Book Proposal: Multilateralism and International Law

Alberto do Amaral Júnior
Professor of International Law at the University of São Paulo – Brazil

Problem

Multilateralism refers to the form that collective international action took from 1945 onwards under the leadership and liberal values of the United States. This approach to international relations was consolidated in the years immediately following the end of the Cold War. I argue that multilateralism is at present in crisis due to its flaws, rather than because of its successes. Put simply, what was erected on the premise of establishing a rule-based international order has been clearly revealed as one actually based on power.

The crisis of multilateralism strikes at the very essence of international law, as I will lay out below. The crisis of international law is clearly expressed through the current institutional paralysis, ineffectiveness and anomie. Institutional paralysis concerns the inability to establish rules to regulate new issues. Institutional ineffectiveness relates to the lack of conditions for the enforcement of existing rules, while international anomie is evident in the systematic non-compliance with the rules already agreed upon. International institutions, especially since the Second World War, have been largely responsible for the formulation, implementation and enforcement of international legal rules. This competence has recently diminished in the areas of trade, the use of force, climate change, health protection and the movement of persons, among others, and without dismissing the important nuances and variations of the regression according to particularities of each area.

Put bluntly, global regulation is in crisis. The incapacity of distinct multilateral institutions to create and enforce international legal rules shares common causes. Global cooperation has experienced unprecedented setbacks since the current multilateral system was put in place 75 years ago. Meanwhile, the degree of anomie has risen dangerously, affecting international peace and security. This concept, which is crafted to explain facts in domestic societies, provides an analytical tool for the interpretation of state behavior. All in all, the deepening conflicts have undermined cooperative efforts which fundamentally involves coordinating practical actions. Especially worth noting is the increased importance of international cooperation in the field of contemporary international law. States that are insulated by their preoccupation with self-interest, even when working together cannot successfully regulate an interdependent world when dispensing collaboration from other actors. Between the winter of despair and the spring of hope, to recall Charles Dickens' Tale of Two Cities, my research question is identifying the purpose or purposes that make both multilateralism and international law a fairer way of organizing the global order than relying on political, economic, social and cultural factors.

Argument

This book proposal purports to be eminently interdisciplinary. Properly speaking, I distinguish two meanings for interdisciplinarity. First, interdisciplinarity implies a congruent combination of knowledge proceeding from different disciplines that provide useful insight on a given phenomenon. Given the exhaustive nature of social reality, diverse or contradictory views of the same phenomenon coexist. In my case, I am well aware of the necessity to bring together political, economic and social factors, and not merely rely on legal reasons, to grasp the crises facing international law. A second implication of

interdisciplinarity is more complex and requires reconstructing multilateralism and international law. The inadequacies of the paradigms separating academic disciplines in the social sciences and humanities have been amply acknowledged. Interdisciplinary academic research requires a high degree of abstraction. Political and moral philosophy offer the necessary conceptual tools to mediate an analysis that draws on law, economics, political science and sociology. The peculiarities of each academic discipline will therefore be preserved, but arranged against a new backdrop. From my perspective, practical reason provides all the means necessary to achieve the common good as long as impartiality with regards people and their value is respected. This implies not only openness to all values but also relinquishing foreground arbitrary preferences for one people or value system over another.

In the twenty-first century, the common good gives sense both to international law and multilateralism. To be sure, this assertion demands clarification. We must draw a distinction between general and particular common goods. Prior to going into that distinction, however, it is worth noting thatcontrary to the common good, we have, according to Lima Lopes, common evils that are of natural, institutional or social nature. Earthquakes and pandemics, like that of COVID-19, make up the first group. Conversely, the rise in global temperatures above the limit set in the Paris Agreement on Climate Change FLOWS from institutions. Anomie, in turn, takes the form of social phenomenaa at domestic level and of institutional failure at the international level. Common evils are intrinsically random to the extent that everyone can be affectedindiscriminately. Far more importantly, the effects of common evils affect all persons indirectly. The COVID-19 pandemic well illustrates these two features. While ongoing human-caused natural degradation jeopardizes life on Earth, systematic non-compliance with international rules could leadto war, even a far-flung nuclear conflict, whose consequences would be equally disastrous. Clarifying the distinction between intra and inter-generational common goods thus gains more urgency than ever. The risk of human extermination from nuclear conflagration or climate change throws in question the possibility of upcoming generations'enjoyment of the goods our generation takes for granted.

Particular common goods encompass those that are natural, like forests, rivers, oceans, and the atmosphere, as well as institutional goods that we have come to depend on, for example, coordinated efforts to maintain peace and protect the environment. They do not admit private appropriation nor exclusion. Nevertheless, the common good, in a broad sense, supposes an inherent association with the concept of community as spelled out below. A set of interactions, on their own, are not enough to create a community. More than repeated or converging actions, a common goal, rather than a multiplicity of interactions, constitutes communities or societies. For the Australian philosopher John Finnis, a group, club, team, society, corporation or community exists when various persons, in a time span, interact among themselves, in pursuit of a shared goal. Hence, the common good is not reducible to the greatest amount of happiness for the greatest number of people. In the case of a political community, as Finnis maintains, the common good alludes to a factor or set of factors, either a value or a goal, or a whole of conditions that realize a value or purpose. In the end, coordinated actions towards a shared goal induce participants to cooperate with one another. Yet, the common good also has an even deeper meaning. It underscores a set of conditions that allow all members of a community to achieve reasonable purposes or recognize the value of cooperating positively or negatively in a community. Thus conceived, a commitment to the common good entails ensuring conditions so all human beings might flourish.

Given the complex degree of physical, biological, ecological, social and economic interdependence, the modern State no longer represents the full political community pursuing the common good. Many of its functions are performed by the international community even without a cosmopolitan State. The principle of subsidiarity governs, in an international community, the relationship between the whole and the parties. In this account, he common good grants meaning to international law because States and

individuals, wherever they stand, find reasons to collaborate in joint undertaking to address numerous questions. For instance, the use of force and exploitation of natural resources as a way of ensuring basic conditions for public health as well as conciliating rights raise problems of coordination that demand cooperative solutions. They are also requisites for justice. A global community is open, human values are often not fully realized or attainable, and problems of coordination are never definitively resolved. Short of a commitment to the common good, international law becomes a technique empty of valuable meaning. It becomes an object that the most powerful interests can manipulate. Multilateralism, on the other hand, viewed from the angle of the common good, becomes a purposively oriented community. The wider notion of multilateralism is in terms of incorporating States, NGOS, national and transnational corporations, the more legitimate it will be. Certainly, multilateralism does not replace States but it does contribute to manage global issues and in so doing helps governments. At this crucial moment of human history, multilateralism could play a major role in moving us away from the brink of calamity.

Frankly, I resist claims based on realism, neo-realism, critical legal studies and legal positivism. In pursuit of new meaning for international law and multilateralism, I refute approaches that concentrate on sheer political power, although I recognize it as a key element to understand the international scene. Realism and neo-realism are grounded in a negative view of human nature. This is a philosophical question that cannot ultimately be scientifically proven. the realists and neo-realists do not provide a consistent perspective to transcend reality toward a cooperative world. Critical legal studies reject objective criteria for the study of law unduly reducing everything to political struggles. Legal positivism, on the other hand, incurs the opposite mistake. Positive law is only of interest to lawyers and jurists, for sociological, cultural, economic political factors are cast aside. For those reasons, I offer a new analytical approach that I am calling a "perspective from the South." My reference is not to the geographical divide, however, but rather an alternative to frayed methodologies by a scholar educated within the continental and Anglo-Saxon traditions, yet removed enough from them to offer perspective.

Book chapters

Far from adopting an encyclopedic spirit, my intended analysis prioritizes the areas where the crisis is especially keen. The book starts with a general introduction that relates the apparent exhaustion of consensus building by international regimes to shifts in international relations since the end of bipolar world. Reference will be made, for instance, to negotiations involving the law of the sea, the absence of meaningful advancement in efforts towards disarmament, the crisis of the denuclearization regime, and the US animosity, even before Trump's election. The book, in six chapters, explores the crisis of multilateralism in different areas. Meanwhile, my conclusion proposes a robust concept of the common good to rebuild both international law and multilateralism. Each chapter will be divided into an introduction of the issue, then analysis of its origin, characterization and consequences, followed bya conclusion. The book will develop the analysis in the following five chapters:

Chapter 1 - The erosion of the rules of the UN Charter governing the use of force in the twenty-first century

Over the course of human history, law aimed at regulating the use of force. Political power, fragmented during the Middle Ages, was consolidated after the emergence of the modern State. Political command, in general translated into legal rules, emanated, naturally, from a centralized government possessing the legitimate monopoly of force. At the international level, legal rules sought, at the beginning, to organize

peaceful coexistence among sovereign States. Norms enacting duties of abstention in the domestic affairs of another Stater gathered speed. The United Nations Charter centralized the use of force in the Security Council. This chapter analyzes the unprecedented paralysis of the Security Council in the twenty-first century. It compares the inaction of the UN Security Council with an extensive interpretation of several resolutions upon the use of force. Finally, we unveil risks for international peace and security.

Between the doctrine of just war developed in the sixteenth and seventeenth centuries and the United Nations framework, a deep change came about. The Spanish theologians Vitoria and Suarez, in the context of the international order of christendom, admitted the use of force to redress wrongdoing on several occasions. Every war was to correspond to a just cause and follow previously established requirements. Independence and supremacy, two features of the sovereign State, were consolidated in 1648 with the Westphalian peace. Afterwards, the doctrines of just war waned and the legal positivism took primacy. For Christian Wolf a Westphalian author, stability in international relations depended upon tolerance regarding the domestic affairs of another State. Exceptionally, the use of force was considered admissible in cases of violation of the law of peoples. For positivists, without a moral limit, war became a legitimate means to settle conflicts. Simultaneously, Kant and Mill criticized foreign interventions, while the Monroe doctrine repudiated military actions in the American continent by the original colonizers. In the early twentieth century, Antoine Rugier wrote an acclaimed article in France, in which he barely saw any justification for multilateral intervention. The Napoleonic wars officially ended in 1815 with the Congress of Vienna, giving rise to the European Concert, an arrangement among the main powers of the continent to deal with international relations. This arrangement lasted almost 100 years until the First World War broke out. Gathering in diplomatic summits they decided, from time to time, where force should be used to quell bouts of violence.

The human tragedy of the First World War raised the problem of international regulation of force at the 1919 Versailles Peace Conference. Undoubtedly a major achievement, the Covenant of the League of Nations limited but did not outlaw the use of force. Various articles called on States, before waging war, to exhaust all diplomatic and jurisdictional means. An attempt to outlaw all wars, albeit ill-fated, arose in 1928 with the Briand-Kelog Pact. Notwithstanding its validity, this initiative was undermined in the 1930s by a wide range of factors that culminated in the outbreak of the Second World War. The United Nations Charter, an endeavour to surpass the failures of the League of Nations, endowed the Security Council with competence to authorize any coercive act at the international level. Political independence and territorial integrity of States enjoy a prominent place in the UN Charter and respect for them is enshrined in the principle of non-intervention. Only Article 51 allowed States to use force in self-defense. Concomitantly, nuclear weapons changed the nature of war altogether. More than politics by other means, according to Clausevitz, nuclear war threatens humanity with extinction.

Despite extremely limited action during the Cold War, the Security Council regained prestige at the start of 1990s during a brief period of political concertation among the Great Powers. From the mid-1990s to date, however, mounting rivalry amidst States with permanent seats and veto power on the Security Council has divided it. The bitter climate of division has prevented the UN from suitably addressing domestic conflicts with potential cross-border effects for international peace and security. Disagreements within the Security Council led NATO to act alone in Kosovo. Since then, joint military action undertaken by the Security Council encountered numerous obstacles. The 2003 Iraq war marked an overt discordance within NATO between Washington and London on one side and Berlin and Paris, on the other.

The responsibility to protect, approved by the General Assembly in 2005, failed to propitiate the expected benefits of intervention in Libya, mainly because China and Russia were forcefully opposed to it. Although the specificities of the conflicts in Georgia, Syria and Ukraine differ significantly, those

conflicts are also, effectively if informally, rewriting the UN Charter on the use of force. This chapter will analyze the paralysis of the UN Security Council in those conflicts. A comparison will be made to other situations of international use of force, notably the extensive interpretation of the UN Security Council resolutions when the interest of some permanent members was at stake.

In the Cold War, disputes between the US and the USSR generally led to direct negotiations between Washington and Moscow. The SALT Agreements sharply illustrate the dominant procedure practiced for nearly five decades. Analogously, other powers directly searched for solutions to their conflicts. In that context, the Security Council played a marginal role for international peace-keeping and security. The negotiations that culminated in the signing of the P5+1 Agreement with Iran on its uranium enrichment program did not involve Security Council participation. Likewise Nor did it pass any measure to further a peaceful solution for an internationalized civil war in Yemen.

The aggressive Chinese policy towards Hong Kong, transgressing its agreement with the United Kingdom – one State / two systems – did not receive formal censure. Today, the UN remains inert in the face of an ever increasingly conflictual world. The Security Council finds itself unable to ensure international peace: open-ended resolutions on the use of force have been interpreted from the great powers' standpoint; territorial annexations are gradually accepted; and new bellicose strategies loom large and a bitter mood among the permanent members of made any political concertation impossible. At this stage, we should ask what has changed in the Security Council's performance during the Cold War and at present.

For almost fifty years, international relations revolved around a hegemonic dispute between the US and the USSR. Currently, we have witnessed a complex rivalry in which the five permanent members are the protagonists. The US and the UK tend to adopt identical positions while France is closely associated with the EU's foreign policy. China's sudden emergence as an economic and military power has led it to claim a much more prominent role. It has an assertive policy in Asia, but also aims to extend its influence other areas of the globe. Taiwan remains a matter of contention between Washington and Beijing. Russia, contrariwise, has experienced enormous economic decline after the break-up of the Soviet Union .

However, Russia remains a nuclear power in quest of greater power abroad, especially in Europe, Middle East and Asia. Moscow has never abdicated its efforts to contain EU expansion in its vicinity. In general, Russia and China have voted together to veto resolutions sought by the United States. The rise of China is incontestably a new element that makes management of international affairs much more difficult. This new configuration of power and interests reverberates in the successive misunderstandings within the Security Council. Never before the Security Council has been as crippled in a world fearful of daunting conventional and nuclear war.

Chapter 2 - The WTO crisis

Soon after the Second World War, trade regulation was seen a crux for a new international economic order. It was thought that the protectionist practices in force during the inter war-period could negatively rebound for the nascent multilateralism. Therefore, GATT coupled with IMF and the World Bank embodied, from an economic perspective, a new manner of organizing international relations. The WTO, established in line with the GATT principles, took form under the influx of globalization. Over time, the WTO aroused much criticism and plummeted into a crisis that seriously jeopardizes its existence. This chapter throws light on those issues, namely the current hurdles facing the WTO.

From Adam Smith and David Ricardo on, peace and harmony have been seen as deriving from international trade. On the grounds of the benefits offered by specialization together with the theory of comparative advantages successively renewed, a positive view of trade quickly expanded in the academic milieu. By contrast, mercantilists since Alexander Hamilton and Friedrich List have deemed international trade as a source of permanent conflict. Hence, the role of State is seen as promoting economic development and social integration. In his Report to the House of Representatives in 1791, Alexander Hamilton laid the foundations of economic mercantilism in modern economics. In the nineteenth century, Friedrich List, a defender of German industrialization, criticized the division of labor preached by Great Britain, as an example of chrystallization of its historical position after the industrial revolution.

In the mid-1940s, the General Agreement on Trade and Tariffs arose as the third pillar of the post-war economic order. In that scene, each institution performed distinct and complementary functions. Whilst the International Monetary Fund, or IMF, sought to guarantee economic stability, the World Bank aided poor States and countries devastated by the Great War, and GATT nourished a staggering liberalization of world trade in the decades to come. Over time, tariff barriers lowered spetacularly, but social nets dampened the effect of unemployment in the developed countries. Indeed, multilateralism gathered speed to a great degree through the conventional regulation of the most-favored nation clause and the rule of non-discrimination between foreign and domestic goods. Three decades of continuous economic growth came to an end in the 1970s following two oil shocks. High rates of inflation ended in recession in developing a countries, and disputes for market-share and minilateralism endangered trade liberalization. To supersede those obstacles, the Uruguay round was convened to reorganize the wobbly system. From 1986 to 1994, the Uruguay Round exerted a huge influence on the shape of the global economy for years to come.

The WTO, the first international organization of the post Cold War world, emerged under the aegis of liberalism. It lifted numerous barriers trade in goods, services and intellectual property rights, three decisive areas for international economic growth. The crucial problem was regulating interdependence in a global market. Predictability of rights and obligations as well as an efficiente dispute settlement system were, for John Jackson, the keystone for a rule-oriented, instead of a power-oriented international trade. In this new legal framework, the WTO brought together principles of the GATT tradition and themes inextricably linked to the coming post-industrial society. The WTO incorporated all rules, decisions and obligations in force during the GATT era, a sign of continued liberalization that started in the mid 1940s.

The Agreement on Rules and Procedures Governing the Dispute Settlement (DSU) replaced articles XXII and XXIII of GATT, in line with the American proposal. It sought to forestall procedural fragmentation, the morosity of cases and non-compliance with decisions of GATT panels. This set of rules created a Dispute Settlement Body (DSB) of political nature, with functions such as establishing panels, issuing panel and Appellate Body reports, providing oversight recommendations and suspending concessions agreed upon in trade rounds. With specific exceptions, the WTO “shall be guided by the decisions, procedures and customary practices folloed by the Contracting Parties to GATT 19477 and the bodies established in the framework 1947” (The WTO Constitutive Agreement). Article 3.2 of the DSU provides that the WTO dispute settlement system serves to “preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements”. Article 7.1 requires panels, unless otherwise agreed by the parties, to examine disputes brought to the Dispute Settlement Body exclusively in light of the WTO Agreements.” Articles 3.2 and 19.2 preclude panels and the Appellate Body from adding to or diminishing the rights and obligations provided in the WTO covered Agreements. Pursuant to the DSU, any WTO Member may bring a claim against any other Member relatively to “measures affecting the operation of any covered agreement”. Reports by panels

or the Appellate Body, once adopted, must be complied with by a Member in breach of the established rules. The WTO framed a collective for political surveillance composed of all Members to verify implementation of reports. When persistent non-compliance with recommendations is observed, a complainant is permitted to adopt, by means of previous authorization, to adopt trade retaliation against the respondent. Since the inception, the Appellate Body has been concerned with in developing an interpretative unity with high internal consistency. Vidigal holds in this respect that "the WTO reports become not just authoritative views but sources of law, not only guiding its own future decisions but also binding future panels and Members". Thus, a true "structural hiearchy" between the Appellate Body and panels has little by little been consolidated.

In the last two decades, trade deals with two or more countries surmounted negotiations purely concerned with tariffs. They include a great deal of topics, namely, wider protection for services and intellectual property rights, financial markets, electronic commerce, technical, sanitary and phitosanitary measures, labor and environmental standards. We cite, only in 2018, the Comprehensive and Progressive Trans-Pacific Partnership, the Comprehensive Economic and Trade Agreement between Canada and the European Union, the EU-Japan Economic Partnership Agreement and the United States, Mexico-Canada Agreement. Many of them cover a formidable proportion of the world economy. Agreements of that nature are a new challenge to the extent that the WTO rules and the Appellate Body preclude FTAs from establishing new trade barriers and impose discrimination not foreseen in GATT Article XXIV. Eventually, the Appellate Body, at odds with its current position, might accept an FTA clause consenting to restrictions on trade of goods that present environmental risks. If it does, a fragmentation of world trade will be legally acknowledged.

Since the Uruguay Round, Cottier notes, the WTO rules have undergone a legitimacy crisis. In substance, the quintessential factor is the issue of distributive justice in industrialized and developing countries alike. On procedures, arguments focus on the shortcomings of the negotiating process and its unbalanced relationship with regards judicial dispute settlement. In Cottier's words, they challenge the legitimacy of WTO law from the point of view of democratic accountability. Pogge, in tune with such criticism, points out how hard developing countries have been hit. These countries, in his view, question the benefits resulting from the Uruguay Round. The WTO is accused of failing to adequately promote welfare and prosperity. For Pogge, the WTO thus contributes to an increasing divide between the rich and the poor within countries as much as between them. From that angle, the WTO does not reduce poverty as long as special and differential treatment remains formal and without great impact on the ground. Cottier's criticism and doubts are also being voiced in industrialized countries. Restructuring and outsourcing of production to more competitive regions impelled workers to question the legitimacy of open markets. Competition is rejected in relation to countries with lower social standards and salary structures. For Cottier, competition among unequals is perceived as unfair, and calls for enhanced protection for goods and services are being heard.

Unlike the optimism in globalization of the mid-1990s, mercantilist pressures have now surfaced with full force. The WTO has undergone the deepest crisis since its establishment at the end of the Uruguay Round. Because of endless friction amidst the WTO members, the Doha Development Agenda launched in 2001 remains unachieved. Moreover, the GATT principles negotiated in 1947 find themselves under unprecedented attack. The principles of non-discrimination and national treatment that underpin post-war liberalization have been systematically subverted during the course of the "trade war" between China and the US. Consequently, the WTO has not only been weakened but has even been rendered powerless to address the conflict. Last January, an agreement covering a significant proportion of American and Chinese exports proved how irrelevant the WTO had become to multilateral trading system.

In the meantime, the Appellate Body has been paralyzed by the US decision to block the appointment of the new judges that it requires to perform its primary function. Payosova, Hufbauer and Schott held that "US frustrations have accumulated over time, for multiple reasons. The biggest objections question the pattern of Appellate Body decisions, not always involving a case in which the United States is a party. These worries are rooted in the alleged 'overreach' of WTO panels and the Appellate Body, an issue that requires political will to find a compromise. In contrast, the technical issues that the US intransience creates are more susceptible to resolution. The United States has tried to address some of these concerns through negotiations and has tabled several proposals to amend the DSU. But no DSU amendments have been adopted, largely because of the cumbersome consensus requirement (Marrakesh Agreement Article X.8)." The "GAP fillings" are seen negatively since decisions cannot add to or detract from the original rights and obligations. Yet, judicial activism would be another objectionable DSB behavior. Washington has taken the position that WTO law would not override US federal law which is inconsistent with the original WTO agreement established in 1995. In March 2017, the new American administration declared that the United States government would not be necessarily bound by rulings of Panel or the Appellate Body when they go against the interests of the United States.

Meanwhile, Picker highlights two endogenous factors behind the WTO crisis. First, the founders' fault lies both in the structures and process to create an institution based on the rule of law without considering that respect for the rule of law might falter over time. Second, the WTO is now vulnerable in a world where the commitment to the rule of law is rare and assailed. Picker, likewise, points to the desire of some countries to return to power politics and diplomacy. In his opinion, the architecture of the WTO resulted in an unbalanced system with only one functional branch: the Dispute Setlement Body. From a different prism, Dani Rodrik emphasized the regulatory trilemma, that is, a situation where hyperglobalization, national States and democracy cannot coexist harmoniously. Solely two elements are virtually compatible. In addition, the WTO fosters hyperglobalization that has resulted in ever-growing economic inequality at the domestic level. Populism across the world has taken root in the social discontent over the unequal distribution of the economic benefits of lower trade barriers. Democracy is in jeopardy and social disruption spreads perilously across the world. Rodrik only envisions a response for the present-day malaise. A sane trade must seek strike a balance between liberalization of international trade and national spaces for regulatory policies.

Chapter 3 – Science and politics in the Paris Agreement on Climate Change

At the heart of the Paris Agreement on Climate Change lies the interplay between science and politics. In the Preamble and in Articles 2, 4 and 14 this appears in full day light. If science commits itself to the purpose of truth, politics frequently embodies interests. It often leads to a situation in which a zero-sum mentality predominates. In the case of the Paris Agreement on Climate Change, negotiators opted for national interests to the detriment of science. This chapter delves into the issue by examining the implementation techniques that the Paris Agreement established.

Raustiala and Victor have defined a regime complex as "an array of partially overlapping and non-hierarchical institutions governing a particular issue-area." That definition, may not adequately explain the complex realities of international environmental law, but it aptly describes the Paris Agreement on Climate Change. Overall, climate change is a delicate and multidimensional problem that requires responses to its challenges with a plurality of instruments. For a long time, there was no synergy among the UNFCCC and other institutions, the International Maritime Organization, the International Civil Aviation Organization, the World Trade Organization, and the Montreal Protocol or the Convention on Biological Diversity. The 1992 UNFCCC fell short of facilitating those vital interactions. The Paris Agreement, an open set of rules, is more aptly prepared to streamline governance on climate change.

Divided in three main components, goals, action areas and implementation techniques, Dupuy and Viñuales stress various tensions in the Paris Agreement, namely between developing and developed countries, between more vulnerable countries and the rest, between countries that expect to suffer from measures that "respond" to climate change and the rest, between climate change action and the fight against poverty or the need for a smooth transition of the work force, between intervention in and conservation of nature, and between sscience and equity, among other.

Several years elapsed before the parties agreed upon a text that would become the Paris Agreement on Climate Change. J. Brunnée estimates that four kinds of substantive features stand out. First, the Paris Agreement repeated references found in the UNFCCC, especially in the Preamble, that the parties subscribe to acting "in pursuit of the objective of the Convention, , being guided by its principles ...." Second, in terms of objectives, Article 2 was itself inspired by the UNFCCC, using the same drafting model. Third, substantive commitments were carefully crafted. According to Brunnée, Article 4(1) states that in order to achieve the goal "Parties aim to reach a global peaking of greenhouse gas emissions as soon as possible ...." Four, the Paris Agreement provides substantive parameters for NDCs. In accordance with Article 3 of the Paris Agreement expectation is that "a nationally determined contribution to the global response to climate change undertake .... ambitious efforts with a view to achieving the purpose of this Agreement as set out in Article 2."

Originally, the Preamble of the Paris Agreement represents a sharp intent to make several interests explicit. Never before had a multilateral environmental agreement brought specific references to human rights, gender equality and inter-generational equity. Also, food security and ending hunger, imperatives of just transition with decent employment and quality jobs, equal acess to sustainable development were undescored. Similarly, by acknowledging that climate change is a common concern of humankind, recommendations were made to reach this goal. "Parties should, when taking action to address climate change, respect, promote, and consider their respective obligations on human rights, the right to health, the right of indigenous peoples, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of wemen and intergenerational equity.

The 2015 Paris Agreement is the prime example of an international instrument for multilateral cooperation to address climate change. It is the culmination of a huge mobilization among governments and a multitude of international stake-holders that started in 1992. Negotiators bore in mind, above all, scientific parameters and enhancing implementation in a new legal framework. Article 2(1)(a) holds the increase "well below 2C ... and to pursue efforts to limit the temperature increase to 1.5C." To reach this goal and shrink emissions of greenhouse gas, States Parties were obliged to assume the commitment to prepare, communicate and maintain successive nationally determined contributions. Of equal magnitude, it called for general effort to promote economic development with low carbon emissions. A key point resided in financing capacity building thanks to a solid cooperation. The principle of common but differentiated responsibility plays a pivotal role in that scenario. In contrast to the Kyoto Protocol, all parties to the Paris Agreement, including developed and developing parties, have the duty to "prepare, some level of contribution to ensuring that greenhouse gas emissions peak as soon as possible and thereafter reduce rapidly so as to stabilize in the second half of the twentieth century."

The Agreement did not specify the contributions in advance. Each party shall determined them unilaterally taking into account their capabilities. Reductions are expected to increase, gradually, "on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty". Boyle stressed that "Developed States will take the lead, but developing States are no longer exempt from making any emissions reductions, as they were under Kyoto". He has argued that "if climate change is to be tackled successfully, then China, India and other industrialized developing States have to be brought into the greenhouse gas emissions and carbon management control regime". Developing countries,

which contribute greatly to global warming, shall strive to avoid catastrophic damages wreaked by climate change everywhere, though in a different degree.

In the wake of the Kyoto Protocol, Article 6 consents to "a joint implementation" between States, if countries' commitments may voluntarily be expressed in divisible and quantifiable amounts and traded between States. Article 6 also foreshadows a mechanism analogous to CDM forged by the Kyoto Protocol according to which offset units could be generated and traded. But the vague text makes it difficult to predict how useful Article 6 may be. James Munro observed that the "nationally determined" structure of the Paris Agreement is, in reality, a consequence of the failure to reach multilateral consensus on how to apportion the burden of achieving the ultimate objetive amongst individual countries. Munro thus underlines the relationship between the absence of agreement on what it means to share the burden of addressing climate change equitably in the international climate changee and the way the Paris Agreement pursues an approach. In the new model countries set their own levels of ambitions but are simultaneously required to demonstrate how that level of ambition is justifiable under the principles of the UNFCCC. Further, countries are demanded to review their level of ambition and the aggregate contribution of all countries' commitment to the ultimate objective of the UNFCCC. In the Munro's words "whereas the principle of equity in the international climate regime is expressed through norms such as common but differentiated responsibilities, and taking account national circumstances and capabilities, the actual content of these norms is contested and unsettled." Importantly, an open economic system and the environmental climate protection are seen as mutually supportive in light of Article 12 of the Rio Declaration.

The rocky implementation of the Paris Agreement on Climate Changes is a result of the tension between scientific targets, the State's freedom to determine national contributions, and sub-national entities and other stake-holders. Established to limit the rise in global temperature, the Preamble of the 2015 Paris Agreement recognizes "the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge." Reflecting the conclusions of the Intergovernmental Panel on Climate Change (IPCC), its Article 2 (a(, already mentioned, includes among its objectives: "Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to l.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change."

However, the tension between objective scientific considerations and State interests, the Gordian knot of implementation, also finds succinct expression in the innovative structure of the Paris Agreement. It gives States power over their Nationally Determined Contributions, reflecting near total deference to national interest. Yet, the agreement creates a higher-level body to monitor implementation, however, the Global Stocktake of Article 14, which prioritizes objective scientific consideration. Furthermore, it is worth noting that Paris Agreement is the first major international environmental treaty to incorporate the principle of non-regression as an intrinsic element. Implementation of the Paris Agreement is evaluated through a complex equation that requires States to formulate their interests in terms of scientific targets.

The central challenge in the implementation of Article 14, Jürgen Friedrich notes, are the number of tools needed, as its goals shall be increased at regular intervals. Nationally determined contributions shoud be communicated every five years, and must thus reflect a growing level of ambition and connection to collective goals. The global stocktake, a procedural innovation in international environmental law, exercises the following functions: (1) understanding how far the Party States have collectively come in achieving their goals; (2) determining how much is still required collectively to reach them and (3) providing information on possible options to enhance their actions both nationally and internationally and thereby hopefully motivating the countries to do more. So conceived, global stocktake favors the Agreement to advance in an unprecedented way. Friedrich holds that this

dynamism is a precondition for a durable Agreement, since only through an upward dynamic can the Agreement deliver in the long term. The relationship between the global stocktake and future actions aroused much interess during the negotiation process. Article 14.3, however, was sufficiently clear by proclaiming that the global stocktake outcome shall "inform Parties in updating and enhancing [their actions and support] in a nationally determined manner".

This provision constituted a true compromise between States that proposed a higher degree of national action and those that defended less self-determination. The global stocktake gathers useful technical information about the current situation of parties end goals to be reached in the future. So far, despite individual commitments, global temperature has risen to a worrisome level. The early results challenge expectations and constitute a threat to our future. Climate change needs to associate the domestic with the collective perspective. The Paris Agreement on Climate Change did not adequately balance the coordination of action at the national and international levels. Implementation techniques constitute the most conspicuous innovation of the Paris Agrement, mainly "the enhanced transparency framework for action and support, enshrined in Article 13. Amidst those mechanisms, Dupuy and Viñuales distinguish between information-based techniques, compliance facilitation techniques and non-compliance management techniques, which we we will analyze in detail. It is in the field of implementation that the Paris Agreement was estimated to offer valuable progress more than the engagement of other subjects. Alongside States, networks of sub-national and regional entities, international organizations and other relevant stakeholders need to cooperate in pursuit of the common goals. Even though the US decided to exit the Paris Agreement, for example, many individual American states have demonstrated a steady committed to reducing greenhouse gas emissions. It is a complex regime where States and non-States actors, namely corporations and NGOs, play an extremely meaninful role to hamper the rise global temperatures. Up to now, however, the results achieved are disappointing. Emissions of carbon dioxide increased in 2019 in comparison to 2018.

In short, the Paris Agreement is like a minimum common denominator in the effort to address climate change. Nevertheless, to limit the rise of global temperatures, its paramount purpose, depends, on the last instance, on the Parties' will. In effect, the goal of progressively curtailing greeenhouse gas emissions as recommended by scientists is in jeopardy of failing. This reality arises from the NDCs issued in 2015. Most of them lack the necessary ambition towards a substantial change. According to IPCC, the NDCs are not capable of the ensuring the target limit of 1.5°C is respected. Such a target would require the total emissions of CO2 and other greenhouse gases to reach a maximum limit in 2020, CO2 emissions to drop to zero in 2050, and all greenhouse gas emissions to reach zero by 2070. The IPCC holds that, in the long term, the objective of the Paris Agreement is only feasible if there is a systemic transformation of energy, industrial and urban structures along with a transformation of land management in the next decade. Carbon should be altogether cast aside in 2050 and around ¾ of full electricity will have to be supplied by renewable energies, whose use ought to be extended to urban transportation, to industries and buildings. Collective changes like these also mean also imply a huge shift of investment to low or zero carbon emission technology in the next two decades.

Chapter 4 - The World Health Organization and the COVID-19 pandemic

In the nineteenth century and up to the Second World War, world health was occasionally the subject of diplomatic summits. The United Nations then created a number of agencies dedicated to the topic, like the World Health Organization. The WHO and other agencies have been concerned with epidemics and pandemics, but lack the regulatory power to respond to serious risks. The outbreak of COVID-19 pandemic sharply illustrates those weaknesses. Moreover, the novel coronavirus brings about questions

of different nature ranging from the relevance of the World Health Organization to the capacity of multilateral institutions in new devastating pandemics.

The World Health Organization, or WHO, was established in New York in 1946 at the end of an international conference convened by the UN Economic and Social Council. The Preamble of its Constitution, which entered into force in 1947, defines health as a crucial issue of international concern and as a fundamental human entitlement: "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity …. The enjoyment of the highest attainable standard is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition". Article 2 tasked the WHO "to act as the directing and coordinating authority on international health work". Following the classical structure of international organizations, the WHO is based on a plenary assembly, an Executive Board and a Secretariat headed by a Director-General that the Executive Board nominates and the Assembly appoints. Unlike the Assembly, which is political in nature, the Executive Board ideally embodies the prevailing science upon public health. The institutional model initially devised is noteworthy. Very often, the Executive board positions is merely meant to reproduce the assembly's collective political view. In 1998, the Health Assembly decided that members of the Board should be elected as government representativess. This endorsed a behavior commonly utilized in the previous years. The Board has in fact acted as a preparatory body for the Health Assembly. For the purpose of redefining the division of labor between the two bodies, a process of reform was initiated in 2011 but has since fizzled out.

The legal function of the WHO is essentially exercised through conventions and agreements, regulations and recommendations. Conventions are regularly adopted by the Health Assembly with respect to matters of WHO competence. The WHO Framework Convention on Tobaco Control was adopted in May 2003 and entered into force in 2005. The global instrument regulates the trade, marketing, and consumption of a lawful consumer product. On that occasion, the dominant opinion was unequivocal about the urgency to minimize the risks generated by tobacco consumption. In accordance with Articles 21 and 22 of the Constitution, the Assembly is a legitimate organ for the adoption of Regulations mainly concerning international health. In that respect, The International Health Regulation, perhaps the most important example in this sphere, targeted the prevention and control of international spreading of disease.

It came to the fore in 1951 and was significantly revised in 1956 and 2005. Over the years, those rules have made it unequipped to deal with new and unpredictable events. A more vertical and legislative approach based on the WHO engenders uniformity and centralized monitoring. An updated International Health Regulation became effective in 2005 in search of fighting disease independently of origin and source. At present, interaction between health regimes is growing because of the risks to human health stemming from nuclear and chemical accidents and bioterrorism. The WHO Director-General enjoys authority to declare a "public health emergency of international concern". In that capacity, he can issue recommendations to control a significant spread of international disease.

In addition, the WHO has taken recourse, on a large-scale, to non-binding recommendations and standards. Special circumstances, commonly of local scope, are at the heart of recommendations and standards. Recommendattions, for instance, being rules of 'soft law,' cover the International Code of Marketing of Breast-Milk Substitutes of 1981.22 and the Global Code of the Practice on the International Recruitment of Health Personnel of 2010.23. The Codex Alimentarius Commission, a programme putting together the WHO and the UN Foold and Agriculture Organization, is also highly relevant. It sets standards for food trade and has influenced both governments and consumers. The WHO Secretariat has issued soft law rules, like the Recommendations to the UN for the international control of narcotic drugs and psychotropic substances, or the Model List of Essential Medicines used by national health authorities to prioritize procurement of medical equipment.

The outbreak of the COVID-19 pandemic coupled with the risk of a new and far more dreadful pandemic in the near future has forced the world to discuss much denser cooperation on the subject of health. Although it is the designated organization of the UN family for such area, the WHO was only able to perform limited functions. It lacked the financial resources to provide ventilators and medical equipment to poor nations and the authority to bring recalcitrant States into line. In addition, it was accused of political interference.

Moreover, the WHO has technical weaknessses. Morten Broberg notes the assumption that contagious diseases break out in poor countries in the global south. Therefore, international rules for such diseases seek to protect the wealthy countries in the global north. For Broberg, this assumption is misleading in two respects. Firstly, contagious diseases do not break out only in the global south. More accurately, poor countries, in general and on average, have fewer resources to detect and respond to transmittable diseases at an early stage, which increases the risk that diseases become unmanageable. Secondly, in the contemporary world, transboundary relations are so ubiquitous that if a transmitable disease runs out of control, it is very difficult for any State to keep it outside the national borders. The COVID-19 is a clear-cut example of that situation. In Broberg's opinion, a possiblyy attractive solution would be for all States to combat any event that may develop into a transboundary epidemic, in spite of costs. Financial and human resources would be needed for States that lack the ability to comply with International Health Regulation of 2005 themselves and the WHO must be able to call on skilled healthcare professionals who can be deployed at very short notice, whenever and wherever the need arises.

Such issues raised by some authors are undeniably important, but contemplate only part of the problem. The vast majority of States put in place public policies only meant to protect their national populations against COVID-19. After dithering while States acted on their own, many closing their borders, the European Union granted its members economic assistance, mostly for the most affected. The lesson learned is that far-flung pandemics cannot be successfully contained through isolated actions. Another lesson driven home by the pandemic involves the wide range of disadvantages that developing countries suffer in these circumstances. We have witnessed the grave effects of, among other shortfalls, deficient sanitation services, limited access to potable water, and exacerbated poverty, which have led to starvation conditions in many places. Measures to end the pandemic must therefore include increasing the competences of the WHO. The prospect for a robust international cooperation would benefit from the creation a special fund to provide aid to poor nations. Finally, the COVID-19 warns us about the outbreak of even more catastrophic pandemics. In particular, the WHO needs to be much more equipped to affront challenges ahead.

In the ensuing paragraphs, I briefly discern conclusions that can be drawn regarding the consequences from the COVID-19 pandemic:

a) Flaws in the current international system call for a more efficient and coordinated decision-making procedure. At a multilateral level, the World Health Organization should be the backbone in that area, even though structural improvements are needed. Its function, however, must take place in the context of coherent action by all UN agencies. In view of securing such an ambitious target, corporations, sub-national entities, civic leaders and NGOs of different kinds have much to contribute. Unquestionably, political will from governments stands in the center of any necessary, multifaceted cooperation. Paradoxically, instead of setting in motion an international effort to confront the COVID-19 pandemic, the world finds itself fragmented along national lines. Rampant xenophobia and nationalism were laid bare by scrambles for medical equipment in international market and protectionist actions pushed governments to a wrong direction. The logic of "everyone for himself" not only denotes egotism but also radiates disastrous effects for large numbers of people living in poor countries.

b) As for effects, a neat resemblance emerges between climate change and the COVID-19 pandemic. Mostly in the twentieth and twenty-first centuries, a slough of epidemics have originated from unbridled environmental degradation. Without halting the impressive pace of deforestation and degradation of habitats of natural species, new and possibly more nefarious pandemics may wreak havoc on the entire human race. Similarly, measures to mitigate ever-lasting harm derived from climate change and to diminish the risk of pandemics presuppose strong coalitions comprised of State and non-State actors.

c) The COVID-19 pandemic generates uneven outcomes for developed and poorer States. Whereas the former, albeit weakened, are in condition to swiftly recover from an economic slump, the latter tend to remain poor. In those countries, social inequality will surely increase so as to move millions of people beneath the poverty line. No doubt exists that such a development will fuel the rise of populist and authoritarian rulers across the globe.

d) The COVID-19 pandemic starkly deepened the rivalry between China and the US and might lead to a decoupling of the two economies. This prompts stronger tensions that erode even further the international liberal order. If, on the one side, the novel coronavirus appear to menace definitively the rule-based international order, it can provide the impetus to recast international institutions. Certainly, the current crisis shows how pressing a more coordinated, legitimate and cooperative order is for the world as a whole. In spite of its merits, limits and mistakes, the WHO appears central to face this and future pandemics of equal or greater magnitude.

Chapter 5 - Beyond the refugee and migrant

The scale of the flows of refugees and migrants in the last decades has been striking. Further, one feature of the globalization following the end of the Cold War has been the increased international mobility of individuals as a whole. Legal instruments to address the needs of refugees date back to the post-Second World War, where challenges differed greatly from those that now cause concern. This chapter broaches this question by unfolding the suggestions gathered by a set of experts in different areas whose object is a projected convention that goes beyond the traditional distinction between migrants and refugees.

There is growing awareness that the 1951 Refugee Convention is unprepared to handle the current migration crisis. Fleeing human tragedies such as wars, domestic conflicts, poverty and climate change, the flow of migrants and refugees has exponentially grown in our time. Furthermore, globalization led to unprecedented mobility of persons across countries and continents. International rules from a quite distinct historical juncture have proved incapable of managing such a complex reality. A refugee is defined as “a person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” (1951 Convention Relating to the Status of Refugees). Conversely, the UN Migration Agency defines “migrant” as “any person who is moving or has moved across an international border or within a State away from his or her habitual place of residence, regardless of 1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of stay is.” This framework leaves legal gaps that have yet to be filled, gaps that must be regulated for the notion of a globalized world to have real meaning.

The Preamble of the Model of International Mobility Conventions reads: “The movement of people across borders lacks global regulation, leaving many people unprotected in irregular and dire situations and some States concerned that their borders have become irrelevant. International mobility—the

movement of individuals across borders for any length of time as visitors, students, tourists, labor migrants, entrepreneurs, long-term residents, forced migrants, refugees, victims of trafficking, people caught in countries in crisis and family members—has no common definition or legal framework. A holistic approach to human mobility is needed at the international level to address these gaps in protection, regulation and cooperation. An international mobility regime should establish a system that recognizes the human dignity of all while promoting the interests of countries of origin, transit and destination." In 213 articles divided over eight chapters, the Model of International Mobility Convention (MIMC) proposes a framework for mobility with the goal of reaffirming existing rights afforded to mobile people (and the corresponding rights and responsibilities of States) and expanding those rights where warranted. A model of International Mobility Convention has been drawn up, but has was not embrace by States and international organizations to grapple with this issue.

Chapter 6 - Conclusion

By way of conclusion, I turn to the unavoidable question that arises in each chapter: might multilateralism be meaningfully reconstructed? I propose two tentative answers. First, at the present juncture, the necessary conditions for multilateralism to operate are at best meager, let alone those necessary for it to thrive. For the reasons pointed to above, the traditional conception of multilateralism is in deep crisis. That crisis precludes it from creating or maintaining the international rules needed for global order. Second, I outline some steps to be taken. After having depicted the crisis of multilateralism and international law, in each of the previous chapters, I point to a way out. Instead of designing the best institutional arrangement for each analyzed issue, my concern lies in rethinking the meaning of international law and multilateralism. Such an enterprise requires deepening the argument put forth above. In short, we need to overcome the thin concept of common good so as to associate it with multilateralism and international law. Once this relevant purpose is achieved, this research will have found entire justification.