposals for reform are on the table, we are unlikely to see the creation of a statutory SDRM-like arrangement for political reasons, and it

is unlikely that a purely market-based approach would solve the economic and legal problems at the heart of debt restructuring. As such, three recommendations should be carefully considered.

Recommendations

1. The IMF should develop a credible and consistent framework to guide and constrain its lending decisions so that large-scale financial packages do not weaken the incentive for both sovereigns and creditors to undertake timely debt restructuring, if needed (Schadler, 2013; Boughton, Brooks, and Lombardi, 2014).
2. A Sovereign Debt Forum (SDF) should be created to “provide a centre for continuous improvement of the processes for dealing with financially distressed sovereigns and a venue for proactive discussions between debtors and creditors to reach early understandings on treating specific sovereign crises” (Gitlin and House 2014: 7).
3. The feasibility of introducing an independent and widely agreeable international arbitration process should be assessed with the aim to settle disputes arising from sovereign debt restructurings.

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Appendix: CIGI Publications on Sovereign Debt Restructuring

TITLE	AUTHOR(S)	DATE	PUBLICATION TYPE
The Political Economy of Governing Sovereign Debt Restructuring	Skylar Brooks and Domenico Lombardi	Forthcoming	Paper
Issues Paper for Global Consultations on Sovereign Debt Restructuring	Skylar Brooks and Domenico Lombardi	Draft for comments published online	Paper
Report from Sovereign Debt Forum Consultations	Richard Gitlin and Brett House	Forthcoming	Paper
African Perspectives on Sovereign Debt Restructuring	Skylar Brooks, Domenico Lombardi, and Ezra Suruma	Forthcoming	Paper
African Perspectives on Sovereign Debt Restructuring	Skylar Brooks, Domenico Lombardi, and Ezra Suruma	August, 2014	Commentary
Chinese Perspectives on Sovereign Debt Restructuring	Brett House, Hongying Wang, and Miranda Xafa	July, 2014	Commentary
The IMF's Lending Framework and Sovereign Debt Restructuring	Miranda Xafa	July, 2014	Commentary
IMF Lending Practices and Sovereign Debt Restructuring	James M. Boughton, Domenico Lombardi and Skylar Brooks	June, 2014	Policy Brief
Lessons from the Greek Debt Restructuring for Future European Debt Crises	Miranda Xafa	June, 2014	Paper
Sovereign Debt Restructuring: Old Debates, New Challenges	James A. Haley	May, 2014	Paper

A Blueprint for a Sovereign Debt Forum	Richard Gitlin and Brett House	March, 2014	Paper
The IMF's Preferred Creditor Status: Does it Still Make Sense After the Euro Crisis?	Susan Schadler	March, 2014	Policy Brief
Debt Dynamics Indicate That Italy Remains Vulnerable as Spain Stabilizes	Domenico Lombardi and Samantha St. Amand	January, 2014	Commentary
Unsustainable Debt and the Political Economy of Lending: Constraining the IMF's Role in Sovereign Debt Crises	Susan Schadler	October, 2013	Paper
The Sovereign Debt Forum (SDF): Expanding Our Tool Kit for Handling Sovereign Crises	Richard Gitlin and Brett House	August, 2013	Policy Brief
Sovereign Debtors in Distress: Are Our Institutions Up to the Challenge?	Susan Schadler	August, 2012	Paper

Op-eds

TITLE	AUTHOR(S)	DATE	OUTLET
Assessing Greek Debt Restructuring	Miranda Xafa	June 25, 2014	Vox EU
The IMF's preferred creditor status: Questions after the Eurozone crisis	Susan Schadler	April 28, 2014	Vox EU
The IMF: Crisis Fighter	Brett House	April 16, 2014	Jubilee Germany/ Open Canada
Argentina's debt saga shows	Brett House	March 24, 2014	Quartz

why we need a better way to deal with bankrupt countries			
Another public-debt crisis is on its way. Let's start fighting it now	Richard Gitlin and Brett House	March 18, 2014	The Globe and Mail
The Sovereign Debt Forum (SDF): A Snapshot	Richard Gitlin and Brett House	February 15, 2014	G24
IMF failings in the EZ crisis	Susan Schadler	October 15, 2013	Vox EU
It's time for Canada to break some global logjams	Brett House	August 12, 2013	The Globe and Mail
The IMF has been cut adrift	Susan Schadler	November 12, 2012	The Guardian – Economics Blog

¹ Bi, Chamon, and Zettelmeyer 2011; Bradley, Cox, and Gulati 2010; Das, Papaioannou, and Trebesch 2012.

² The public debt-to-GDP ratios have increased across all advanced economies since the so-called subprime crisis. The escalation of debt problems in the Eurozone, however, stands out. Four out of the six countries in the midst of the persisting Eurozone crisis—Greece, Ireland, Portugal, and Italy—have public debt-to-GDP ratios that are already above 100 percent of GDP.

³ As Reinhart and Rogoff (2013: 10) argue: “Given the magnitude of today’s debt and the likelihood of a sustained period of sub-par average growth, it is doubtful that fiscal austerity will be sufficient, even combined with financial repression. Rather, the size of the problem suggests that restructurings will be needed, particularly, for example, in the periphery of Europe, far beyond anything discussed in public to this point.”

⁴ See press release “CIGI commissions New Rules for Global Finance Coalition to initiate global consultations on sovereign debt restructuring” of June 16, 2014 available at: <http://www.cigionline.org/articles/cigi-commissions-new-rules-global-finance-coalition-initiate-global-consultations-sovereign>.

COUNCIL OF COUNCILS

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Session Three

Breaking the Global Climate Change Deadlock



Panelist Paper: Breaking the Global Climate Change Deadlock

Council of Councils Sixth Regional Conference
September 28-30, 2014
Centre for International Governance Innovation

Susanne Droege, German Institute for International and Security Affairs

What are the challenges of breaking global deadlocks in large, multilateral negotiating forums?

There is a misconception regarding the role of large multilateral forums. In particular the United Nations Framework Convention on Climate Change (UNFCCC) is not able to solve the climate problem because it lacks the means (binding treaties, national commitment).

Climate policy at the global level hinges on national implementation of agreed measures and beyond. It also hinges on interactions and coordination, or even better, cooperation of countries in taking action. This is what international negotiations are about. And even with an international agreement with legal force (like the Kyoto Protocol), the climate policy outcome depends on national willingness to follow up. While it could be asked why international talks are necessary at all, the coordination function is crucial. National geographical and resource endowments do not stop at borders. Some resources, like the atmosphere or the oceans, are shared and actions taken impact other nations.

Another distinctive feature is the difference in economic performances around the world and the capability to cope with climate change (CC), be it as a polluter of greenhouse gases (GHG) or as an adapter to the effects of CC. International talks are the only option to sort out the strategies to mitigate and adapt and the claims being made for assistance (in money and in technology). This could also be handled bilaterally, but for most small countries this does not make sense or is just not a viable option.

Overcoming the obstacles requires *political leadership* of key negotiating parties. For a long time, the EU took up this role while it was not supported much by other big emitters. The EU leveraged its engagement for developing countries in fighting climate change and its impacts on the poor. In the run-up to Paris 2015, the EU has lost ground and this vacuum is being filled by the United States for the time being.

How might the political obstacles to more effective international climate agreements be lessened or circumvented?

To overcome political obstacles that hinder effective international agreement on climate change, “effectiveness” first needs to be defined. An international climate agreement is effective with respect to its outcome if it leads to reduced

emissions, if it reduces the adverse consequences of climate change, and if it supports effective management of resources devoted to both mitigation and adaptation. Furthermore, the agreement is effective if it can be enforced, if it ensures broad participation, and if the costs of the agreement and their distribution are perceived as “fair.” These three dimensions can be identified as the key obstacles of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP).

First of all, parties will only agree on enforcement provisions if this is in their national interest. The national interest in turn depends on the payoffs in the short-term and payoffs in the long-term across countries. This again relates to the fairness chasm, driven by different perceptions of a “fair deal” and the lack of trust in the UN system, and based on claims from historical polluters, by future polluters, and countries that do not contribute to the dynamic emissions trend.

Progress will evolve if the *negotiations will be held on individual topics* (e.g., oceans, forests, adaptation investment, and measurement, reporting, and verification, or MRV), and if the compensation for the effects of climate change are translated into monetary terms by financing the Green Climate Fund. Financial transfers influence perceived fairness and they help to build up trust.

What are effective means to actually help mitigate GHG emissions and adapt societies to climate impacts, as distinct from agreements to talk further about achieving such effects?

Given the lack of an international “climate government,” measures to reduce emissions can only be taken at the national level by using regulation, market mechanisms, or incentive systems to foster low-carbon economies. Private actors will base investment decisions on the national policy framework, its reliability over time, and the international context. Thus, such national measures will need international coordination—the effects will materialize at the global level and detrimental side effects need to be avoided (e.g., carbon leakage from relocation of energy-intensive production or from coal which is substituted domestically but still produced, exported, and combusted abroad).

Given short-sighted policymaking, *climate policy needs a coupling with co-benefits*. National policy approaches which internalize the CO₂/GHG effects from energy production, manufacturing and consumption, transport, and heating/cooling, for instance, can improve air quality (health), reduce resource costs, enhance energy security, and could stimulate the business cycle through public expenditure. One of the most viable tools is a price on carbon. It would change the substitution elasticities between different energy sources and would incentivize consumer decisions. National climate policy needs an *institutional backing* which is secured by legal tools (laws and directives) and which allows a long-term implementation beyond discretionary political interventions (see Australian example).

To what extent do future environmental and climate change risks represent an under-reported risk in economies?

There is a dichotomy in the way that climate risks are translated in the economic context. While the insurance industry has a clear understanding of the impacts from climate change on its business, and is able to calculate risk premiums, governments in general still lack this understanding. Measurement of economic performance (GDP) includes damages only if they are being repaired (increasing GDP), not as detrimental to growth, although impacts can deteriorate the natural endowments (e.g. land) or the capital stock. In some countries, negative externalities are

incorporated into “green” versions of national statistics. Yet, the impact assessments from action versus non-action on climate change are not part of “mainstream” economic thinking or political decision-making. “Green recovery” discussions after the 2009 worldwide economic crisis indicated for the first time how longer-term investment could deliver on both ends the stimulation of the business cycle and the need for low-carbon investment, e.g., in infrastructure.

Moreover, and relating to insurance against climate risks, the need for international assistance to countries facing severe climate change impacts is going to increase steeply. Thus, national governments also need to consider the risk (i.e., cost) from inaction compared to the cost of action. As a practical consequence, calculations of climate impacts (see Intergovernmental Panel on Climate Change, or IPCC), would need to be reported as regularly as the growth rates or other economic indicators. The financial burdens following international or national assistance for extreme weather impacts, for instance, need to become more transparent in public budgets. The benefits from investment in mitigation (avoided damage, co-benefits) could be incorporated just like other returns on investment in private and public sector accounting. This, of course, is not an easy task, given that it can only be based on best estimates. Incorporation of future risks would need a concept of how climate change will develop (a task performed by the IPCC) and it needs to be discounted in order to translate it in current economic terms. There is a need to *translate climate risks on a regular basis into economic assessments* by international (Bretton Woods) and national institutions. So far, this has been left to the “weaker” UN programmes (UNEP, UNDP). First attempts were taken by the World Bank (4 Degrees World reports).



Panelist Paper: India's Climate Change Strategy: Expanding Differentiated Responsibility

Council of Councils Sixth Regional Conference
September 28-30, 2014
Centre for International Governance Innovation

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Introduction

As the world prepares for the upcoming climate change negotiations in Lima in 2014 and Paris in 2015, there is an expectation that the talks be more decisive than previous attempts at consensus from Kyoto to Copenhagen. Yet the assumption that the undeniable science of climate change will by itself compel action on an issue that has thus far proved the mother of all collective action problems ignores the failures of past conferences. For Lima and Paris to succeed in achieving consensus, the issue of equitable response to the climate crisis must be creatively reimagined. Equity has been a challenge for climate consensus since the 1992 Rio Earth Summit first articulated that, “In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities.”¹

In meeting this challenge of articulating responsibilities for a climate that all share but only some have impacted substantially, India's challenge is increasingly the world's challenge. How can India acknowledge and respond to existing trends—the increasing urgency of confronting climate change, the energy-intensive process of achieving a semblance of development, and widening wealth gaps between rich and poor—while maintaining its focus on bringing its hundreds of millions of citizens out of poverty? In a larger sense, how can the world prevent climate degradation amid existing inequality and the aspiration of billions to rise out of poverty?

Maintaining Equity between India and Earlier Developers

For India, the actualization of differentiated responsibility remains central to any climate agreement. Developed countries and China have already undergone energy-intensive industrial development (and largely coal-fired electrification) to bring their people out of poverty, consuming much of the world's carbon budget in the process. From Britain's use of the steam engine in the early nineteenth century to China's exponentially increasing coal capacity over the last decade, carbon-polluting energy has been essential to providing jobs for the millions who seek them in each successive industrial revolution.² India's coming industrial revolution and necessary shift to manufacturing, with twelve million new workers entering the workforce each year, cannot be avoided lest those millions lose the possibility of a better life.³ India's economic transition, coming at a time when the world is finally

moving toward a collective response to climate change, represents a great challenge to maintaining economic equity between India and previously industrializing powers. After all, the cost of access to prosperity must not be the highest for latecomers to industrialization. In other words, poverty cannot be frozen by a dateline.

India has acted to engage these contrasting priorities, by committing to a 20-25 percent reduction in carbon intensity by 2020—a natural consequence of increasing efficiency in the energy sector, but also a step to ensure the government's promise that India's per capita emissions will not go above those of wealthy countries.⁴ But equity suggests that India resist any effort to tie its energy intensity reduction to China's, as the two countries have vastly different existing energy consumption and generation footprints. India starts from a lower polluting baseline compared to China and even to developed economies that have shed manufacturing—India's use of energy per purchasing power parity dollar of economic output is 0.33 kg CO₂, compared to China at 0.60 and developed countries like the United States at 0.48.⁵ The tendency to see China and India in hyphenated terms as large economies with growing emissions ignores the fundamental differences in their current contribution to climate change and to their vastly different economic and development landscapes.

Toward an Indian Strategy

The need for global action against climate change has prompted diplomats in the developed world to speak of “win-win” situations—that transitioning to renewable energy will allow economies to reap the benefits of green jobs growth while reducing emissions. At least in India, this rhetoric rings false. Barring as-yet-insufficient technology, stuttering monetary transfer, or commercial funding from the developed world, coal will remain significantly cheaper than all other sources of energy through 2030 and perhaps beyond.⁶ Renewables suffer from high variability in supply and base load restrictions on Indian power grids. Renewable energy development, which would be appealing from a simplistic “first, do no harm” perspective, collapses upon closer scrutiny: how should India assess the harm of more of its citizens remaining in poverty for every increase in marginal energy cost? The ethical aspect has a political dimension as well: India's parliament will not countenance ratifying the Paris proposal unless it allows maximal focus on poverty alleviation. And even if it does, democracies have other ways to negate bad agreements, federalism being chief among them. While this is a matter for another study in itself, it must be noted that in the Indian context, the country must be viewed as a collection of thirty nations in a union. The Paris proposal must work for Indian states, or it will fail the ultimate test of implementation.

To negotiate action on climate change despite these challenges, India should promote a more fine-tuned form of differentiated responsibility—not just between countries, but *within* them as well. International debate thus far has been dominated by equity between countries, yet recent globalization has caused increasing intra-national inequality as global inequality decreases.⁷ Even proposals for differentiated responsibility within federal systems, whether EU members, Chinese provinces, or American or Indian states, suffer from inadequate consideration of the far greater inequality within each of these smaller entities.⁸ India should solve this problem by introducing international emissions standards for large corporations. For instance, all corporations valued above \$1 billion (or another suitable cut-off) should be subject to internationally binding efficiency standards, regardless of national origin. By decoupling protection of the poor from protection of wealthy corporations that reside within the same borders, India will focus its negotiating power on protecting its most vulnerable citizens, while also addressing large multinational corporations often unconstrained by state power. Allegations that India's wealthy corporations hide behind its government's focus on poverty would be allayed, and the world would be able to address climate change with

differentiation and therefore equity—targeting those able to pay rather than the global poor. This would also compel the “rich” countries to act against the “carbon gaming” of their transnational corporations.

Market-Oriented Change

Such a negotiation strategy would enshrine an expanded differentiated responsibility, helping to solve equity concerns. Corporate emissions standards would nonetheless face several practical obstacles—balancing mandatory and transparent compliance with national sovereignty; preventing economic distortions that might inefficiently incentivize corporations to remain below \$1 billion valuation or break into subsidiaries; and solving the larger challenge of corporate tax havens that would be ripe for exploitation under any international standards. As these are important issues for global governance to solve regardless, an equitable response to climate change can provide the impetus.

India can supplement this new proposal with more traditional methods of reducing emissions. India is leading the way in developing countries’ efforts on energy efficiency, a key opportunity for the eventual low-carbon transition—and one that remains truly “win-win” because energy saved from low-cost sources further reduces cost. In the latter part of the last decade alone, India’s Bureau of Energy Efficiency (BEE) doubled its energy savings in avoided generation capacity each year.⁹ New economic instruments like demand-side management hold the potential to reduce energy use by up to 25 percent, and the Bombay Stock Exchange’s GREENEX Index on energy-efficient stocks shows that the private sector is already taking action through market mechanisms to improve its energy efficiency.¹⁰ Lima and Paris can capitalize on such early beginnings to turn India’s ideas and experimentation into global systemic change.

Summing Up

India’s challenge at the upcoming global climate talks is twofold. First, it is now time to look beyond the India-China hyphenation; it is unhelpful to India’s cause and situation. It is time to walk alone and seek specific exemptions or exceptions for India’s scale and diversity of realities.

Second, India needs to take leadership and identify constructive ways to move forward on climate change mitigation while not sacrificing the imperative of poverty alleviation. By the same token, the world’s challenge is to develop a holistic global framework that can manage the climate change threat in a world of differentiated responsibility.

By introducing intra-national differentiation between wealthy corporations and impoverished populations, Indian negotiators can help move the upcoming talks beyond past failures. These big corporations also account for a large carbon treasury and can be a low hanging fruit for both emissions reduction imperatives and to fashion a new sustainable business paradigm. Through leadership on this and other issues like energy efficiency, India can ensure its commitment both to the development of its citizens and the maintenance of the ecosystem.

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² “China Approves Massive New Coal Capacity Despite Pollution Fears,” *Reuters*, <http://uk.reuters.com/article/2014/01/07/china-coal-idUKL3N0K90H720140107>.

³ “Why India Must Revive Its Manufacturing Sector,” *The Diplomat*, <http://thediplomat.com/2014/02/why-india-must-revive-its-manufacturing-sector/>.

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- ⁴ “India Vows 20-25% Carbon Intensity Cuts,” *The Times of India*, <http://timesofindia.indiatimes.com/india/India-vows-20-25-carbon-intensity-cuts/articleshow/5298030.cms>; “India to Reduce Carbon Intensity by 24% by 2020,” *The Guardian*, <http://www.theguardian.com/environment/2009/dec/02/india-carbon-intensity-target>.
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- ⁶ “Energy in India: The Future is Black,” *The Economist*, <http://www.economist.com/node/21543138>.
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- ⁸ “New Players on the World Stage: Chinese Provinces and Indian States,” The Brookings Institute, <http://www.brookings.edu/research/essays/2013/new-players-on-the-world-stage>.
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- ¹⁰ “BSE S&P-Greenex,” Bombay Stock Exchange, http://www.bseindia.com/indices/DispIndex.aspx?iname=GREENX&index_Code=75&page=19D7C1A5-BE2B-43EC-AD77-CE539070D72E; “Calibrating India’s Climate Change Response,” *Courier*, <http://www.stanleyfoundation.org/articles.cfm?id=797>.

COUNCIL OF COUNCILS

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Session Four

Conflict Management in a World Adrift



Panelist Paper: Conflict Management in a World Adrift

Council of Councils Sixth Regional Conference

September 28-30, 2014

Centre for International Governance Innovation

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Writing in the *New York Times* a few weeks ago, Roger Cohen suggested that we are living in a time of the “great unraveling”—beheadings by radical Islamic extremists, territorial aggression by the world’s two largest nations as measured by geography and population respectively, incendiary religious wars (e.g., the Middle East), rising anti-Semitism, the outbreak of infectious disease, and the fraying fabric and appeal of democracy. In short, the world is adrift and global disintegration may be lying just around the corner.

Let me begin by offering a couple of observations to counter some of the doom and gloom many feel about today’s world.

The good news is that there have been no major conflicts between the great powers of the international system that have threatened international stability since the Second World War. Since the Cold War ended, there has also been a steady decline not just in the number of intrastate wars, but also in their lethality as measured by the number of victims of these conflicts. Although there has been an uptick in those numbers in the past several years it does not, as yet, represent a pronounced trend.

Interstate conflict has remained at remarkably low levels since World War II and has been confined largely to border disputes between neighboring countries or military interventions by great powers against small states. Terrorism, which has been a source of great concern since the attacks on the United States at the beginning of this century, is also in “statistical” decline. That is to say, we have seen a decline in the frequency of terrorist attacks although those individual attacks have become more lethal. Iraq, Afghanistan, and South Asia are the hotbeds of terrorism in recent years.

The “causes” of international stability are complex. At the risk of simplification, I would suggest that there are six pillars that hold up the current international order.

The first pillar of the current international order is its political legitimacy and the fact that none of the major powers of the international system—or any of the rising powers—seeks to challenge it through a revolutionary foreign policy.

As Henry Kissinger wrote in his first book, *A World Restored*, “A legitimate order does not make conflicts impossible, but it limits their scope. Wars may occur, but they will be fought in the name of the existing structure and the peace which follows will be justified as a better expression of the ‘legitimate’ consensus. Diplomacy, in the classic sense, the adjustment of differences through negotiations, is possible only in ‘legitimate’ international orders.”

Although Russia and China once viewed themselves as revolutionary powers, this is no longer the case. Russia under Putin may harbor great power ambitions, but those ambitions are confined largely to its periphery. Russia’s economy is still far too weak for it to play any kind of global imperial expansionist role. Like Russia, China is flexing its muscles vis-à-vis its smaller neighbors by asserting its territorial claims in the South China Sea. However, with its embrace of free markets and its own unique brand of state capitalism China is a status quo power in terms of the global political economy. So too is India. Russia and China have key positions in the world’s leading international institutions, the UN in particular, through their seats on the Security Council. Generally speaking, these countries and other emerging powers are trying to exert their newfound power and influence through existing institutions, and only, when all else fails in terms of their efforts to leverage reform will they try to create new institutions like the BRIC Bank.

The second pillar of the current international order is its institutions.

The number of international institutions has grown dramatically during the past fifty years from roughly eighty in 1940 to well over four hundred today. A wealth of empirical research suggests that global and regional institutions have generally been a positive force for peace and international security. As John Ikenberry and other scholars argue, these institutions not only enjoy widespread political legitimacy, but they have actively promoted the general values of their members and the acceptance of key rights, rules and responsibilities thus contributing to global stability.

It is undeniable that international institutions engaged in conflict and security management are over-stretched, pulling back, or facing internal divisions that are allied with key interests on the part of key actors. The United Nations, which should be the principal institution of global conflict management and security, has had a difficult decade. The United States, which was very active in terms of humanitarian intervention in the 1990s, has also had an unhappy decade in the wars and subsequent nation-building efforts in Afghanistan and Iraq. Both the United States and Europe have experienced severe economic downturns, resulting in fierce domestic demands to fix the economy first and cut defense expenditures. The appetite for overseas military engagement has decreased sharply.

The resulting security vacuum has produced a variety of responses. Destabilizing forces such as Al Qaeda affiliates, other terrorist groups, and transnational criminal networks, for example, have taken advantage of the fragmentation of power around the world.

However, the dispersal of power has had a potentially salutary effect on the development of at least two contemporary conflict management patterns: emergent regionalism and the development of ad hoc collective arrangements to address specific security problems.

Since the end of the Cold War, regional entities have demonstrated a greater will and capacity for action. For example, the African Union has developed its own capacities and structures for mediation and conflict prevention, and has mobilized resources in its early warning assessment systems and prevention and response capabilities. So too have sub-regional entities in sub-Saharan Africa like ECOWAS. In Latin America, the principles of sovereignty and nonintervention, which were the cornerstones of the inter-American system have been relaxed and modified to allow

the OAS to play a greater role in the defense of democratic principles and the advancement of human rights in the region.

The other trend in global security is makeshift security management or what Richard Haass refers to as “messy multilateralism,” characterized by the formation of ad hoc coalitions of the willing or capable. Such improvised groupings are comprised not just of states but also regional bodies and international institutions.

In Darfur, when it came time to recognize that AMIS, the 7,000-man African Union force, was not sufficiently robust and resourced to cope with the severe security conditions it faced, the UN and the AU improvised. The result—codified in UNSCR 1769 (2007)—included language calling on the parties to cooperate with proposals flowing from the joint work of UN and AU special envoys for Darfur.

In the case of Cote d’Ivoire, when the country descended into strife in the early 2000s, France sent additional units (Operation Licorne) aimed initially at protecting and evacuating French citizens. As it became clear that there was a need to separate government forces from rebel forces, units deployed by the ECOWAS sub-regional group soon joined the French forces. Both forces’ presence was authorized—after the fact—by means of passage of UNSCR 1464 (2003), authorizing French units to assist ECOWAS in its mission of supporting the French-sponsored October 2002 ceasefire, separating warring sides and assisting civilian protection.

In the case of the broadly-based international campaign to combat piracy off the coast of Somalia, the UN Security Council in its Resolution 1851 (2008) authorized and endorsed the voluntaristic, ad hoc characteristics of the ongoing response to the Somali piracy challenge, calling upon states, regional and international organizations that have the capacity to do so, “to take part actively in the fight against piracy and armed robbery off the coast of Somalia.” Combined efforts to deal with piracy have involved joint, ad hoc naval coordination among key NATO, EU and coalition maritime forces; a major parallel role of the private sector, especially among those companies whose ships transit these waters; the critical cooperation of Kenya in handling captured pirates; and the impact of more effective effort by distinct Somali non-state entities. Although there is no unified command structure among the three naval contingents, there has been extensive coordination at the tactical level, to deal with Somali pirates.

In terms of regionalism and collective security management, the Libyan intervention also reflected a mixed approach. Improvisation and ad hoc utilization of NATO resources by a coalition of willing NATO military actors was the order of the day. Agreeing to quite openly disagree as seen in high-level public statements did not, in the end, prevent NATO’s activists from mounting an effective air campaign and recruiting non-NATO participants to join the effort. Its elements also included regional organizations from two regions—Europe/transatlantic and the Middle East. In fact, the combination of the two regional initiatives lent it strength in two of the three areas discussed above—legitimacy and effective management/governance. The call from the Arab League, Gulf Cooperation Council and the Organization of the Islamic Council for the imposition of a no-fly zone over Libya also gave a regional stamp to the intervention.

Makeshift groupings of the willing, or the somewhat willing, are now being assembled to fill the gaps in dealing with ISIL in the Mideast and even Ebola in West Africa.

The third pillar of the current order is not just the embrace but the strengthening of democracy in many corners of the globe as citizens mobilize and become increasingly engaged in the democratic process.

Since the overthrow of Portugal's dictatorial regime in April 1974, the number of democracies in the world has multiplied dramatically. Before the start of this global trend toward democracy, there were roughly forty countries that could be classified as more or less democratic. The number increased moderately through the late 1970s and early 1980s as a number of states experienced transitions from authoritarian (predominantly military) to democratic rule. In the mid-1980s, however, the pace of global democratic expansion accelerated markedly.

The growth and strengthening of democracy has generally been a positive force for world peace and global order and again this is borne out in a wealth of research on this matter.

Although democracy is under assault in some corners of the globe, the overall record is not entirely gloomy. According to Freedom House, some “twenty-seven countries showed significant declines” while “sixteen showed significant gains” in their democratic development. The recent election in Indonesia is one such example. Nevertheless, this is the “seventh consecutive year that Freedom in the World has shown more declines than gains worldwide” and there has also been “a stepped up campaign of persecution by dictators that specifically targeted civil society organizations and independent media.” All of which is to say that there is little ground for complacency.

The fourth pillar of the current order is the globalization of trade and investment.

When the British economist and Nobel laureate, Sir Norman Angell, forecast in his book *The Great Illusion* (1910) that the forces of globalization would inevitably create a more peaceful world, he was not wrong, just perhaps fifty or sixty years too early with his forecast. “Commercial development,” he wrote, “is broadly illustrating one profound truth: that the real basis of social morality is self-interest. If the subject of rivalry between nations is business, the code which has come to dominate business must necessarily come to dominate the conduct of governments.” This is surely the story of China in recent years. But it is also true of wide swaths of the Asia-Pacific region where many countries have until recently enjoyed some of the highest economic growth rates in the world. It is surely no accident that this region has gone from being one of the most violent to one of the more peaceful. From 1946 to the mid-1970s, East Asia, Southeast Asia, and Oceania accounted more than half the world's battle deaths, but that number has fallen off dramatically, especially with the ending of conflicts in Vietnam and Cambodia.

The system of rules, institutions, and procedures to regulate the international monetary system at Bretton Woods, and the reduction of tariff barriers, quantitative restrictions and subsidies on trade through the GATT/WTO have obviously played a key role in promoting postwar global economic growth and stability.

The fifth pillar of the international order lies with its structures of power.

The British historian E.H. Carr once wrote that “international government is, in effect, government by the state [or states] which supplies [supply] the power necessary for the purpose of governing. Or as Raymond Aron put it, “the structure of the international system is always oligopolistic. In each period the principal actors have determined the system more than they have been determined by it.” The structure of the international systems generally follows from one of three canonical types: imperial or hegemonic, bipolar in which two powerful states dominate the system, or multipolar in which three or more states manage the system through diplomacy, shifting alliances, and even “managed” conflict. Over the past fifty or so years, we have gone from a bipolar to a unipolar system in which the United States is the predominant power, but one that has played a critical role in managing and maintaining the current international order.

We are now entering a third hybrid phase of “weakened” or “soft” hegemony coupled with “aspiring multi-polarity” as the great powers of Asia, China and India in particular, begin to assert themselves on the world stage. Europe is also part of this new multipolar equation. This emerging set of multipolar relationships does not pose a threat to world order if the great powers in the system continue to believe that stability serves their core national interests, especially their own economic and political survival. Like the nineteenth century though, stability is not automatic. It requires leadership and deft diplomacy to manage political relationships and the latent rivalries that come with the assertion of great power status. It is now clearly a matter of some debate whether those critical ingredients are in scarce supply or not.

Finally, some argue that the possession of nuclear weapons by the great powers of the international system has also been a source of stability in the current international system.

This is a more controversial proposition, especially in light of the very obvious dangers of nuclear proliferation, the continuing risks of accidents and miscalculation, and the possession of nuclear weapons by unstable or weak political regimes like Iran. What we can say is that since the dawn of the nuclear era, great powers have come to develop a greater appreciation about the dangers of nuclear war and the inherent risks of possession. They have behaved more prudently in their dealings with each other—like two scorpions in a bottle. That sense of wariness is clearly still at play in the West’s dealings with Russia even as Putin goes out of his way to remind Western leaders that Russia is a major nuclear power.

The six pillars of our current international order, however, are being stressed by a number of new forces and challenges in the international environment.

- *A Rising tide of nationalism.* We know from the last century that bad economic times historically have strengthened the appeal of dictators and autocrats. Hypernationalism and demagoguery are never far from the door. This is a problem not just for some European and Latin American countries, but also Asia where political institutions are weak. Rising nationalism in Russia, China, Vietnam, and Japan is playing out in various territorial and resource disputes. Many of these disputes are infused by deep-rooted cultural and historical animosities and political opportunism. The radicalization of ethnic and religious minorities, such as China’s perennial tensions with its Tibetan, Uyghur and Mongol minorities, is also a source of internal instability as it is in other countries.
- *Income inequality.* As Monty Marshall has argued, “the most troubling regional sub-systems in the Globalization Era are the regions constituted by the sub-Saharan African countries and the pre-dominantly Muslim countries, which stretch from Morocco and Senegal in the west to Malaysia and Indonesia in the east. The Lorenz curves for these two regions are roughly equivalent; income inequality among African countries is only slightly greater than income inequality among Muslim countries.” It is also apparent that “although the general magnitude of armed conflict in both regions has diminished substantially in since the end of the Cold War, the overall decrease in warfare in Africa has fallen more slowly than the general global trend.” Muslim countries, however, “are the sole group of countries where there has been an increase in armed conflict in recent years, possibly leveling, or even reversing, the general downward [global] trend.”

- *The declining effectiveness and relevance of international institutions.* The painful reality is that the international institutions that guided and stabilized global events in the post-Second World War era, specifically the UN, the Bretton Woods institutions, and even our main security alliance, NATO, are losing their luster, their relevance, and their utility. Uncertainty rather than stability is the order of the day. In responding to global flashpoints as noted above, military interventions by “coalitions of the willing” have tried spasmodically to fill the vacuum, e.g. Iraq, Afghanistan, and Libya, only to prove that military muscle is not an adequate response. The inconclusive yet costly consequences from these interventions have sapped the desire for more of the same, e.g. in Syria. Meanwhile, the UN Security Council and the less formal Group of Eight (now Seven) have been stalemated. In responding to these conflagrations, major powers like Russia and China are, for their own reasons, increasingly determined to thwart collective action.

NATO has tried to find purpose in a post-Cold War world, but its collective will to respond to global crises, including the actions of Putin’s resurgent “New Russia,” is seen more in rhetoric than commitment. The Responsibility to Protect principle, supported fervently by the UN in 2005, is simply no longer in vogue. Consensus—when it can be found at the UN—is either too feeble or too late, often both.

- *Nuclear proliferation.* As was the case during the Cold War, the growing proliferation of nuclear technology poses a major threat to global political stability because of the risks of miscalculation, loss of control, or the response of regional actors to an impending or actual breakout by one (or more) countries who produce a weapon and simultaneously withdraw from the NPT (North Korea, Iran).
- *Loss of prestige.* The Cambridge economist, Ralph Hawtrey, who was both a friend and critic of John Maynard Keynes, rightly stressed the central role that *prestige* plays in the ordering and governance of the international system. He argued that a weakening of the prestige of key great powers was “an injury to be dreaded” because it would lead to an erosion of political authority, the breakdown of governance, and greater conflict in the international system.

Many see in Putin’s actions in Georgia, Ukraine, and elsewhere a desire to restore Russia’s diminished prestige and standing as a great power following the collapse of the Soviet Union with the end of the Cold War. In that respect, Russia (and Putin’s) behavior may be more dangerous than the rise of China and its own aspirations for great power status for the reasons that Hawtrey identifies.



Panelist Paper: Conflict Management in a World Adrift - A Few Reflections on Particular Cases

Council of Councils Sixth Regional Conference
September 28-30, 2014
Centre for International Governance Innovation

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If we glance at conflict resolution efforts and humanitarian intervention in the last several decades, we see the growing incapacity and weakening of international institutions. Often we see international coalitions, led by the U.S., being formed in attempts to respond to threats to human security and even broker peace deals, but no concerted, consistent effort can be found. Sometimes peace summits and military intervention go through UN mechanisms, but more often they either do not reach the UN or do so post factum. At other times, both the incapable and often redundant UN as well as state actors fail to act to prevent and manage wars.

At the start of the 1990s, the Gulf War was the first of six recent military interventions to be waged by a coalition of states led by the U.S. In this war, the use of force was authorized by the UN. The Security Council delegated its Chapter VII powers to the U.S.-led coalition and did not take up the matter again until the operation had finished. In addition, when the U.S. and Soviet Union first decided to use military force, the Security Council had not formally identified the inadequacy of the sanctions. The U.S. ultimately played a central, leading role. This was even more so the case in the 2003 Iraq war, when the U.S. and allies launched a war and UN mechanisms failed to stop them, despite deeming the war illegal.

In between, the UN failed to prevent genocides in Bosnia and Rwanda. Although peacekeeping forces were deployed at some stage in both of these cases, the Security Council mandates were too weak and troops were not sufficiently forthcoming. After these genocides, the concept of Responsibility to Protect (R2P) emerged as a norm within the international system. R2P aims to alter the understanding of sovereignty as a fundamental right and instead posits that when a state fails to protect its own civilians from mass atrocity, the international community has a responsibility to intervene. It however appears that this morally inspired concept is in fact secondary to a myriad of political and pragmatic considerations.

The lack of intervention in the Syrian civil war shows the incapacity of both states and international institutions to protect civilians and resolve conflicts. The UN estimates the death toll at nearly 200,000 and yet no UN intervention or other international military actions have been taken; only a very short lived UN peacekeeping mission. Russia and China, trading partners with Syria, have vetoed Security Council resolutions condemning the violence and referring the case to the International Criminal Court (ICC) in The Hague. A lack of response has created a far more complex picture on the ground in Syria, with an increased number of factions and rebel-to-rebel fighting, and a death toll beyond anyone's expectations.

The Libyan crisis in 2011 did however capture the attention of the international community. As political protests against Gaddafi began and it was becoming clear that the leader had a real intention to massacre the protesters, condemnation was being voiced by the League of Arab States, the Organization of the Islamic Conference and the African Union. The UN Security Council adopted Resolution 1970, imposing an arms embargo, freezing assets of Gaddafi and his family, and referring the case to the International Criminal Court. When non-military measures failed to be effective, the Security Council adopted Resolution 1973 and imposed a no-fly zone to "protect civilians and civilian populations under threat." A coalition of fifteen NATO states implemented the no-fly zone and also bombed government positions. Gaddafi was overthrown and later captured, and died in custody. The war regained momentum and the conflict is still unresolved, but we can say that the international community prevented a massacre in Benghazi, by a concerted effort of an array of states and with the support of international institutions.

Above are just a few recent examples that highlight the weakness of the UN, the ridicule and absurd composition of the United Nations Human Rights Council and above all the inconsistency of the international community and the need for innovative mechanisms to resolve conflicts.

The nature of conflicts is arguably changing with an increase in non-state actors such as, in the Middle East, ISIS, Hezbollah and Hamas, involved in violent conflicts. There has also been an upsurge in religious terrorism of a fundamentalist Islamic nature, beginning in the 1990s. The emergence of ISIS puts further pressure on the international community, as it marks the first time an al Qaeda-related Islamist terrorist organization has controlled territory—effectively obliterating the formal border between two states—and carrying out massacres on a large scale, with the international community apparently unable or at the very least late to act. As the UN seems unable to deal with such types of actors, and the U.S. administration is becoming more reluctant to unilaterally intervene abroad, the need for a fundamental UN reform—after seven decades of operation since its inception—or more robust international mechanisms cannot be overstated.

Just as the international community finds new ways to tackle new challenges, such as in the fields of space regulation, climate change and cyber space, so also the field of conflict resolution requires revisiting. It urgently needs decisiveness, innovation, new methods and established mechanisms for dealing with complex, spilling over, protracted and multi-dimensional conflicts in the international arena.

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Session Five

The Future of Internet Governance



Panelist Paper: The Future of Internet Governance: Balkanisation But Without Africa

Council of Councils Sixth Regional Conference
September 28-30, 2014
Centre for International Governance Innovation

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Introduction

The global Internet is at a moment of redefinition. Its current status is that of openness, interoperability, interconnectivity, and global unification. Any Internet user can exchange information with more than two billion other global Internet users. However, the Internet of the future may lose its openness and global status to restrictions and blockages of its vast resources. Consequently, the future of Internet governance is likely to be characterised more by uncertainties than by self-desired planned goals.

The current debate on global Internet governance is aimed at redefining the extent of openness, interoperability, interconnectivity, and the global nature of the Internet. Hill (2012) argued that with more than two billion users currently connected to it, the Internet has grown by nearly 500 percent in the past decade. The major events of the Internet have been dominated by the English-speaking world and there is now a paradigm shift toward Asia, as Chinese Internet users have now outnumber the English users. Thus, English is no longer the Internet's dominant language. Consequent upon these fundamental changes to the Internet environment, politics and economics are increasingly invading the Internet's ecosystem.

Besides, a working definition of Internet governance, according to paragraph thirty-four of the World Summit on Information Society (WSIS) Tunis Agenda 2005, was given as "the development and application by governments, the private sector, and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet." Internet governance is perhaps the most contentious issue of the emerging information society era. The political controversies that have greeted the idea of Internet governance are predicated on the following:

- a) There is the perception of dominance of the Internet in the existing governance model by the United States and some Western nations, providing them with undue advantage over the rest of the world. According to Berry (2006), some countries such as Iran, China, and Cuba have expressed concerns that the United States government is largely in control of the management of the California-based Internet Corporation for Assigned Names and Numbers (ICANN). The ICANN was established in 1998 to coordinate unique

identifiers for Internet resources across the world. Without this coordination, one global Internet will be impossible. ICANN manages the core of the Internet, that is, its address system;

- b) More significantly, the Internet is a network of independent networks distributed across the borders of a network of independent nations. Therefore, it is believed in some quarters that it is 'out of place' to have a form of governance policy that provides any nation with undue advantage over the rest of the world;
- c) The increasing agitation for governments of nations to be more involved in the management of the Internet and not to be merely treated as ordinary stakeholders. As reported by the Economist (October 1, 2011), China, Russia, and others have proposed an International Code of Conduct for Information Security in their attempt to strengthen the role of governments. This arrangement will neutralize the multistakeholder model of the Internet governance forum (IGF) which allow for equal say by everyone in decision making process;

It is useful at this juncture to put the discussion of the future of Internet governance within the context of its current dynamics. These include the technical and regulatory challenges to an open and global Internet some of which have been identified by Hill (2012):

- a) **The Threat to the Domain Name System (DNS):** The DNS provides the translation service between a human-readable domain name such as niianet.org, and its Internet Protocol (IP) address. In order for the DNS to function properly so that users can connect to a site they wish to view, Internet routers on the network must be configured to send and receive data from the canonical "root servers" coordinated by the Internet Corporation for Assigned Names and Numbers (ICANN). There is concern that if countries decide to form national root servers apart from the ICANN-approved root, users of the Internet within those "seceding" countries could be severed from the global Internet and this will lead to the fragmentation of the Internet.
- b) **The Gradual Transition from IPv4 to IPv6:** "The Internet Protocol Version Four (IPv4) is the predominant packets switching protocol on the Internet today. It uses a 32-bit address number, allowing for approximately 4.3 billion unique Internet addresses. This is an insufficient number of addresses given the past and anticipated future growth of the Internet. The successor to IPv4, Internet Protocol Version 6 (IPv6) which uses a 128 bit addressing system and thus has exponentially more address space has not been rapidly adopted, even as free IPv4 addresses are becoming increasingly scarce. IPv4 and IPv6 are not immediately interoperable. If firms and countries fail to make the appropriate transition or to use effective translation tools, it is likely that applications will "break" and information will be lost across the IPv4/IPv6 divide."
- c) **Internet Censorship, Blocking and Filtering:** "In order to restrict access to, or prevent the publication of certain types of information on the Internet, governments around the world are employing a variety of technical and legal tools to block websites and platforms and to remove online content. Through such tools as DNS filtering, IP blocking, distributed denial of service attacks (DDoS), and search result removals, governments are dramatically changing not only the way users connect to and participate in the wider global Internet, but how the Internet actually operates."
- d) **The Breakdown of Peering and Transit Agreements/Net Neutrality:** "Payments for data passed between large and small Internet Service Providers (ISPs) is usually negotiated privately through bilateral

interconnection agreements. Large ISPs generally pass data between one another without charges. However, under the right set of circumstances, ISPs might discriminate against those services associated with the competing service providers, thereby cutting service between users and certain sites affiliated with competing companies. Likewise, in opposition to the notion of “network neutrality,” some ISPs may, believing that to do so would be in their business interests, choose to discriminate among the services they provide and to give priority to specific types of data. This too could have the effect of limiting the type of applications and services users could access based on the ISP to which they subscribe.”

- e) **The Collapse of the Internet Standards Process:** “The organizations that design and promulgate the Internet’s technical standards are coming under increased political pressure. Governments and firms assert that these organizations, which have been responsible for the Internet’s core protocols and standards since the 1980s, discriminate against non-American technology firms. Therefore, there is now concerted effort to take the standards-making power out of the hands of the established standards-making organizations, such as the Internet Engineering Task Force (IETF), and to give ultimate authority for standards to the United Nations and the International Telecommunications Union (ITU). Advocates of a free and open Internet argue strenuously that a UN takeover of the standards process would be a disaster for the technical wellbeing of the Internet. It may be that if the standards process continues without addressing its critics’ concerns, a country like China, or a coalition of countries, may be constrained to set up standards independent of the internationally accepted norm.”

- f) **Local Privacy Regimes:** “In the effort to regulate online privacy and the way companies collect, store, and transfer citizens’ personal information on the Web, governments around the globe are considering sweeping legislation. While increased legal protections for personal data may be a necessary part of the solution to the online privacy problem, there are mounting concerns that if many countries adopt their own unique privacy requirements, then every firm operating on the Internet could potentially be subjected to a multiplicity of inconsistent laws.”

In view of the above, it stands to reason that the main motivation which may not be so obvious behind Internet governance is the issue of international suspicion and mistrust among powerful nations. However, what is obvious is that the emerging trend of globalization has made Internet governance a necessity. This is because globalization has significantly influenced the conduct of global politics and international relations. The issue of different policy frameworks on Internet governance as they exist in the constitutions of different nations has continued to be a major challenge. As a result, achieving a globally acceptable framework for harmonizing these different national policies has been a daunting task in the administration of the Internet.

Privacy Policy in Internet Governance

The purpose of privacy policy is to protect sensitive information of the Internet domain name registrant or users. The most obvious question is: How then can Internet Governance strike the right balance between privacy and human rights at the national and international level? In a report by the Internet Governance Project (IGP, June 7, 2014) “finding the correct balance between transparency, accountability, and privacy is never easy, especially in a global context with different cultures, legal regimes, and economic power.” For instance, Nigeria’s Freedom of Information (FOI) Act, 2011, is an “Act to make public records and information more freely available, provide for public access to

public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences of disclosing certain kinds of official information without authorization, and establish procedures for the achievement of those purposes and; for related matters.” (FOIA, 2011). Other nations have their own legal framework on freedom of information which often have different provisions.

Often when any sinister event occurs on the Internet, the most commonly asked question is: who registered the domain name that is associated with such event? Such information is accessible from the WHOIS lookup database. The WHOIS is a query and response protocol that is widely used for querying databases that store the registered users or assignees of an Internet resource, such as a domain name, an IP (Internet Protocol) address block. With the new privacy advocacy, access to this information will now be restricted by intending users, such as the press and media. This is obviously a freedom of expression or freedom of access to information issue which revolves around human rights. Therefore, to strike the right balance between privacy and human rights at the national and international level, it is suggested as follows:

- a) The requirement to openly publish on the Internet, sensitive contact information of Internet domain name registrants who wish to have their privacy rights enforced should be discouraged.
- b) The proposed use of a privacy rights proxy service provider to act on behalf of and for the protection of Internet domain name registrants is a welcome development, as long as it is going to be free or affordable. However, service providers may be required by legal provisions to make such private information available in the event of any violation of Internet user agreement such as involvement in cybercrimes. Nevertheless, the subscription to proxy privacy protection services is not economically viable for users from developing nations as it will attract additional cost on access to Internet services. This proposal will better serve the business interests of the accredited proxy service providers which are largely from the advanced economies.
- c) Another way of protecting the rights of Internet users is by allowing them to give their consent to access request to their sensitive data by any intending or accredited users. The adoption of the principle of consent must be on the basis of the right to refuse, right to withdraw consent, and right to the specificity of purpose and use of private data. The consent policy issue has been one of the most contentious in the privacy debate.
- d) There is the need for accountability by way of having a mechanism for logging in the identity of who is being given access to sensitive records. This will provide avenues for individuals to ascertain if their records were being queried by authorized people. Additionally, the mechanism should be able to create the history of access to sensitive data for a later audit trail.

Competing Perspectives on Net Neutrality

Net neutrality or Internet neutrality suggests the idea of the equality of all Internet resources. It is based on the principle that the Internet service providers, governments, and other stakeholders should treat all data on the Internet equally, without imposing any discriminatory charges on user, content, site, platform, application, and even region. It is an important component of the open Internet. Put differently, net neutrality prohibits Internet access service providers (ISPs) from charging content and service providers (CPs) extra for terminating their traffic to the

end users. The tradition that CPs pay only once for access to the Internet and not again for the termination of their traffic to end users is termed zero-price rule. It is believed by the proponents of net neutrality that the zero-price rule is an indispensable principle of the Internet because it facilitates content creation and innovation, and prevents the fragmentation of the Internet (Kourandi et al, 2013). This is how the Internet has always been, until the debate on global Internet governance.

However, today, substantial illegal online activities are taking place with huge uploads of immoral content and traffic that is intended for cybercrimes, which necessitates the need for content and traffic censorship. As indicated in a report published by *The Economist* (October 1, 2011), the Internet as it is presently governed, in openness and with neutrality, fosters two of its grand merits. First, it promotes innovation. Second, its growth cannot be restrained. Other schools of thought believed that net neutrality is militating against innovation because of its openness, which does not allow for effective intellectual property rights protection and has adversely affected return on investment. Hence, the global crusade for some form of restriction to close up the Internet or reduce its openness. According to a report by the Digital Agenda for Europe, a closed Internet refers to the situation in which established corporations or governments favour certain uses of the Internet over others. A closed Internet may have restricted access to certain web standards, synthetically degrade service delivery and performance, or explicitly filter out content for political or socioeconomic gains.

The debate over net neutrality has remained one of the fundamental debates in Internet governance policy. Governments around the globe have been investigating the need for regulatory action to limit the ability of providers of Internet access services to interfere with the applications, content, and services on their networks. Besides the rules that prohibit network providers from blocking applications, content, and services, non-discrimination rules are a major element of any net neutrality management. Non-discrimination rules apply to any form of differential treatment that falls short of blocking. As reported by Schewick (2012), there is a general consensus among network neutrality proponents that the rules should preserve the Internet's ability to serve as an open, general purpose infrastructure that provides value to society over time in various economic and noneconomic ways. Put differently, net neutrality regulation "should preserve the factors that have allowed the Internet to serve as a platform for application innovation, free speech, and decentralized economic, social, cultural, and political interaction in the past," namely, user choice, application-blindness and innovation without permission (Schewick, 2012):

- a) "User choice: Users independently choose which applications they want to use, without interference from network providers."
- b) "Innovation without permission: Innovators independently choose which applications they want to pursue; they do not need support or "permission" from network providers in order to realize their ideas for an application."
- c) "Application-blindness: The network is application-blind. An application-blind network is unable to distinguish among the applications on the network, and, as a result, is unable to make distinctions among data packets based on this information."

However, in ensuring the openness of the Internet by the application of non-discrimination rule, measures to protect children against harmful content and behaviour in the Internet ecosystem must be put in place. These can take the

form of the criminalisation of sexual abuse of children, child prostitution, child pornography, grooming, and other conducts through the use of online social media.

Inevitability of Internet Fragmentation in the Future

The fragmentation of the Internet is inevitable. The Internet is already fragmented along linguistic lines. The global dominant languages such as English, Chinese, German, Russian, French, and Arabic languages have been used to create contents on the Internet and this information is only available to sections of the international community who can interpret such languages for their benefits. More of this kind of fragmentation is expected to occur along other lines in the future and nothing can be done to prevent it. Already, there have been pressures by powerful players with interests in the Internet to fragment it along regulatory, political, cultural, and economic or business lines (Kourandi et al, 2013).

Conclusion: Internet Governance and Africa in the Future

In conclusion, following a careful review of the circumstances surrounding the debate on global Internet governance, it does not seem that the balkanization of the Internet is preventable in the future for many obvious reasons. First, there is the struggle by the major powers in the cyber space to gain greater political and economic control than they currently have over the use of the Internet.

Secondly, the Internet is already fragmented along linguistic lines as the existing cultural diversity in the world has permeated the Internet and further infusion will be difficult to prevent.

Thirdly, the Internet has developed some form of resilience against control and now has the potential to become disorderly not simply because of the competing interests and struggles over its use, that is order and counter order amounting to disorder, but particularly because stakeholders that are yet to be part of the current struggle also have the potential to join.

Another point is that Africa, in all cases, is likely to become the first major victim because a new paradigm in global Internet governance will not be a task without casualties, the process of which may result in a new 'cold' cyber warfare among the advanced nations.

Finally, Internet governance, being a component issue in global governance, has the potential to become the most critical challenge after global climate change.

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Panelist Paper: The Future of Internet Governance

Council of Councils Sixth Regional Conference
September 28-30, 2014
Centre for International Governance Innovation

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General Introduction

The topic of “Internet governance” was previously almost exclusively the preserve of the technical community. Technical parameters were set, data packets were routed efficiently, and the Internet just worked. However, as the importance of the Internet as a tool for economic growth increased, so too did the interest of governments and policymakers globally.

What makes this policy space so dynamic is that it is founded on a truly atypical governance structure, known as the multi-stakeholder model. In the multi-stakeholder model, a wide variety of interested parties—including business, civil society, the technical community and government—are all involved in the decision-making process. While the “future” of Internet governance more generally is somewhat uncertain, there are four topics that have been selected for this panel to evaluate more deeply. Those are: 1) the relationship between surveillance, privacy, and digital human rights; 2) the competing perspectives on net neutrality; 3) the problems associated with Internet fragmentation; and, 4) the role of the state and intergovernmental organizations in Internet governance. The purpose of this memorandum is to provide an introduction to these topics as well as some generalized policy recommendations to potentially help guide discussions.

How can Internet governance strike the right balance between privacy and human rights at the national and international level?

Recent high profile disclosures regarding major state-sponsored acts of cyber espionage have pushed online surveillance onto headlines around the world, and consequently, onto the agenda of policymakers. The Internet is now ubiquitous and enmeshed into our daily lives, allowing new technologies to assemble a picture of an individual’s entire personal and professional life with a few computer commands. This has created a significant privacy interest for both individuals and businesses in their activities that take place online.

At the same time, intelligence gathering remains a crucially important government function, driven largely by the promise of the state to keep its citizens safe, and to protect them from enemies both foreign and domestic. However, the campaign of online surveillance pursued by some governments has created considerable public outcry and

exposed the grey area in the rules of the game. This has led to calls for a global constitution or digital bill of rights—an online Magna Carta. This call to action, however, exposes a deeper and more sinister problem: Privacy is a universal and inalienable human right, but is one which many governments are prepared to ignore in the name of national security or when asserted by non-citizens outside the territorial jurisdiction of the state.

The International Covenant on Civil and Political Rights (Article 17) and the Universal Declaration on Human Rights (Article 12) set out an unequivocal right to privacy. In December 2013, the United Nations General Assembly adopted Resolution 68/167, without a vote, which affirmed that the rights held by people offline must also be protected online, and called upon all states to respect and protect the right to privacy in digital communications.

Thus, there is little doubt that these rights should exist online; but, states will continue to be responsible for keeping their citizens safe, and this will undoubtedly involve intercepting communications. No one would argue (at least credibly) that the communications between al-Qaeda operatives should be immune to interception because of privacy rights, but at the same time, most would consider the cell phone interceptions aimed at the leaders of allied states as clearly offside. But between these two poles, there is considerable legal and ethical distance. This problem is compounded by the fact that private companies also engage in campaigns of information gathering and sharing, leading to a globalized corporate culture that is looking for more and more data on potential customers and markets, combined with stronger analytics.

In this policy environment, the question to be resolved is: How do we sensibly discuss the tradeoffs made to advance national security, while at the same time preserving the necessary elements of privacy which the global public is entitled to? And, how does this discussion get credibly advanced when the relevant stakeholders are all so different?

Policy Recommendation #1: The Internet governance policy space has a crowded meeting agenda already (the IGF, NETmundial, ITU, etc.). However, there is no dedicated forum for discussing the appropriate balance between the need for robust digital privacy rights and protections, and the need of states to conduct extraterritorial data collection. A new international forum should be created to bring together representatives from relevant stakeholder communities, including law enforcement and the intelligence/security community, to specifically discuss establishing and implementing an appropriate set of parameters to protect digital privacy in a sensible way, while not unduly hampering the ability of the state to gather critical intelligence related to security threats.

What are the competing perspectives on net neutrality?

At its most basic level, “net neutrality” is the principle that all Internet traffic should be treated equally and that Internet service providers and regulators should be prohibited from treating different network traffic differently. What this means in practice is that Internet service providers cannot treat certain data, like Netflix videos, differently than those of a competitor, like Amazon Prime video services. It means that data will be routed to its destination equally across platforms and regardless of content. There are, however, both strong proponents and opponents of net neutrality. Some of their main arguments are:¹

Argument	Proponents of Net Neutrality	Opponents of Net Neutrality
Past/Future	▪ New Internet companies	▪ Traffic management is inevitable

¹ Kurbalija, J. (2012). An Introduction to Internet Governance. Retrieved from: <http://www.diplomacy.edu/IGBook>, page. 56.

Argument	<p>developed thanks to the Internet's open architecture, and end-users are benefiting from innovation and diversity of services thanks to net neutrality. Net neutrality will preserve the Internet architecture that has enabled the fast and innovative development of the Internet so far.</p>	<p>and has always existed. For example, Skype is often given preferential treatment over email, because users of Skype will notice a delay opposed to users sending and receiving emails. Besides, there are already non-neutral leased services like VPNs (virtual private networks).</p> <ul style="list-style-type: none"> ▪ Without network neutrality restrictions, Internet companies can develop new services with better quality of service.
Economic Argument	<ul style="list-style-type: none"> ▪ Without net neutrality, the Internet would look like cable TV: a handful of companies who control access and distribution of content, deciding what users get to see and how much it costs them to see it. New entrants will not have a chance to develop, especially in the developing world. ▪ Over the top content/service providers pay high fees to network operators for their Internet connections, and invest in infrastructure like caching servers. 	<ul style="list-style-type: none"> ▪ Without net neutrality restrictions in commercial agreements with content and service providers, telecom operators will raise funds which would make them more interested in investing in better infrastructure. Better infrastructure will encourage new services and innovations, more tailored to customers' needs, bringing more revenue to all. OTT service providers will also find value in possible innovative services with QoS, enabled by the operators if not restricted by net neutrality provisions.
Ethical Argument	<ul style="list-style-type: none"> ▪ The Internet is the result of developments by volunteers over decade. They invested time and creativity in developing everything on the Internet, from the technical protocols to the content. The Internet is more than a business—it has become a global heritage of mankind. It is not justifiable to have such a huge investment of time and creativity harvested by only a 	<ul style="list-style-type: none"> ▪ Net neutrality is ethically questionable because network operators have to invest in maintaining and expanding the Internet's infrastructure to support new services, while most of the benefits are reaped by Internet content companies such as Google, Facebook, and Amazon

	few companies who will lock the Internet in constrained business models by breaching network neutrality and turn the creativity of many into the profit of a few.	
Regulation Argument	<ul style="list-style-type: none"> ▪ Net neutrality must be imposed by government to preserve the public interest. Any form of self-regulation will leave it open for operators to breach the principle of network neutrality. The open market is not a sufficient mechanism since major global telecoms are at the core of the Internet's infrastructure. Even if there is a possibility to choose, this is not always realized since users need technical and legal literacy and awareness of the consequences of the various choices available. 	<ul style="list-style-type: none"> ▪ The Internet has developed because of very light or no regulation. Heavy government regulation could stifle creativity and the future of the Internet. ▪ The open market is based on choice and a user can always change their Internet provider if they are not satisfied with the offer. The users' choice and the market will kill bad offers and sustain good ones.

The real risk over the net neutrality debate is that different states may choose to do different things; meaning that some states choose to codify neutrality requirements in law, while others do not. The specter of this phenomenon is very real. Brazil recently adopted *Marco Civil*, which includes forceful provisions on net neutrality. At the same time, in a case called *Verizon v. Federal Communications Commission*, the U.S. Court of Appeals for the DC Circuit has undermined the ability of the U.S. regulator (the F.C.C.) to effectively implement the principle of net neutrality. If unchecked, this disharmonization among domestic regulatory environments could create a number of incongruent legal regimes and different Internet data delivery parameters, markedly changing the economics of data and user experience across borders.

Policy Recommendation #2: The economic implications of moving to a non-neutral model of data delivery are unclear at this time. One of the core features that has allowed for the high level of innovation that has become the hallmark of the modern Internet, is the neutral way in which data has typically been treated. Before moving to a model which could—potentially—jeopardize this structure, policymakers must have a clear picture of the economic implications of doing so. Without this understanding, no significant moves should be made which could jeopardize the current level of economic success and growth created by the Internet.

How can the problem of Internet fragmentation be addressed and what can be done to prevent the balkanization of the Internet?

“Internet fragmentation” is a broad term that can mean different things to different people. The baseline of a non-fragmented Internet would be one that is universally accessible and technically interoperable. Vinton Cerf, one of the so-called “Fathers of the Internet,” has noted that in its original design, the Internet was meant to allow for the free sharing of information without any restrictions on communication between devices on the network. The core technical protocols, like TCP/IP, effectively allow devices to send and receive information from other devices connected to the same network, ensuring that all networked computers can connect along a single “unfragmented” Internet.

The term “balkanization” is used interchangeably with the term “fragmentation”, as they both refer to the same notion of breaking apart the universal and interoperable Internet in some fashion. Today, the term “fragmentation” is more commonly used to describe issues such as data localization, the resurgence of proprietary protocols, net neutrality, and blocking content. When thinking about how to address fragmentation, policymakers need to recognize that fragmentation can take on a variety of different forms at different layers of the Internet (infrastructure, technical, content, institutional). As a result, different issues that could result in the fragmentation of the Internet will need to be addressed on a case by case basis. What made the Internet so successful, were the open standards and development practices that created a universally accessible and technically interoperable tool. This has led to the establishment of an incredibly powerful economic tool that fosters both innovation and growth.

Policy Recommendation #3: Governments should seek to better understand the potential economic implications of the various forms of fragmentation and should aim to harmonize national approaches to ensure a continuation of both the multi-stakeholder model and a universally accessible and technically interoperable Internet.

What are going to be the major sources of tension at the ITU Plenipotentiary Conference in Busan (October 20-November 7) and what are the prospects for overcoming these roadblocks?

The ITU (International Telecommunication Union) is a specialized agency of the United Nations which addresses information and communication technologies. Historically, the ITU ensured interoperability for telegraph and telephony. As the technological landscape changed, so too did the remit of the ITU. Now this institution is responsible for the assignment of international radio spectrum and the assignment of communications satellite orbits, amongst other things.

The development of the Internet has always been something which has taken place largely outside the preserve of the ITU. Internet governance, broadly defined, has taken place largely through a multi-stakeholder process where non-state actors, including technical bodies and civil society, collaborate with both business and government across a range of issues, including the management of technical and operational parameters, the standardization of protocols, and ensuring the unique nature of global identifiers by actively managing the “names” and “numbers” on the Internet.

A clash over the role of the ITU, and consequently the role of the state itself, in core matters of Internet governance (which have previously been left to the multi-stakeholder community) will likely be the primary source of tension and the greatest threat to any universally accepted outcome at the ITU Plenipotentiary Conference in Busan. A number of states, led largely by the United States, will no doubt coalesce around the notion of preventing any centralization of control or regulatory authority within the ITU. A number of states, likely led by Russia and China, will be pushing for an increased role for the ITU in core Internet governance functions.

Policy Recommendation #4: One of the primary reasons for the universal success of the Internet is precisely because of the way that this has been governed. Now is not the time to try and alter the DNA of those governance structures. However, given the likely push for centralized control by some states, those states that wish to maintain the multi-stakeholder institutions need to articulate a coherent strategic vision for the future of Internet governance around which they can rally.



Panelist Paper: The Future of Internet Governance

Council of Councils Sixth Regional Conference
September 28-30, 2014
Centre for International Governance Innovation

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The future of Internet governance will be determined in the next couple of years. The stakes are important but often not well appreciated. To many the issues sound boringly technical. In fact the key issues are very much “high politics.”

The role of states and governments is highly contested. The battle has been going on for more than ten years. Those governments that would like a high degree of control have worked together quite effectively. The liberal democracies have not managed to do so well; internal differences have consumed a great deal of energy. I believe that the latter governments need to work out their differences and pursue a common strategic vision for the Internet (Recommendation #1).

Once there is such a vision, it will be important to persuade key governments why it would be in their interest to favour a liberal democratic approach to Internet governance rather than a statist/international organization approach (Recommendation #2).

At the present time, there is a focus on the US Government’s desire to transfer its oversight responsibilities for the Internet Assigned Numbers Authority (IANA) to the Internet Corporation for Assigned Names and Numbers (ICANN). Do not get lost in the detail! This then has raised the question of the future accountability of ICANN – to whom and for what).

The present form of Internet governance is described as the “the multi-stakeholder model.” Stakeholders may be governments, corporations, technical people and civil society – anybody who has an interest. The key element of this model is the Internet Governance Forum; the last forum took place at the beginning of September (and I was there). The IGF will need to be prolonged (or not – but then what?) through a decision of the General Assembly of the UN; a decision to renew the mandate, better define its role and ensure adequate funding and support is required (Recommendation #4).

There is a lot of woolly idealism about some people’s views of the IGF. There are some, for example, who talk of “the Internet nation.” This “nation” would be something apart from (and morally superior to) the Westphalian model of international governance. Governments are and will remain a part of Internet multi-stakeholder governance; the question is in how they will participate.

At present governments sit on a body that is advisory to the ICANN Board. It is called the GAC – the Governmental Advisory Committee. The GAC is largely unknown, filled with mid-level bureaucrats, but increasingly discussing hot political (rather than technical) issues. It is time to examine the role of the GAC and bring about such change as is needed (Recommendation #4).

CIGI along with Chatham House has established the Global Commission on Internet Governance. Its chair is Swedish Foreign Minister Carl Bildt. It is looking at many of the questions posed in the description of this session: net neutrality, fragmentation, and balkanization.

There is a seemingly never ending stream of meetings of one kind or another dealing with Internet governance. At the Plenipot meeting this Fall it should be anticipated that some countries will again be pushing to increase the role of the ITU in Internet governance. This would be at the expense of the multi-stakeholder system. While the present system may not be perfect, most people who have thought about the subject think it is and will be better than the UN state-based system. (Recommendation #5)

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Session Six

Rise of Trade Megadeals



Panelist Paper: Do Megadeals Pose a Serious Threat to the Multilateral System of Trade Governance? Not Likely.

Council of Councils Sixth Regional Conference
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Centre for International Governance Innovation

Len Edwards, Centre for International Governance Innovation

For decades the proponents of the multilateral system have worried about the attractiveness and proliferation of bilateral and regional trade agreements. These agreements have been seen as needlessly complicating the international trade picture, distracting countries from the multilateral channel of trade liberalization, and creating preferential systems that mainly benefit the stronger players while disadvantaging or leaving out those weaker countries—especially the least developed—most in need of access to good markets but with little to offer in return. Businesses have welcomed FTAs and RTAs as helpful to their interests, yet complained about the added complexities and costs in navigating multiple agreements and their accompanying “rules of origin.” They find this particularly frustrating in today’s world of multi-country value chains. Since the end of the Uruguay Round, the infamous “spaghetti bowl” has become even wider and deeper.

The Doha Round launched in 2001 was intended to drive a new phase of multilateral trade liberalization: improving access and rules in traditional areas, drawing the agriculture sector fully into multilateral disciplines, tackling some new areas, and bringing significant benefits to developing countries under its featured “development agenda.” In the process, a successful round would have reduced the roles played by FTAs and RTAs in place at the time, and reduced demand for new arrangements. Instead, the Round’s failure has left those most interested in making further progress little choice but to return to even more emphasis on bilateral and regional avenues for making progress. In shifting its trade policy away from the frustrations of the Doha Round, the United States has led the way. It has adopted the strategy of focusing on major regional negotiations both to advance U.S. interests in lowering trade barriers where it can with certain partners and also to put in place rules around certain issues—such as the behaviour of state owned enterprises—not yet subject (or only marginally so) to international trade disciplines. The ambitious Trans-Pacific Partnership (TPP) negotiations, and the recently launched Transatlantic Trade and Investment Partnership (TTIP) talks are being described as so-called “megadeals” since each involves significant groups of countries which together account for a large portion of the global economy.

Their proponents argue that the results of these “megadeals” could then be integrated in due course into a revitalized WTO, strengthening and advancing the rules-based system of international trade. Yet others are expressing concerns that these megadeals are themselves threats to the WTO and could lead to separate regional “systems” and a permanent weakening of the multilateral approach to the governance of international trade.

Are these fears misplaced? For a start, they are based on the assumption that the TPP and TTIP will come to positive conclusions. On this point, there are still doubts.

Although the Trans-Pacific Partnership negotiations have made significant progress, they have missed deadline after deadline. The addition in mid-2013 of Japan has further complicated matters. The TPP is now essentially the main framework for a bilateral deal between the first and third largest global economies.

Every passing day diminishes the chances of the TPP being concluded successfully before Presidential election politics take over the U.S. agenda at the end of 2015. Even if there were a breakthrough between Japan and the United States in the coming months, the lack of Congressional “fast track” authority and the uncertainties of U.S. domestic politics together constitute a serious hurdle. Why would America’s trading partners in the TPP make important final concessions without knowing that the deal will stick and that Congress will not impose additional demands as the price of its approval?

Meanwhile the U.S./EU negotiations are just getting underway. The size and complexities of this negotiation surpass those of any previous RTA. Add to the aforementioned U.S. political situation Europe’s ongoing preoccupation with its flagging economy, the settling-in of a new line-up of Commission leadership in Brussels, and other internal power jockeying among the Commission, member states and the European Parliament, and it is difficult not to imagine that this “megadeal” will be “megayears” in the making. Additionally, Russian aggressiveness in Eastern Europe has become a major political/security distraction for the Europeans that is not likely to go away anytime soon. Even if these strong head winds do not stall or blow off course the TPP and TTIP negotiations (the latter to be linked up with the now complete Canada-Europe deal), there are other reasons why these “megadeals” are not likely to become game changers.

While the TPP and TTIP together include forty countries representing about 60 percent of the global economy, this still leaves a significant 40 percent of world economic activity on sidelines, and a whopping 119 current members of the WTO.

In the days when the Quad dominated world trade and multilateral trading system, these two proposed megadeals involving the United States, Europe, Japan and Canada could have been decisive in determining the future direction of the trading system. But as we have seen in the WTO itself, the rise of new economic players, the shift in global economic power, and a feistier developing world generally, have forever changed this dynamic.

None of the current deals under negotiation (except the still nascent RCEP) bring in Brazil, India or most importantly China. In the TPP, Mexico is the one exception to the inclusion of a major emerging market. Measured in nominal GDP, Brazil, India and China are predicated to be the world’s fourth, third and largest economies respectively by mid-century, with China achieving number one status before 2030. By 2050, today’s emerging economies generally are expected to account for up to 70 percent of global trade.

Unless these three emerging economies in particular are engaged by the United States, Europe, Japan and Canada in these or other new mega arrangements, it is very doubtful that the TPP and TTIP alone will have the critical weight to

transform the international trading system's rules and set the new standard for global trade governance. They will have an impact, certainly, but it will not be decisive.

And what if the four BRICS plus South Africa decide to set up their own version of a megadeal—just as they have announced the creation of what some see as alternative to the World Bank—incorporating their preferred approaches to IP, competition policy, state owned enterprises, regulatory reform and so on? Since this deal is likely to have terms and conditions that are less demanding than those championed by the United States and advanced countries, it will be more attractive as a model to developing countries that have been increasingly feeling left out of the benefits of the international trading system, yet frightened off by the tough demands of advanced countries and the high ambition of the TPP model.

This opens the door to “duelling” megadeal systems, something already possible in Asia between the incomplete RCEP and the TPP models. The hopeful assumption has been that these two potential arrangements in Asia would with time coalesce into one greater Free Trade Area of the Asia Pacific (FTAAP), with the RCEP countries moving towards the higher levels of ambition on access and new rules favoured by the USA and other advanced market economies. There is no basis yet for thinking this will happen.

This unfortunate “schism” scenario is speculative, but not beyond the realm of possibility. Changing power relationships, the increasing leverage enjoyed by those who have been “deal takers” in the past, and the presence of new geopolitical tensions in which trade and economic policies have been caught up in international political and security agendas, are worrisome supporting factors.

This is all the more reason why the international trade community—advanced, emerging and developing countries alike—should be working hard to restore the multilateral system to good health.

First, governments and negotiators toiling away on current megadeals—and others that might follow—need to be aware of the broader systemic consequences of their positions and decisions. They should introduce a bias in the negotiating outcomes that complement rather than compete with the multilateral system, and make it easier rather than harder for the multilateral approach to re-assert itself at a later date.

With that in mind, trade academics and former practitioners have made several suggestions for negotiators and governments, such as:

- ensuring the megadeals are as transparent and non-threatening as possible, and relatively open to non-participants;
- shaping the outcomes in ways that make them more, not less, adaptable to eventual multilateralization in the WTO;
- limiting the use of deep “hard” preferences that are highly discriminatory against non-participants; and finally,
- keeping the Rules of Origin as uncomplicated as possible.

Another bridging tool would be for the TPP, TTIP, and RCEP to use the WTO's excellent and well-oiled systems for dispute settlement, rather than create their own tribunals or processes. The WTO also offers excellent secretariat and statistical services that could be contracted where they are required.

Second, the TPP should be opened up to the addition of at least one of Asia's two emerging economy giants—China or India—the sooner the better. China is the obvious choice. In recent months Beijing has ramped down its earlier criticism that the TPP was part of the broader U.S. geopolitical strategy of containing a resurgent China. Bringing in China now to help shape the TPP, will mean more “water in the wine” and a longer wait, but it will be better to have China part of the system than encouraged to create its own competing system either in Asia, or involving the other BRICs and developing countries. It is unlikely that China will be ready to join a club in which it has not played a formative role.

Third, efforts should be redoubled to make the WTO work, starting with reforms to the governance model given the new political and economic power dynamic. This will not be easy for advanced countries particularly, as we have seen in the resistance within the United States and EU to implementing the governance reforms in the IMF and World Bank agreed to in 2009 at the Pittsburgh Summit that would give emerging economic powers more voice. Yet, in terms of negotiating formats, members have shown themselves more flexible in looking at the expanding the use of plurilateral negotiations, such as on services, which others might join later. These approaches should be encouraged, restoring confidence and a sense of positive momentum.

Despite the worries now being expressed in some quarters that “megadeals” will become the “new normal” in international trade governance, there are several reasons to conclude that the WTO will eventually return as the venue of choice:

- The Doha Round has disappointed developing countries, but they have nowhere else to go to gain better conditions for their exports and improve their ability to attract investment, given their lack of leverage to conclude bilateral FTAs and BITS with the biggest players;
- The WTO remains the favoured institution of advanced countries, even if the TPP and TTIP talks in which they participate proceed more quickly to fruition than this paper suggests; the multilateral approach is “bred in the bone”;
- Among emerging economies, China's leadership is critical, and Beijing remains committed to the WTO, diligent in implementing its accession commitments; its interest in joining the services plurilateral negotiations is a further positive sign.
- the new WTO leadership under a Brazilian DG, Roberto Azevedo, and his team has brought some fresh air and new drive to the institution, and to the search for a way forward; and finally
- the business model of global value chains and multi-regional trade, investment, technology flows and other arrangements should mean that businesses themselves will be pressing governments to give priority to multilateral approaches to trade governance.



Panelist Paper: Assessing Mega-regional Trade Agreements - Too Soon to Make a Call

Council of Councils Sixth Regional Conference
September 28-30, 2014
Centre for International Governance Innovation

Beatriz Leycegui, Mexican Council on Foreign Relations

This paper includes the views contained in the report *Mega-regional Trade Agreements: Game-Changers or Costly Distractions for the World Trading System?*ⁱ (the Report) which, at the request of the Council on Foreign Relations, addresses the issues to be discussed in the Council of Councils' session "Rise of Trade Megadeals." Such issues are: (A) the impact of megaregionals on the broader international trade architecture, (B) their impact for members and nonmembers, (C) what the proliferation of megaregional agreements indicates about the new direction of international trade, (D) the future of the WTO and the multilateral trading system, and (E) a list of recommendations. The megaregional trade agreements being negotiated in the twenty-first century, if concluded and put into force, will reshape the course of international trade because of their members' significant contribution to the world's gross domestic product (GDP) and trade. For example, the Transatlantic Trade and Investment Partnership (TTIP), under negotiation between the United States and the European Union, represents nearly half of the world GDP and 30 percent of world trade.ⁱⁱ Moreover, as of 2011 the parties maintained a total of nearly 3.7 trillion dollars of investment in each other's economy.ⁱⁱⁱ

Alongside the TTIP in the Atlantic, there are several other megadeals proliferating in almost every region of the world. In the Pacific, the Trans-Pacific Partnership (TPP) brings together some of the most important economies of the Americas and East Asia: Canada, Chile, Japan, Mexico, Peru, United States, Australia, Brunei, Malaysia, New Zealand, Singapore and Vietnam; South Korea has also requested to join the negotiations. The weight of this initiative can be measured by the trade in goods among TPP partners that in 2012 amounted to more than two trillion dollars.^{iv} Moreover, the participation of its members in world's trade in goods and services is of 26.3 percent.^v

Likewise, the Regional Comprehensive Economic Partnership (RCEP) comprises sixteen countries in Asia, including the ten members of the Association of Southeast Asian Nations (ASEAN)^{vi} plus Australia, China, India, Japan, South Korea, and New Zealand. The RCEP countries have a total population of over three billion people, an estimated share of 27 percent of global trade and a total GDP of approximately twenty-one trillion dollars.^{vii} In Latin America, the Pacific Alliance is another regional economic and trade integration initiative under permanent progressive negotiation between Chile, Colombia, Mexico and Peru. The Pacific Alliance represents a potential market of 216 million consumers with rising purchasing power, 38 percent of the population and 50 percent of trade in Latin America. Given its level of ambition, it has caught the attention of the international community and thus the number of countries accepted as observers has grown to reach thirty-two.^{viii} This integration process could grow in participation to include more countries and hence achieve a wider integration of the region.

The dimension of these negotiations is what makes them “mega”, as they involve countries with different levels of development and different continents, cover a significant volume of trade and foreign investment and seek ambitious agreements both in depth and scope. Therefore, their impact can be expected to be significant. However, to measure the consequences of these mega agreements for each country, different elements need to be considered, such as: whether they already have trade agreements in place with the negotiating parties, how important those markets are for their exports, and their degree of participation in the megaregionals.

This new wave of megaregional negotiations has emerged due to the impossibility for countries to reach agreements at the multilateral level, thus opting for alternatives to advance trade liberalization. The conclusion of these negotiations should not be considered a given as they face considerable challenges that might affect a satisfactory result.^{ix} For example, the ability of some countries to compromise on significant liberalization in key sectors, such as agriculture or services, or the fact that the United States President still lacks Trade Promotion Authority.^x

Impact on the Broader International Trade Architecture

Megaregional agreements present various pros and cons, which represent different risks and opportunities for both members and nonmembers and thus will have an impact on global trade and the multilateral system. The balance of such impact is not clear at this time. The TPP and TTIP negotiations leave out 160 countries that are home to 80 percent of the world’s population.^{xi} Several factors need to be taken into account in order to estimate the effect of the new megadeals. Nevertheless, a real assessment will only be possible upon their conclusion, since there are various measures available for negotiating countries that could ensure the agreements’ contribution to the broader international trade architecture or, in the contrary, undermine it.

Megaregionals could create bigger and more integrated markets for multinational companies operating in member and nonmember countries through, among others, adherence clauses, regulatory transparency, facilitation measures applicable to all trade and the participation of firms in the development of standards. However, if these agreements are not consciously tailored to achieve contestable markets they might increase the gap in trade volume between members and nonmembers, since countries negotiating the TPP and the TTIP account for nearly 80 percent of the world trade.^{xii} Moreover, although it is expected that megaregionals will accommodate the vast amount of free trade agreements (FTAs) and regional trade agreements (RTAs)—the so called “spaghetti bowl” into a “lasagna pan—a faster proliferation of FTAs and RTAs could also occur as a consequence of their signing. It is likely that countries that are not included in the megadeals will begin and speed up negotiations with other nonmembers to secure a common front in an effort to mitigate the effects of the megadeals, such could be the case of countries like China, India and Brazil.^{xiii}

Nonmembers may also engage in FTAs with member countries in an effort to gain benefits from the member’s participation in the megadeals. For example, Mexico has launched bilateral negotiations with the European Union and the European Free Trade Association to further expand liberalization and in response to the TTIP negotiations. Mexico expects eventual convergence of the agreements.

Finally, the WTO has proved useful for negotiating goods and services trade liberalization in the past, achieving modest success in reaching new agreements but guiding international trade as a whole. Yet, more complex topics such as intellectual property, investment, competition and environmental issues, have been less fortunate. If the negotiations of the megaregionals do not maintain uniformity with the WTO criteria, the agreements dealing with WTO-beyond clauses may bring a shift in the leadership of these more complex areas, since the negotiating countries could impose the new thresholds to be followed by the world trading system. This could affect the WTO’s procedures and proceedings, and lessen its authority in these fields.

In order to prevent the latter, innovations in megadeals should not diverge from the criteria adopted under the multilateral system, so that they can be eventually adopted under the WTO, perhaps by means of plurilateral agreements.^{xiv}

Impact on Member and Nonmember Countries

Member Countries

Although the extent and degree of integration that will derive from the negotiations is still uncertain, megaregional agreements could constitute a deeper system of trade rules among negotiating countries. This would enhance opportunities within the markets of members, leading to a growth in the volume of trade between them. They would also generate an environment of confidence for foreign direct investment (FDI) that could increase the number of investors willing to venture in developing countries, thus, further expanding their markets.

Another important consequence of the celebration of megadeals for members resides in regulatory convergence. The fact that negotiating countries mutually recognize regulations to facilitate trade will constitute an important development, especially given the magnitude of the agreements. The inclusion of this type of provisions may be used as model rules in future agreements or even in the creation of standards in the WTO.

Nonmember Countries

The impact in nonmembers is also uncertain and diverse for each country as there are many elements to consider, including how close and relevant are their trade and investment relations with members. However, it is possible to get a sense of the effect of megaregionals in nonmembers by looking at the nature of WTO-plus and WTO-beyond provisions negotiated.^{xv} In this regard, provisions can be divided into those that have a potential risk for discrimination against nonmembers and those that have potential for multilateralization. A provision's potential for multilateralization can be defined through the following parameters: representativeness -the provision is common to several RTAs; homogeneity -the provisions common to several RTAs are similar; and enforceability -the provision may be enforced through dispute settlement under the WTO. Negotiating countries should encourage provisions with limited risk of discrimination and high potential for contribution to outsiders and the multilateral system.^{xvi}

In addition, one of the immediate benefits that the conclusion of megadeals might have for nonmember countries is the phenomenon known as reverse trade diversion: while preferences increase trade between members, imports from nonmember countries who have FTAs with one or more of the negotiating countries will also rise.^{xvii}

The celebration of megadeals is also an opportunity to integrate bigger markets through cumulation of origin. If megadeals do not connect the existing network of FTAs by harmonizing rules of origin and by accepting the cumulation of origin in goods that have inputs of non-participant countries, the competitiveness of the members of the megaregionals will be undermined.

Lastly, another consequence of the conclusion of megaregional agreements for nonmembers could be the unilateral acceptance of standards created by these agreements. Transnational firms usually adhere to the standards imposed by the most influential countries in production, labeling and distribution processes, among others. If these powerful countries agree to certain standards that are later adopted by transnational firms, it is highly probable that such firms will pressure nonmember countries to adopt said thresholds. In many cases, this might be beneficial for firms outside of the megaregionals as they could benefit from accessing broader markets with only one standard but in other cases this could also represent inappropriate restrictions.^{xviii}

What does the Proliferation of Mega-regional Agreements indicate about the New Direction of International Trade?

Although the WTO system has been a success in many ways, reaching an agreement on any subject among 160 Members is more difficult than ever.^{xix} The strengthening of emerging economies has brought a bigger number of actors with power and divergent interests which has contributed to making negotiations far more complex.

In addition to megadeals and plurilateral agreements, countries are negotiating FTAs of substantive current or potential trade and foreign direct investment value (U.S.-South Korea, EU-Japan, Australia-China) and are consolidating or converging preexisting regional free trade agreements (the Pacific Alliance and the Tripartite Free Trade Area in Africa) as an alternative to the lack of multilateral regulation.^{xx}

The challenge, as Richard Baldwin has called it, is that countries “multilateralize twenty-first century regionalism”, consciously crafting the way in which WTO-plus and WTO-beyond provisions negotiated under the aforementioned agreements can complement or eventually become part of the multilateral order, avoiding the fragmentation of international trade.^{xxi}

The WTO following the Doha Round

The WTO must adapt to the significant transformation that world trade has experienced in the twenty-first century where more than half of world’s trade is of inputs and not finished goods, due to the proliferation of global value chains.

It is undeniable that the WTO is facing a paralysis as the multilateral negotiation forum and that the proliferation of FTAs and the conclusion of megadeals may undermine its authority. The WTO could be side-lined on the rule-writing front.

The WTO has contributed in many ways to world trade. It is the international tribunal par excellence to solve trade disputes and has retained its position as one of the most influential judicial institutions when it comes to judgments on international matters. Moreover, its trade policy review mechanism has also proven operative since most countries rely and observe its recommendations.

Only a strong multilateral trade system can guarantee the existence of: an **effective dispute settlement system** that looks for systemic and comprehensive resolutions and the avoidance of protectionist measures worldwide; **an institution** that effectively monitors and makes evident when countries threaten the system through internal measures or international agreements; and **a forum** under which the agreements reached by its members are more likely to be effective, inclusive, legitimate and with greater multiplying effects to the world’s trade and economic growth.

The impact or contribution of megadeals to the world trading system will depend on their outcome, consequently it is too early to make a call. Nevertheless, the more negotiating parties take into account the points outlined below, the lower the risks that megadeals will wreak havoc on what has taken more than 60 years to construct.

Recommendations

- Negotiating countries should encourage provisions with limited risk of discrimination and high potential for contribution to nonmembers and the multilateral trade system. Some measures that could complement the multilateral trading system include regulatory transparency; full participation of foreign firms in standards' development, not only those from the parties to the agreements; trade facilitation measures applicable to all trade and services liberalization in a non-discriminatory basis.
- Mechanisms of adherence must be included in megaregional agreements so that they do not create a sort of exclusive club which disrupts the system created by the WTO. Megaregional agreements should also seek to connect with existing FTAs and RTAs through cumulation of origin and regulatory convergence or harmonization of rules of origin.
- Megadeals could serve as models for the WTO, most likely in the form of plurilaterals with broader WTO membership. Plurilateral agreements or flexible geometry approaches within the WTO, together with unilateral trade reforms and new bilateral or regional negotiations with member countries or other relevant trading economies, will help to raise competitiveness of nonmembers.
- Nonmember countries must inquire upon new market and business opportunities, in an effort to maintain and increase their presence in the international trade arena. Close monitoring of the newly developed areas of the megadeals and work with members is also recommended, so as to cope with the provisions dealing with these areas and ensure that potential for discrimination is minimized.
- Judicial cooperation and uniformity must be sought between the different dispute settlement mechanisms created by the WTO, the megaregional agreements, and existing RTAs and FTAs, so as to avoid discrepancy in the legal criteria.
- The WTO should play a more active role in trying to ensure that new trade agreements adopt best practices and disciplines that do not undermine the international trading system. The WTO and the megadeals should design mechanisms, such as multilateral-system impact statements, to ensure transparency and grant the WTO authority to closely monitor the systemic impact of these agreements.

ⁱ As part of the World Economic Forum's Global Agenda Council on Trade and Foreign Direct Investment, I contributed to this report. The members of the 2014 Global Agenda Council on Trade and Foreign Direct Investment are: Anabel González, Uri Dadush, Jonathan Fried, Richard Baldwin, Karan Bhatia, Peter Draper, Salma Hareb, Gary Hufbauer, Salim Ismail, Selina Jackson, Alejandro Jara, Robert Lawrence, Jean-Pierre Lehmann, Beatriz Leycegui Gardoqui, Christopher Logan, Mario Marconini, Ricardo Meléndez-Ortiz, Susan Schwab, Sherry Stephenson, Guillermo Valles-Galmés, Wan Meng and Wang Yong. It is available at: <http://www.weforum.org/reports>.

ⁱⁱ European Union-United States High Level Working Group on Jobs and Growth, Final Report, 2013.

ⁱⁱⁱ Data of the Office of the United States Trade Representative, White House Fact Sheet: T-TIP.

^{iv} See the Report, p.15.

^v See the Report, p.14.

^{vi} Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.

^{vii} New Zealand Ministry of Foreign Affairs and Trade with data of the WTO and the IMF.

^{viii} Panama, Costa Rica, Australia, Canada, New Zealand, Spain, Uruguay, Guatemala, Japan, Ecuador, El Salvador, France, Honduras, Paraguay, Portugal, Dominican Republic, Germany, China, South Korea, United States, Italy, Netherlands, United Kingdom, Switzerland, Turkey, Finland, India, Israel, Morocco, Singapore, Belgium and Trinidad and Tobago.

^{ix} See the Report, p. 45.

^x The Trade Promotion Authority or Fast Track is the power granted by the U.S. Congress to the U.S. President that allows him to submit signed agreements before Congress for ratification or disapproval, but without being able to modify the results achieved in international negotiations. Without the Trade Promotion Authority, the approval of negotiated agreements becomes more difficult. It is highly likely that the United States Congress will not grant this authority to the Executive Office before the election of November 4, 2014.

^{xi} See the Report, p. 8.

^{xii} See the Report, p. 42-44.

^{xiii} See the Report, p. 26-27.

^{xiv} See the Report, p. 43-44.

^{xv} Provisions that go deeper than WTO obligations (WTO-plus) or that extend their coverage (WTO-beyond).

^{xvi} See the Report, p. 22.

^{xvii} See the Report, p. 22-25.

^{xviii} See the Report, p. 30.

^{xix} Number of members as of June, 2014.

^{xx} See the Report, p. 13.

^{xxi} See the Report, p. 13-14.



Panelist Paper: South African Trade Policy in a World of Megadeals

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Center for International Governance Innovation

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The impact of megadeals on excluded countries has been well-studied, with mostly bad news. The headline estimate of a 0.07 percent decline in GDP for non-member countries perhaps understates the potential impact for Africa, which will see the erosion of preferences granted to the United States under the African Growth and Opportunity Act, and the EU under the Economic Partnership Agreements and Everything But Arms. While there is some scope for nonmember countries to benefit from megadeals—through non-discriminatory issues such as harmonising standards and trade facilitation—ultimately these seem unlikely to outweigh the trade diversion effects of the agreements. For advocates of trade liberalisation, these costs are evidence of the need for excluded countries to reassert the primacy of the multilateral system, as the only forum in which everyone has a seat at the table. The value of this logic is, however, predicated on the underpinning beliefs informing countries' approach to trade policy—beliefs which differ considerably in the developing world.

South Africa, like many parts of the developing world, takes a nuanced approach to trade liberalisation, and serves as a useful case study of the way in which trade policy strategy in the excluded emerging world might react to megaregionals. South Africa liberalised significantly in the Uruguay round and thus generally takes a more conservative approach to negotiations, wary of opening up more rapidly than comparator economies. Two concerns in particular underpin South Africa's cautious approach to trade policy. First is the fact of short-term impediments to competitiveness—most notably in the infrastructure deficit and skills shortage—and the subsequent fear that further international competition could undermine the development of otherwise competitive nascent industries. Second is the desire for greater diversification, in an attempt to manage the comparative advantages that will structure domestic economies in the wake of deeper trade opening. The development of industrial capacity is considered particularly important, offering unique benefits in terms of employment and productive linkages to other sectors.

Both motivations embrace deep liberalisation, but only at some point in the future, at which domestic capacity is up to the challenge of the global market. In the short term, these motivations can complicate trade negotiations. The bargaining chip of improved market is restrained by concerns that exports are not yet adequately competitive for advanced markets, and additional imports are believed to threaten the development of long-term productive capacity. These motivations do not mean countries like South Africa are closed economies or unwilling to engage further on trade issues, but rather means that progress towards the level of agreement witnessed in TPP or TTIP is usually on an

assessment of domestic economic conditions that suit more open markets. Evidence of this can be seen in the case of African regional integration, in which narrower competitiveness gaps amongst the leading economies has given rise to an enthusiasm for integration that is not witnessed at the multilateral or the bilateral level outside of the continent.

This starting point has important implications for the future of the global trading system in a post-megadeals world.

First, the impact of megadeals on the multilateral trading system might be more muted than initially believed. While the stalemate in the WTO looks particularly intractable, the organisation benefits from a global economy characterised by increasingly narrowing competitive gaps. If infrastructure development and structural reforms in the emerging world work, then the multilateral system becomes progressively more beneficial for all member countries, as each has an adequately developed pool of competitive industry that could grow off the subsequent liberalisation. Megadeals don't change the underlying logic of this scenario, but they do have the capacity to push back the point at which negotiations could bear fruit. By building exclusive zones of trade development, the competitive imbalances that characterise global trade are deepened for the bloc in question, and thus excluded countries might believe they are less able to competitively break into the global market. But while megadeals might weaken the incentive to liberalise trade, this incentive will remain large once domestic market conditions are able to take advantage of it, and thus the core motivation to pursue WTO negotiations seems unlikely to be undermined.

In light of this, the primary aim of the WTO over the next decade should be to survive until it becomes relevant again. While the next big deal will only happen in a more equitable world, plurilateral and critical mass agreements could offer some progress in the meantime. These approaches are met with scepticism in South Africa, largely because they are viewed as a means to avoid the core development issues of the Doha round, and because they awaken bad memories of exclusionary green room approaches to negotiations. Plurilaterals would thus have to be very transparent and open, balancing the desire to negotiate with like-minded countries with the need to maintain participation from more sceptical actors.

Second, while the focus thus far has understandably been on excluded countries' access to megadeal markets, megadeals may also make it more difficult for their member countries to gain access to major growth markets. What is more deeply undermined by megadeals is the capacity of member countries to negotiate bilateral or regional agreements with the global growth poles of the future. While some might argue that megaregionals create an incentive for others to liberalise—in a race for market access with megadeal member countries—two forces may undermine this.

First, given that competitive considerations are the prime driver of trade policy for countries like South Africa, then bilaterals are clearly attractive so long as market access is limited to others and thus offers a competitive edge. With access under TPP and TTIP, trade deals with member countries are worth less because they are less exclusive, and offer less of a competitive edge.

Second, the highly advanced standard of deal in TPP and TTIP—embracing WTO Plus and Extra issues—might mean that countries entering into trade deals with megadeal members are still at a trade disadvantage to member countries. Many emerging countries are unable to implement such advanced agreements, and even more are unwilling to do so, either out of scepticism of their value or out of fear of losing bargaining chips at the WTO. Some issues—like restrictions on State Owned Enterprises and Government Procurement—can be left out with little harm, but other next generation issues will improve the competitiveness of trade within megadeals but not in bilateral deals, and again mean there is less to gain in bilateral deals with megadeal member countries.

An 800 million person market in TTP is clearly extremely impressive, but if it reduces the incentive for countries like (for example) India, Nigeria and Pakistan to enter into bilateral deals with member countries, then it might also mean a forgone market of 1.6 billion people. Given the deadlock in the global trading system, it is understandable that nations want to pursue a “coalition of the willing” on trade. But choosing partners based on willingness might mean you miss more suitable partners when considered in the cold hard light of economic rationale.

Third, if progress on the trade agenda is to be made, it is more likely to be through progress on a broader development agenda in the emerging world. So long as African firms remain uncompetitive, there are weak incentives to embrace deeper trade liberalisation. With sufficient infrastructure and more developed manufacturing capacity, firms can benefit more from a comprehensive approach to trade that facilitates export to rich markets and eases imports that are key to entering global value chains.

In the short term, the trade agenda thus might have to look beyond trade issues and give primacy to core development concerns. It remains deeply uncertain when or if this would pay off. There is no clear objective point at which emerging country firms are competitive enough to benefit substantially from trade deals. This is an issue of belief amongst governments, of creating a complicated shift of political mind-set. But it is only through this difficult core consideration that a world of megadeals can give way to one of more substantial liberalised trade for all.

Finally, it should be noted that much of the discussion of a ‘response’ to megadeals by excluded countries is perhaps misleading. While there are many positive decisions these countries can make—including engaging in their own regional agreements, such as the Tripartite Free Trade Agreement in Africa—these are generally good economic decisions regardless of whether megadeals exist or not. A response would involve a policy decision that would not otherwise be taken in the absence of megaregionals, and that is not the case for most actions discussed as policy responses. Megadeals are simply another variable in an otherwise stable approach to global trade. They have the potential to delay the pace at which this logic gives rise to integration, and possibly to allow a forum for experimentation and norms development. But it is not yet clear they are game changers. The game is too deeply set by core economic characteristics—competitiveness above all.

Recommendations

1. Member countries in megadeals should maximise the global coverage of non-discriminatory measures, such as standards alignment and trade facilitation.
2. In the short term, the WTO should focus on practical and uncontroversial modes of engagement, until the development of base political and economic willingness of countries to engage in a major agreement on trade liberalisation.
3. Engagement must continue by all actors on improving competitive conditions in emerging countries, to build economies that are better able to take advantage of trade liberalisation.