

Where is U.S. Multilateral Leadership?

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Abstract

U.S. leadership is essential for reconceptualizing global multilateral institutional cooperation. Yet, such leadership has by and large not been forthcoming in the post-Cold War period. There are three related political reasons for this. First, despite the victory in the Cold War the U.S. has become increasingly isolated in international organizations. Second, the ecology of the institutional landscape has become less favorable for the U.S. Third, domestic politics imposes strong constraints for delegating new authority to formal supranational institutions. I identify three ways forward. First, the U.S. can help repurpose the core institutions it helped establish in the aftermath of World War II. Second, the U.S. can adopt a more exclusionary approach to influence global rules through informal clubs, formal plurilateral institutions or the application of extraterritorial jurisdiction. Third, the U.S. can lead on inclusive multilateral initiatives without treaty commitments or meaningful delegation. I discuss the promises and pitfalls to these approaches using examples from various issue areas.

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Reconceptualizing Transnational Governance: The U.S. Perspective

The list of challenges that could benefit from more effective global institutions is long. Global warming, financial crises, health epidemics, refugee flows, arms control, and water are just some pressing issues that require more coordinated action than appears to be forthcoming. Yet, the creation of effective international institutions has never been a straightforward response to functional needs. There have always been sharply differing views on what to coordinate on, who gets to have the biggest say, and how to share the burdens of producing public goods. Institutional solutions to problems don't emerge from thin air. They are typically forged by powerful actors.

The United States has played an outsized role in the creation of the global institutional structure, most notably the founding of the United Nations and the Bretton Woods institutions after World War II. Theorists argue that most major global International Governmental Organizations (IGOs) are created in the aftermath of a major war, when power asymmetries are at their starkest and the victor may have the most pronounced interest in shaping a future institutional order.¹

In the eyes of many, the end of the Cold War presented a new opportunity for U.S. led multilateral institutionalized cooperation. The demise of the Soviet Union and with it communism gave the U.S. unparalleled material and ideological advantages. Yet, with the notable exception of the WTO, there was little meaningful U.S. led global institutional change. Instead, the U.S. has remained on the sidelines as other states created and joined new institutions, such as the Kyoto Protocol, the International Criminal Court, and the UN Law of the Sea Convention. Recently the U.S. Senate refused to ratify the Disabilities Convention, a treaty modeled after U.S. law.

I identify three related developments that complicate U.S. efforts to lead institutionalized international cooperation.

¹ For example, Ikenberry 2009a.

First, despite the ideological victory in the Cold War, the U.S. has become increasingly isolated in international institutions. Paradoxically, the defeat of communism has exposed the U.S. as an ideological outlier even within the loose coalition of Western countries that have dominated traditional global institutions. This makes a U.S. leadership role increasingly difficult.

Second, the landscape of international institutions no longer reflects US interests. During the Cold War, the Bretton Wood institutions were global in aspiration but they were practically limited to capitalist states who were at least nominal U.S. allies. The USSR and its allies were not part of the main global economic and many other non-UN institutions. This kept a great deal of ideological conflict outside of these institutions. Now the main global institutions must accommodate a group of states that are growing in material clout but that are also diverse in their interests. Ideological distance from the U.S. correlated strongly and negatively with membership in international organizations in 1985. But by 2010 ideological adversaries of the U.S. were just as likely to be institutional members as ideological allies. This in part reflects the ideological triumph of liberalism writ large. Yet, broad acceptance of international liberal principles means very different things to different actors.

Third, U.S. domestic politics has become hostile to multilateral treaty ratification. Even modest proposals that appear to advance U.S. national interests suffer defeats in the Senate when they imply the barest minimum delegation of authority to international institutions.

This limits the potential for U.S. leadership but there are three ways the U.S. still advances multilateral solutions to new challenges. First, the U.S. remains comfortable within the core global organizations with build-in institutional advantages that favor the U.S. The U.S. has taken an active role to repurpose those institutions for new challenges. I will discuss the potential but also the functional and political limitations of repurposing.

Second, the U.S. has adopted some more exclusionary approaches, including plurilateral initiatives like the Transpacific Partnership (TPP), clubs like the Basel Committee, and extraterritorial jurisdiction, like the Foreign Corrupt Practices Act.

Each of these initiatives aim to ultimately influence global principles. The efficacy of this strategy depends strongly on and is limited by incentives provided by U.S. market size. Moreover, the confrontational nature of these initiatives plausibly imposes political costs.

Third, the U.S. has promoted global agreements of a more informal nature, such as the Paris agreements on climate change. These agreements involve little delegation to supranational bureaucracies and few legal obligations. They can work to coordinate state responses to problems but are unlikely to be effective at producing global public goods at a larger scale.

Three Trends That Stifle U.S. Multilateral Leadership

I. The U.S. is Getting Lonelier

In the immediate post-World War II period the U.S. expressed national interests in international organizations that were not that dissimilar from those of other Western powers and many Latin American states. But the U.S. has gradually become an outlier. Figures 1 and 2 show this graphically. Figure 1 plots the ideal points of Security Council's 5 permanent members and 5 other key states based on their historical voting records in the United Nations General Assembly.² Figure 2 does the same except that it contrasts the United States with averages in the world's main regions.

² Bailey, Strezhnev, and Voeten 2015.

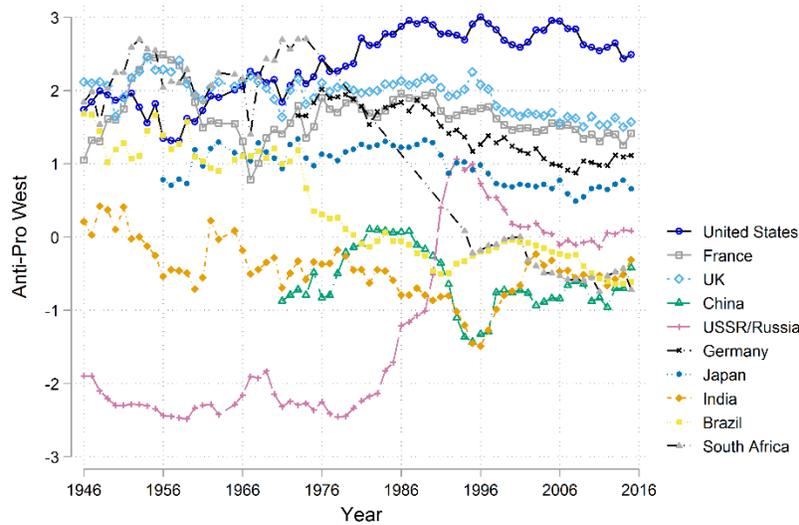


Figure 1 Major Country Positions in the UN General Assembly 1946-2014

These ideal points are estimated with methods that scholars use to estimate how liberal or conservative senators are based on their voting records in the U.S. Congress. The UN General Assembly is not a global legislature but it is the only place where states have regularly over a long period of time revealed their positions on a wide variety of issues. There is a fairly stable dimension of contestation that underlies many of these 100 or so contested votes each year. During the Cold War, this main dimension reflected the conflict between the East (communism) and the West (liberalism). Since the end of the Cold War, the non-Western side of the scale is occupied by states that have little in common ideologically other than their opposition to liberalism (e.g. Iran, North Korea, Sudan).

The main advantage of these ideal point estimates is that they can be compared over time. Naïve measures, such as percent vote agreement with the U.S., cannot tell agenda change (e.g. more resolutions on Israel) from preference change. We exploit that some UNGA resolutions are identical across years. We fix these resolution parameters across time, which allows us to separate agenda change from preference change.³

³ Ibid.

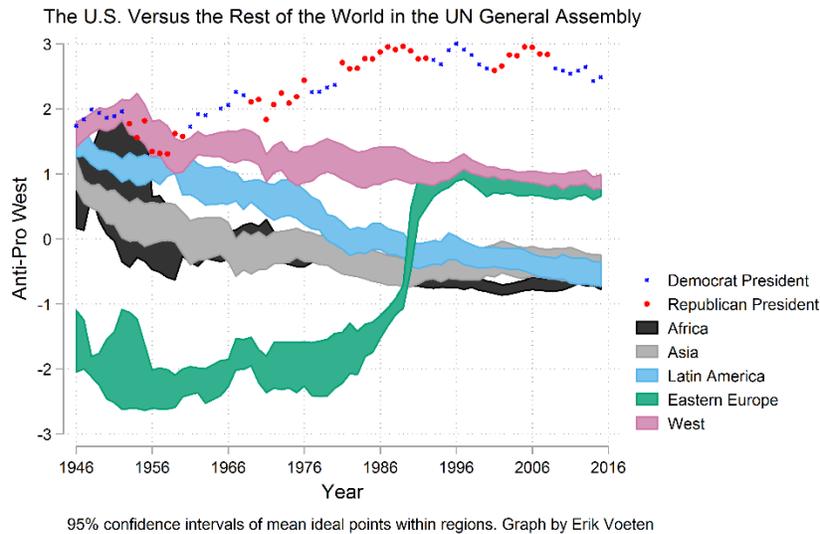


Figure 2 U.S. and regional Positions in the UN General Assembly: 1946-2014

The graphs show both interesting change and stability. For our purposes, two changes matter especially. First, the Soviet bloc states (and their successors) abruptly changed their voting behavior in the late 1980s and especially the early 1990s. The most important states that now oppose the U.S. are not nearly as far removed from the U.S. ideologically as the U.S.S.R. and its allies were during the height of the Cold War. In that sense, the ideological landscape has improved for the U.S.

Second, during the first few decades post-World War II the U.S. was firmly in the middle of Western powers. Yet, since the 1960s the U.S. has slowly become an outlier. No-one other than Israel has voting patterns that are very close to those of the U.S.

There are multiple reasons for this.⁴ The demise of colonialism removed an issue on which the U.S. was closer to the rest of the world than most of Europe's Western powers. But the U.S. has also become more isolated on the Middle East and other recurring issues. Cuba is a good example. In the early 1990s the U.S. could count on most of its Western allies to at least abstain on the annual resolution condemning the U.S. boycott. Since the 2000s the U.S. finds only Israel and occasionally Micronesia and Nauru on its side.

⁴ Voeten 2004.

There is little evidence that domestic partisan politics is the main driving force behind this. Although the U.S. has moved somewhat closer to the rest of the world under the Obama Administration, the difference with the Bush Administration is modest. The big gap between the U.S. and the rest of the world is stable across Republican and Democratic Administrations.

The U.S. outlier status has a procedural and a substantive component. First, the U.S. frequently opposes efforts to delegate authority to international institutions even when it agrees with the substance of international agreements. This is exemplified not just by UN votes but also in decisions not to ratify treaties that include meaningful delegation. For example, the 1990s and 2000s saw strong efforts to judicialize international relations through the creation of courts or semi-judicial bodies that resolve disputes. Other than the WTO, the U.S. has refrained from joining any of these initiatives including human rights treaties with semi-judicial enforcement, the International Criminal Court, and the Law of the Sea with its associated tribunal. This is so, even though the U.S. substantively agrees with much of the human rights, criminal law, and law of the sea norms and principles. Indeed, it accepts many of these rules as part of customary international law and/or has incorporated them into domestic law. The U.S. was the main driving force behind the creation of the criminal tribunals for the former Yugoslavia and Rwanda. But it objects to an independent international court and prosecutor that would have jurisdiction over U.S. persons.⁵

I discuss the domestic politics reasons for this skepticism later. But there is also a straightforward realist rationale: handing over authority to independent supranational institutions is less appealing if you are a great power with lots of options to realize objectives without institutionalized cooperation. Moreover, no-one is going to pressure the U.S. into delegating authority. Every country is concerned about the sovereignty cost of delegation. Yet, the U.S. has much better outside options and will thus less often prefer to delegate.

Second, there are important substantive differences with other countries. Some of these are ideological. Israel jumps out with

⁵ Bosco 2013.

regard to UN related issues. The U.S. has a different approach to regulation of the economy from its European allies. This sometimes leads to clashes, such over the proper protection of privacy. Others stem the U.S. unique position of dominance in the system. On arms control, for instance, the U.S. cares a great deal about non-proliferation but less about limits on uses of weapons to which it has asymmetrical access, like drones.

More broadly, although liberal internationalism has won the ideological battle, there remains a great deal of controversy over what this entails, exactly. There is a great deal of contestation at the international level over whether human rights, election monitoring, democracy, corruption, and other governance aspects are properly part of the concern of international organizations. There are strong divides over how exactly trade and investments ought to be regulated and how intrusive regulation of behind the border barriers should be. In short, liberalism's ideological victory does not mean an end to ideological contestation.

II. The Institutional Landscape is no Longer Dominated by U.S. Allies

U.S. played a crucial role in creating global institutions in the aftermath of World War II and throughout the Cold War.⁶ Institutional rules, norms, principles, and memberships reflect this dominance. Even later in the Cold War, when the U.S. was already pretty isolated in terms of its foreign policy preferences, most international institutions were still dominated by states who were reasonably sympathetic to U.S. interests. This is no longer so.

Figures 3 and 4 demonstrate these points graphically. In 1985 there was a strong negative relationship between the ideological distance from the U.S. (measured by UN voting patterns as above) and the number of Inter-Governmental Organizations (IGOs) a country had joined.⁷ Communist countries initially joined the general UN related institutions but did not join institutions with a more explicit liberal internationalist agenda. They did not create

⁶ Ikenberry 2009a.

⁷ The data come from the Correlates of War IGO project v3.0. coded according to the following criteria: (1) An IGO must consist of at least three members of the COW-defined state system; (2) An IGO must hold regular plenary sessions at least once every ten years; (3) An IGO must possess a permanent secretariat and corresponding headquarters; Pevehouse, Nordstrom, and Warnke 2004.

many formal institutions of their own. During the Cold War, joining international institutions for the most part meant joining a club that was pretty friendly to U.S. interests.

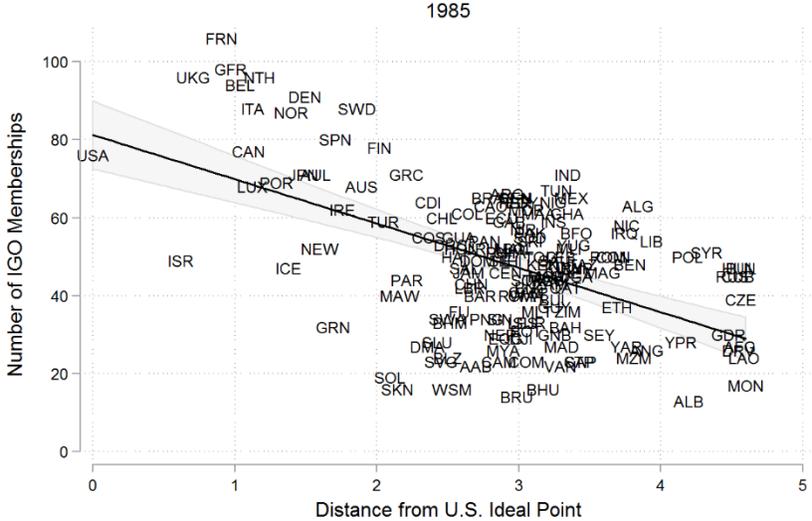


Figure 3: IGO Memberships and Ideological Convergence with the U.S.

This has changed since the end of the Cold War. Figure 4 shows that by 2010 there is no longer a significant correlation between ideological distance from the United States and the number of IGOs a state joins. An ideological adversary of the U.S. is just as likely to become a member of many IGOs as an ideological ally.

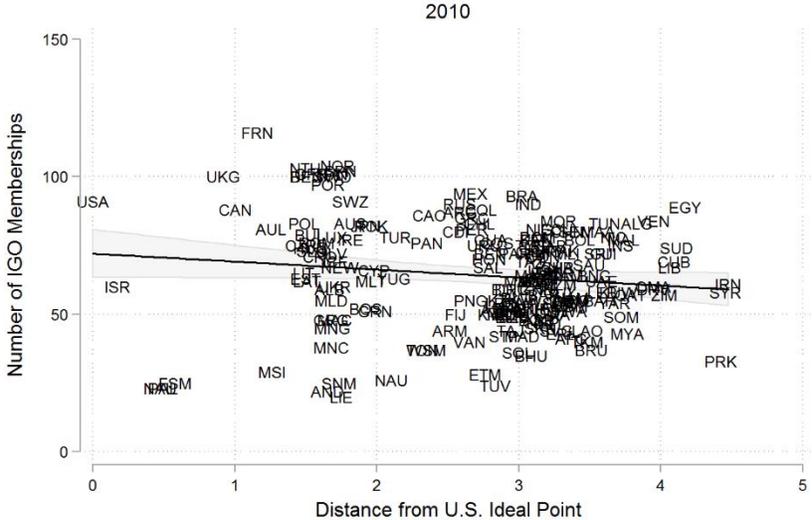


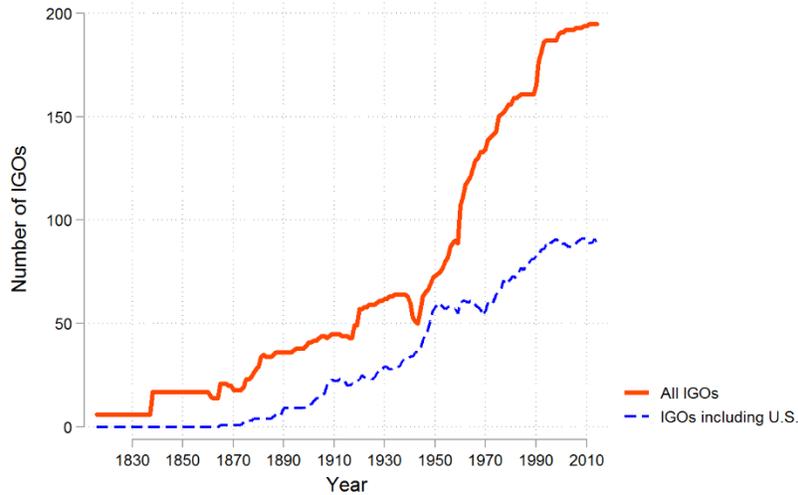
Figure 4: IGO Memberships and Ideological Convergence with the U.S.

To some degree this reflects liberalism's ideological victory. As highlighted in the previous section, the ideological gap at the global level is less severe than it was during the height of the Cold War. No longer are there large groups of states that deliberately want to exclude themselves. China, Brazil, India and other rising states are not opting out of the main global institutions. They do want a bigger say in them. Even Iran would like to become a WTO member. Other than North Korea, there are few countries that explicitly want out.

This inclusion has paradoxically led to increased heterogeneity in the core global institutions. The U.S. has an increasingly difficult time shaping the policies of the WTO, IMF, World Bank and other formal institutions. Countries press for institutional reforms to change voting weights and/or create new institutions that may rival the existing ones. The latest example is the Asian Infrastructure Investment Bank, which the U.S. fears could undermine the World Bank (although other Western states became members). Other organizations, especially the WTO, have institutional rules that produce stalemates.

The commonality is that it is much harder to get agreement in these institutions with more states with diverse preferences. Or, from a purely U.S. perspective: it has gotten more difficult to get these institutions to do the things that the U.S. wants them to. But there is important variation in this. The institutions the U.S. created in the aftermath of World War II have institutional structures that continue to favor the U.S. in a way that newer organizations do not.

The second trend is that many new IGOs do not include the U.S. at all. The figure below demonstrates this. In 1950, the U.S. was a member of almost all existing IGOs, excluding a few regional ones. Between 1970 and 1990, the rest of the world created more IGOs but the U.S. line is flat. The gap between the number of IGOs the U.S. is and is not a part of has never been larger.



Source: Correlates of War IGO data 3.0

Figure 5: Creation of Inter-Governmental Organizations with and without the U.S.

There are similar trends for treaties that do not create formal IGOs. I already discussed human rights agreements. The U.S. has also refused to ratify major legal agreements on climate change (e.g. the Kyoto Protocol) and arms control (e.g. the Nuclear Test Ban Treaty). The Law of the Sea Convention is another major example. These were all initiatives that were joined by most other Western states.

It would be mistaken to see most of these institutions as deliberate attempts to balance the U.S.⁸ The U.S. is free to join most of them and many pursue norms and principles that the U.S. favors. Many of these institutions constrain other states rather than enable them to form strong coalitions against the U.S. The U.S. is less willing to accept these constraints.

Yet, the end of the Cold War changed the incentive structure for institutional politics. Under bipolarity, states had to evaluate not just whether an action is in their short-term national interests but also how their preferred course of action affected the broader struggle against communism.⁹ This provided a lot of glue. Explicitly excluding the U.S. from an institutional initiative would have raised worries about the cohesion of the Western bloc.

⁸ Brooks and Wohlforth 2008. A possible exceptions are smaller organizations like the Shanghai Cooperation Agreement.

⁹ Voeten 2011.

Since the end of the Cold War, states are much freer to pursue their short-term national interests. Excluding or alienating the U.S. does not have immediate security consequences, especially for relatively secure Western states. It is hard to imagine something like the ICC in the midst of the Cold War. U.S. objections would likely have swayed other Western states in a way they could not in the post-Cold War world.

When pointing to the looming danger of communist world domination is no longer a credible option, the United States has to find new existential threats that create common interests (for example, terrorism), offer policy choices that are attractive *sui generis*, or rely on costly coercive methods to get states to do what it wants. In this sense, the end of the Cold War is not really a unique opportunity for the U.S. to reshape the world's institutional architecture to its liking, as some have argued.¹⁰ Yes, the U.S. is the world's single remaining superpower. But there is much less reason for other states to jump on the bandwagon than there was right after World War II.¹¹

III. U.S. Domestic Politics

One solution to the two trends identified above would be for the U.S. to simply join more institutions and create more institutional initiatives. This may make for good international politics. International institutions impose some constraints. Independent international judiciaries or bureaucracies would surely at least some of the time do things that go against U.S. national interests. Yet, their abilities to actually make the world's greatest power do things it really doesn't want to do remain modest at best. Modest inconveniences may well be an acceptable price to pay for maintaining institutional influence and advancing norms and principles that are in the U.S. national interests, such as the Law of the Sea regime.

Yet, such a course of action stumbles upon strong domestic political constraints. It has become virtually impossible to ratify substantively important new multilateral treaties in the U.S. Senate. President Obama has submitted fewer treaties and had fewer treaties

¹⁰ Indeed this is where some liberal institutionalists (e.g. Ikenberry 2009b) and realists (e.g. Brooks and Wohlforth 2008) agree.

¹¹ For a somewhat more in depth exploration of this argument, see Voeten 2011.

ratified than any U.S. President in post-World War II history.¹² Instead, executive agreements have become the modal form of institutionalized cooperation.

There are two related reasons for this. The first is polarization and staunch opposition from especially Republicans.¹³ Treaties require a two-thirds majority in the Senate. This is hard to achieve when a vocal minority opposes anything that resembles a transfer of sovereignty. For example, the U.S. military and business groups strongly support ratification of the Law of the Sea Convention. But 34 senators signed a letter authored by Jim DeMint that said:¹⁴

“[...] we are particularly concerned that United States sovereignty could be subjugated in many areas to a supranational government that is chartered by the United Nations under the 1982 Convention.”

These senators also voted down the UN Convention on the Rights of Persons with Disabilities. DeMint again led the opposition arguing that this issue should be addressed “in a format that does not endanger the sovereignty of the United States.”¹⁵ In reality the Convention merely grants a UN committee a non-binding advisory role. But even the semblance of UN interference with U.S. domestic affairs is enough to garner significant opposition.

Second, ratifying treaties is hard work.¹⁶ The Senate’s agree and consent process takes away legislative time and political capital that could be used for other, perhaps more politically advantageous, legislation. This opportunity cost theory yields some interesting and counterintuitive hypotheses. Presidents should become less likely to advance treaties when their approval ratings are high and when their party controls the Senate because that is the time when they can pass more valuable legislation on domestic issues. Kelley and Pevehouse

¹² Peake, Krutz, and Hughes 2012.

¹³ Ibid.

¹⁴ <http://thehill.com/policy/international/229637-opposition-to-law-of-the-sea-treaty-heats-up> (accessed July 20, 2016).

¹⁵ <http://www.whatthefolly.com/2012/12/05/transcript-sen-jim-demints-floor-remarks-against-the-un-convention-on-the-rights-of-persons-with-disabilities/> (accessed July 20, 2016).

¹⁶ Kelley and Pevehouse 2015.

find strong support for these patterns in their analysis with data from 1967-2008.¹⁷

This argument interacts with what I outlined before. International political changes make it harder for the U.S. to negotiate formal multilateral institutions in which it enjoys a privileged position. Passing any multilateral institution domestically requires political capital that could be expended on domestic political projects. So there is little incentive for the U.S. President to expend much effort on creating new formal multilateral institutions, even for a President who is ideologically predisposed towards such initiatives. The recent surge of populism and anti-globalism in the U.S. (and elsewhere) magnifies these difficulties.

The Future of U.S. Multilateral Leadership

The prospects for new and extensive multilateral treaty initiatives looks bleak. But this does not mean that the U.S. has lost interest in multilateralism altogether. There are three ways the U.S. can provide leadership in multilateral efforts to tackle global challenges. First, by repurposing existing institutions. Second, through exclusionary initiative with coalitions of like-minded states. Third, by supporting inclusive multilateralism outside of formal treaty arrangements. I turn to their potential and limits next.

I. Repurposing Existing Institutions

The U.S. remains reasonably comfortable with the institutions it helped create in the aftermath of World War II. Those institutions have voting and appointment rules that favor the U.S. The U.S. has a veto in the UN Security Council and has long had an effective veto in the World Bank and IMF. It traditionally appoints the World Bank President whereas the IMF top job goes to a European ally. Although recent adjustments curtail U.S. influence somewhat, it remains true that these institutions are very responsive to U.S. interests.¹⁸ The WTO's dispute settlement understanding is more of an innovation over GATT. It rules against the U.S. with

¹⁷ Ibid.

¹⁸ E.g. Dreher, Sturm, and Vreeland 2009; Thacker 1999; Kilby 2009.

some regularity but it is still widely seen as advancing U.S. interests.¹⁹

There are both functional and political limitations to the extent that existing institutions can be repurposed to confront new challenges. Functionally, we must ask whether institutions designed to tackle one problem are equipped to deal with new issues that were not foreseen in their founding treaties? Politically, why would other states go along with U.S. efforts to maintain its institutional dominance? The general answer to both questions is that some of the time repurposing works well and other states are happy to tag along but there are limits to this approach. I will discuss through brief examples.

The Bretton Woods Institutions

The World Bank has a long history of repurposing. It was created to revitalize the economies of Western Europe. It then became an institution primarily devoted to financing large infrastructure projects in Africa, Asia, and Latin America. Its current mission is incredibly complex and includes judicial reform, post-conflict reconciliation, and environmental issues.²⁰ These reforms followed changes in the interests of its principals, most noticeably the United States.²¹

Other states have not always accepted this. There are about two dozen regional development banks each with their own agendas dominated by regional principals.²² The Asian Infrastructure Investment Bank is the latest iteration. One of its primary appeals is, ironically, a return to a focus on infrastructure lending without all the governance, environmental, and human rights requirements that have become so prominent in the World Bank. This competition in turn has forged institutional change at the World Bank.²³

Whether the tools of development banks, primarily project financing, are good ways to tackle challenges like domestic

¹⁹ Although presidential candidate Donald Trump recently suggested leaving the WTO (<http://fortune.com/2016/07/25/donald-trump-free-trade-wto/> accessed July 26, 2016).

²⁰ Einhorn 2001.

²¹ Nielson and Tierney 2003.

²² Lim and Vreeland 2013; Lyne, Nielson, and Tierney 2009.

²³ Lipsy 2015.

institutional reform is another issue altogether. This is, of course, a major functional limitation of repurposing: the danger is that hammers designed for one type of problem are applied to a type of problem for which screwdrivers would have been more appropriate.

The IMF also has a long history of repurposing. Its original primary function was to maintain fixed exchange rate regimes between countries. But these mostly became obsolete after 1971. The IMF has found new purposes in a floating exchange rate environment. It has developed an expanded surveillance and advice role and it has become a lender of last resort, often attaching strong conditions to its loans that are influenced heavily by U.S. foreign policy priorities.²⁴

The IMF has remained somewhat immune from competition by other formal IGOs. It is much harder to create an effective outside alternative to a lender of last resort than to a development lender, although there have been some small-scale regional efforts.²⁵ Consequentially, the IMF continues to be dominated by the U.S. and changes in voting procedures have been slow to come about.²⁶ The U.S. jealously guards its pre-eminence in the IMF. That said, for large scale loans the IMF always coordinates with other powers, such as Japan and the EU. So it certainly does not have a monopoly over bailout loans.

The potential for repurposing the IMF is limited both functionally and politically. While the adage “never waste a good crisis” is a useful one there are still important limits on how the IMF’s leverage in bad times can be used to tackle problems. Moreover, given U.S. dominance, other powerful states are often reluctant to assign more prominence to the IMF.

Security Council

The UN Security Council is another much maligned institution. It has clearly failed to provide collective responses to important crises, with Syria as the most recent example. The Council can’t act when one of its five permanent members objects; thus

²⁴ Vreeland 2003.

²⁵ Lipsy 2015.

²⁶ U.S. Congress did approve a modest shift in IMF voting weights in late 2015; 5 years after the IMF’s Executive Board voted for the change.

producing a stalemate whenever one of the world's great powers is involved in a crisis. Some argue that unipolarity has made the Council ineffective.²⁷

But there is misplaced nostalgia for a foregone era that sometimes leads to unrealistic expectations. The UNSC was mostly irrelevant during the Cold War (since 1950).²⁸ Only in the post-Cold War era has the Council started using its most extensive powers under Chapter VII of the Charter with regularity. The expectation that the UNSC swiftly and efficiently solves massive and complex security problems is not a realistic one. It is, after all, just an arena where the world's major power meet under pre-designed institutional rules.²⁹ The Council can't work when those powers can't agree and was never intended to supersede.

Unlike in development lending, there are no viable competitors to the UNSC. This, in combination with the rules for Charter reform, have limited reform prospects. Many countries want a permanent seat but there is no coordination on one alternative proposal. Moreover, the major states that want reform have been unwilling to play hardball: for example by threatening to withdraw support for the UN has constrained reform efforts, unlike the U.S., which applied this tactic with some success in the mid-1990s over dues reform.³⁰ It is doubtful that an uncertain reward of UNSC membership is worth the risks associated with playing hardball.

Yet, even without institutional reform there has been quite a bit of repurposing. This is especially true in the area of peacekeeping. The UN Charter does not foresee peacekeeping. During the Cold War, peacekeeping was mostly about putting small neutral forces in between warring parties. Since then peacekeeping and peacemaking have become complicated multi-dimensional and very extensive operations. There is evidence that peacekeeping on average improves the likelihood of a lasting peace after a civil war.³¹ This is a massive achievement that should not be underplayed.

²⁷ Glennon 2010.

²⁸ Haas 1983.

²⁹ Voeten 2005.

³⁰ Nossel 2001.

³¹ Fortna 2008.

Post-conflict justice is another example of U.S. led UNSC repurposing. The U.S. took the initiative for the criminal tribunals for the former Yugoslavia and Rwanda, which were the first international criminal tribunals since Nuremberg. They were created by the UNSC with somewhat questionable legal foundations in the UN Charter. The ICC was a response to the limits of this UNSC oriented approach. The critique was that non-permanent conflict specific tribunals that had to be created by the UNSC would not have a strong deterrent effect and would be subject to political considerations.

Terrorism provides another lesson for the limits and potential of U.S. led UNSC repurposing. Resolution 1373 establishes the Security Council's Counter Terrorism Committee. It includes legally binding measures that affect countries' immigration policies and that create a blacklist of suspected terrorists whose access to banking systems across the globe is revoked. This resolution is a semi-legislative act with shaky legal foundations in the UN Charter.³² It imposes legally binding obligations on member states even if they had no representation in the UNSC.

The resolution has also been subjected to legal challenges in the Court of Justice of the European Union (CJEU). In the *Kadi* judgment, the CJEU found that the EU's implementation of the resolution violated the rights of EU citizens because there was no effective judicial review of Security Council decisions to freeze bank accounts.³³ The court was careful to point out that it did not, and could not, overturn a Security Council resolution. Yet, the UN Security Council had to overhaul its practices for providing remedies to those who claimed their inclusion was in error. There is no judicial review of UN Security Council resolutions. This episode illustrates how difficult it is to repurpose the Council for tasks that require some form of global legislation or a substitute for a global formal treaty.

We should not underestimate the UNSC's ability to repurpose for some issues, most notably peacekeeping. But its tools are also clearly inadequate for other issues. Consider cybersecurity. The principal UNSC members have diametrically opposed views.

³² Happold 2003.

³³ Kokott and Sobotta 2012.

Moreover, it is unclear what a UNSC resolution could even accomplish. As such, this is an issue much more likely to be tackled through informal networks (see below).

WTO and Trade

The WTO's institutional structure is not set up for repurposing. Changes to its Articles of Agreement require consensus. This appeared possible early on. The TRIPS agreement expanded the WTO into the area of intellectual property rights. Yet, that agreement also led to considerable pushback, especially from developing countries. The Doha round has been stuck for a decade and a half.

While repurposing through the articles of agreement appears unlikely, there are some more informal routes through which this can occur. Most notable among these possibilities are interpretation by the appellate body of the WTO's Dispute Settlement Understanding. The U.S. has lobbied vigorously and has used its influence in the appointment process to keep WTO panelists from applying broader legal principles than those in the Articles of Agreement. Yet, the U.S. has also filed disputes in areas that were not foreseen but to which traditional trade law still applies. Disputes with China over E-commerce are an obvious example.³⁴ Still there are also ways in which WTO law is ill at ease with e-commerce disputes.³⁵

II. Exclusionary Multilateralism

A second approach is that the U.S. could opt to shape global rules and norms by acting with smaller coalitions of states or even unilaterally. Let me be clear what I mean with this. The U.S. often acts with "coalitions of the willing," which are groups of states that cooperate on specific issues. The war in Iraq is an example. Given their ad hoc character I don't consider these institutionalized forms of cooperation, although institutions like NATO often play a role in creating coalitions like this.³⁶ Moreover, unilateral or coalitional efforts like this are not about influencing global norms and rules.

³⁴ Delimatsis 2011.

³⁵ E.g. Weber 2010.

³⁶ Kreps 2011.

But there are examples where rules in small clubs or exterritorialy applied U.S. rules can shape global rules and norms.

One approach is the proposed Trans-Pacific Partnership (TPP). This is a trade treaty between various pacific nations (broadly conceived) that tackles a set of issues on which the WTO has failed to make progress. It also creates a new dispute settlement system, including for investment disputes. It thus regulates new challenges, including labor and investment rules.

U.S. President Barack Obama made the case for this treaty in the following way:

“When more than 95 percent of our potential customers live outside our borders, we can’t let countries like China write the rules of the global economy. We should write those rules, opening new markets to American products while setting high standards for protecting workers and preserving our environment.”³⁷

The TPP’s purpose is to get better market access for U.S. exporters but at terms that favor U.S. ideology over those of a rival state: China. This is why the U.S. partners with like-minded states (e.g. Canada) and states that depend greatly on access to the U.S. market (e.g. Vietnam). If the TPP is successful perhaps others will be willing to pay the price of adhering to the TPP’s rules.³⁸ The U.S. uses the leverage created by its large market to create an institution that advances its ideology. If it is successful, then this smaller institution may *de facto* set rules for the world economy.

An alternative approach are more informal clubs like the Basel Committee on Banking Supervision. The U.S. uses its financial market power to effectively write rules for the global banking industry with just a few other states.³⁹ The Basel Committee’s recommendations are enforced through national (or EU) authorities. Since essentially all banks that operate internationally require access

³⁷ Statement by the President on the Trans-Pacific Partnership <https://www.whitehouse.gov/the-press-office/2015/10/05/statement-president-trans-pacific-partnership> (accessed 10/16/2015).

³⁸ For a similar logic, see Downs, Rocke, and Barsoom 1998.

³⁹ Oatley and Nabors 1998.

to just 4 or 5 main financial centers, a small club of governments can effectively set regulations for all states.

The success of these approaches depends on market size being a sufficiently powerful attractant. It is thus limited by issue area. Indeed, in many issue areas the U.S. actively worries that plurilateral initiatives undermine global institutions like the World Bank and the IMF. Further NATO expansion is perceived as risky. The U.S. has not developed formal plurilateral security initiatives with other parts of the world, although informal clubs like the G20 play an ever greater role.

Moreover economists have long worried that arrangements like TPP create blocs with special privileges and thereby undermine the aspiration for global free trade.⁴⁰ If the TPP works well, its members should start trading more with each other, perhaps at the expense of China or other non-member states. Although trade is not necessarily a zero-sum game and trade diversion is not a necessary consequence of all PTAs, preferential tariffs discriminate against non-members. Convergence in the standards and rules among TPP members widens the gap with outsiders. Differential rules and tariffs may, for example, lead factories to locate in Vietnam rather than China if they seek U.S. market access. Empirical research shows that anti-dumping actions become less likely among Preferential Trade Agreement (PTA) members, while the creation of a PTA increases anti-dumping scrutiny for non-members.⁴¹ There could be security consequences as well. For example, Peterson shows that export losses due to exclusion from PTAs correlate with increased probability of militarized disputes within dyads.⁴²

Finally, national enforcement of transnational activities is often perceived as unilateral. The U.S. has been quite active in exerting extraterritorial jurisdiction: meaning that it enforces U.S. law on transactions that occur abroad.⁴³ For example, fines in the hundreds of millions of dollars have been levied against non U.S. firms for bribing foreign government officials outside of the U.S., because the Security and Exchange Commission gains jurisdiction when a firm

⁴⁰ Bhagwati 1992.

⁴¹ Ibid.; Prusa and Teh 2010.

⁴² Peterson 2015.

⁴³ Putnam 2009.

trades stocks in New York. This can be seen as an attempt to impose U.S. anti-corruption laws on the rest of the world.⁴⁴

In short, plurilateral initiatives and the use of national jurisdiction can in some cases effectively use U.S. market power to spread rules and norms around the world. This is a confrontational approach with its downsides.

Inclusive Multilateralism without Treaties or Formal Delegation

A more inclusive approach is to have global agreements that define common principles but that refrain from extensive international legal obligations or an intrusive supranational bureaucracy. Examples are the Millennium Development Goals (MDGs) and its successor the Sustainable Development Goals (SDGs) as well as the Paris Agreement on Climate Change.

These types of agreements can be important in coordinating member state and IGO policies. For example, the MDGs affected donor funding priorities (including those of the World Bank) as well as recipient country spending priorities. I'll stay out of the debates on whether this was a good thing.⁴⁵ But when the time came to renegotiate the goals in 2015, all states wanted their preferred indicators included (or non-preferred indicators excluded). For example, the U.S. fought hard to include indicators on corruption, governance, and women's rights in order to shape the future development agenda.

At the same time, such agreements can do little to ensure member state compliance. The MDGs or SDGs do not create international legal obligations nor are there material penalties for non-compliance. By making the goals measurable, the hope is that social accountability processes will induce member state efforts. But there is little institutional machinery associated with it.

Similarly, the Paris agreements are very important in that they are the first time all major polluters, including China and the United States, have agreed on a common approach. Yet there is no

⁴⁴ The US Foreign Corrupt Practices Act dates back to 1977. Bribes to foreign government officials were tax deductible in many European countries until the early 1990s. The OECD anti-bribery Convention dates to 1998.

⁴⁵ For a critical perspective see Easterly 2009.

legal or enforcement machinery to back up these goals. Implementation is mostly left to the national level, although the agreement is embedded in existing institutional infrastructure through the United Nations Framework Convention on Climate Change (UNFCCC).

In this sense, both the SDGs and the Paris agreement build on existing institutional infrastructure and are a form of repurposing. But they do not use the legally binding aspects of existing institutions nor do they create new international bureaucracies or judiciaries with oversight, dispute settlement and enforcement roles. One should not overestimate the importance of enforcement in a world where states can voluntarily sign on to or opt out of legal commitments. For example, the Kyoto agreement contributed little to efforts to reduce global warming as states selectively opted in and out of the agreement. Yet, it does mean that a major public goods problem like global warming is attacked with a fairly minimalist institutional framework where most of the action is at the national level.

The construction of the Paris agreement was a direct response to the three trends identified above, although similar objections from China also played a role. It would have made little sense to have an agreement that did not include the U.S. and China, the world's largest polluters. So domestic resistance in those countries to supranational initiatives shapes the global agenda.

Conclusion

I identified three trends that make it unlikely that the U.S. will take the initiative to create new formal multilateral institutions with independent authority, or even join the ones that currently exist and to which it is not a party. I then highlighted three ways the U.S. seeks to shape global rules and norms that address new challenges: by repurposing existing institutions, creating exclusionary initiatives, or inclusive but soft multilateral initiatives. Each have their promises and pitfalls

Repurposing existing institutions can be useful. It is easy to be overly dismissive of the current system. There is a decent case to be made that it handled the financial crisis reasonably well

(compared to past crises),⁴⁶ that peacekeeping and other institutional activities have reduced the impact of war,⁴⁷ and that poverty and life expectancy have increased in part due to the stabilizing influence of the WTO, which allowed especially China and India to grow economically and improve the lives of hundreds of millions of people. Even if these institutions are inadequate at meeting some challenges, it would be imprudent to dismiss them altogether.

We should also not exaggerate how effective these institutions have been in the past. With few exceptions, such as the WHO-led eradication of small-pox and some peacekeeping operations, IGOs were rarely able to take massive actions that solve big problems. More often their role is to create structural conditions under which more stable and productive interstate interactions are possible. The WTO is a good example. It transforms U.S. China relations by subjecting renewal of MFN status and contentious trade disputes to institutional rules.⁴⁸

The U.S. will continue to favor the institutions where it has built in power advantages. These structural advantages are most pronounced where it is harder to create effective outside options. For example, it is relatively easy to create a multilateral development bank that can rival the World Bank but much harder to create competition for the IMF or Security Council.

Yet, the U.S. must also realize that even without veto rights or similar structural advantages some of these institutions provide a good deal. The UN Convention on the Law of the Sea (UNCLOS) is the most important example. U.S. recognition of parts of UNCLOS as customary international law is not a perfect substitute for a U.S. that is actively integrated into and committed to the system. UNCLOS has the potential to positively structure potentially contentious interactions between states but it will be harder to do this without the U.S. as part of the system.

Exclusionary initiatives are an attractive substitute for the U.S. where it has sufficient market power to effectively set global rules alone or with a few other states. Especially U.S. financial market power combined with the application of extraterritorial

⁴⁶ Drezner 2014.

⁴⁷ Pinker 2012.

⁴⁸ Carnegie 2015.

jurisdiction can be effective to set rules for the globe. Yet, this approach is limited to policy areas where U.S. market power is indeed sufficient. Moreover, when multiple actors start applying these tactics the outcome could be less beneficial to the U.S. and/or the world. The creation of TPP could create competing trade blocs that undermine global trade.

Moreover, especially European courts have also started to issue judgments that affect interstate relations. Recently the CJEU found that a major agreement between the EU and the United States on internet governance, the Safe Harbor agreement, violates the privacy rights of European citizens.⁴⁹ The court expressed concern that data stored on U.S. servers could be subject to National Security Agency (NSA) spying without the kind of judicial oversight guaranteed by the Fundamental Charter. The commercial implications are enormous, given that the business models of many U.S. firms depend heavily on being able to transport data across borders. The U.S. is unhappy about the CJEU's interference but of course other actors have been similarly frustrated over judgments by U.S. courts. The consequences of increasing the role of courts in foreign policy should be thought through carefully.

E-commerce and cybersecurity are good examples of issues that will be subjected to a patchwork of institutional approaches. There is no prospect for a multilateral treaty-based approach. I have highlighted several examples throughout this paper where existing institutions have attempted to regulate some aspects of these issue areas. Yet the tools of these institutions are limited. Hence we see plurilateral initiatives, clubs, and national courts and regulators trying to exert influence across borders. Moreover there are attempts to reach soft inclusive multilateral agreements that should coordinate state policies amidst considerable discord.

These types of multi-faceted approaches are going to be commonplace ways to deal with new challenges. The downside is that various efforts at creating rules or shaping norms are not well coordinated or could even undermine each other. The upside is a less centralized approach. The history of centralized global efforts to

⁴⁹ C 362/14 Maximilian Schrems v Data Protection Commissioner, October 15, 2015.

tackle major problems is not mired with successes so we should not be overly dramatic about its absence either.

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