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# Innovations in Global Governance

Peace-Building, Human Rights,  
Internet Governance and Cybersecurity, and Climate Change

Deborah Avant, Susanna P. Campbell, Eileen Donahoe, Karen Florini,  
Miles Kahler, Mark P. Lagon, Tim Maurer, Amol Mehra, Robert C. Orr,  
Jason Pielemeier, and Sarah Sewall

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# Innovations in Global Governance: How Resilient, How Influential?

*Deborah Avant, Miles Kahler, and Jason Pielemeier*

Two political movements, transnational in scope and promoting divergent views of global governance, have recently collided. Over the last three decades, a diverse collection of actors—private corporations, nongovernmental organizations (NGOs), and subnational (state, provincial, and urban) governments—has developed and promoted a global agenda of collective action. From advancing human rights to combating climate change, these actors have become new governors in world politics. More recently, a second movement—a loose array of populist and nationalist groups and governments—has questioned the forward momentum of institutionalized global cooperation. Brexit, followed by the Donald J. Trump administration’s withdrawal from the Trans-Pacific Partnership and the Paris Agreement on climate change, as well as proposed cuts in U.S. contributions to the United Nations and development assistance, suggest a weakening—if not undermining—of the network of treaties, institutions, and relationships constructed over the last seventy years.

Each of these movements aims to transform a global order based on intergovernmental agreements and institutions. The first movement has already done so by increasing participation in global governance of new actors who are pursuing cooperative outcomes in collaboration with and independently of national governments and intergovernmental organizations (IGOs). Their involvement both complements and complicates the traditional international order. The second movement, in contrast, asserts national interest and sovereignty against the constraints of global governance.

Although the conflict between these two movements remains unresolved, they will likely shape the future global order. The eight memoranda that follow, commissioned for a Council on Foreign Relations workshop, examine innovations in global governance across four critical issues on the global agenda: peace-building, human rights, the cyber domain, and climate change. These memoranda, by leading practitioners and researchers, describe the landscape of global governance in each area; estimate sources of resilience and disruption, including those from nationalist and populist political pressure; and chart innovations that could improve the effectiveness of global governance.

## *THE EMERGING LANDSCAPE OF GLOBAL GOVERNANCE*

NGOs, corporations, and subnational governments have long attempted to influence global governance, but in most issue areas their influence has been exerted through national governments and IGOs. Recently, as documented in these memos, the role of the former in global governance has become both more substantial and more direct. In part, the involvement of a broader array of actors in governance has followed from the increasing complexity of these issue areas. For instance, as documented by Mark P. Lagon and Eileen Donahoe, efforts to protect human rights have expanded beyond civil and political

rights to include transnational phenomena such as human trafficking, global health (infectious disease), and internet freedom. None of the four issue areas is dominated by a single IGO or cluster of IGOs; such fragmentation has produced more access points for new actors.

NGOs play different roles in these global governance innovations. Advocacy organizations have long been active in pressuring governments and businesses to adopt appropriate behavior in support of human rights and protection of the environment. Less visible but no less influential are NGOs that implement policy and those that are involved in capacity-building and knowledge transfer in several issue areas, particularly peace-building. Technical advisory and standard-setting bodies constitute another arena for nongovernmental action that is increasingly important in climate change and internet governance.

The private sector is perhaps the most pivotal in internet governance and cybersecurity, where decisions of companies such as Google and Facebook influence governance on the internet and private organizations—such as internet registries and the Internet Corporation for Assigned Names and Numbers (ICANN)—participate in governance of the internet. The commercial importance of the internet is not replicated in the other issue areas, but the role of business in arresting climate change has grown in importance. As Karen Florini suggests, corporations that actively support the Paris accord are unlikely to change course, even after the U.S. government withdraws from the agreement. Climate change has unavoidable consequences for the corporate bottom line. Where implications for corporate performance are less clear, recent business activism has been more episodic. As the human rights agenda has expanded, human rights NGOs and advocates in such areas as human trafficking, labor rights, and global health have increasingly targeted businesses as possible allies in achieving their goals. In peace-building, although economic development is part of the governance mandate, corporations have been most important as contractors, rather than investors, with a growing role in the implementation of peace-building programs. Private security companies in particular have enjoined to adopt conflict-sensitive and rights-respecting policies and to encourage peace-building efforts.

While subnational governments have played a lesser role in internet governance and human rights, areas in which national governments have asserted primary jurisdiction, they are more visible in efforts to address climate change. The C40, for instance, is a network of megacities that coordinates urban policies to mitigate climate change. Subnational governments can also play important roles in peace-building. Sarah Sewall's advocacy of micro-peace-building and Susanna P. Campbell's criticism of prevailing top-down prescriptions point to peace-building strategies that are more focused on local actors, governmental and nongovernmental. Local governments can influence conflict outcomes, as demonstrated in Northern Ireland, where the willingness of local police to refrain from sectarian favoritism resulted in less violence.<sup>1</sup>

Across these four issue areas, one innovation in global governance has been the emergence of less formal, creative multilateral organizations in response to the existing slow-moving, formal intergovernmental mechanisms. These institutionalized coalitions of the willing have proved to be useful instruments for collective action. The Community of Democracies and the Open Government Partnership concentrate on governance and human rights. The Proliferation Security Initiative has provided a networked response to emerging nuclear security issues. Several such groups address different dimensions of internet governance: Freedom Online Coalition, Global Commission on Internet Governance, Global Conference on Cyberspace/Global Forum on Cyber Expertise, and Internet Governance Forum. The organizations that Florini categorizes as Paris Agreement “relatives” (such as the Green Climate Fund and NDC Partnership) and as non-Paris plurilateral and multilateral initiatives (such as the Clean Energy Ministerial and the Climate and Clean Air Coalition) also occupy this category.

Some of these governmental groups, though not all, are more open to partnership with NGOs and corporations.

Multistakeholder initiatives, which have proliferated in recent years, constitute a more radical departure from conventional global governance.<sup>2</sup> Some, such as the Voluntary Principles on Security and Human Rights, include governments; others, such as the Global Network Initiative, do not. Their missions are often focused on improving corporate conduct, as exemplified by the International Code of Conduct Association (ICoCA), which governs private security providers. Such arrangements, described by Donahoe as “open, multistakeholder, and merit-based,” have become a principal format for governance of the internet. Particularly in the environmental and climate space, similar innovative institutions set standards for corporations and subnational governments. As Tim Maurer describes, in this model of global governance, national governments are “part of a broader ecosystem of actors that have influential and decisive roles.”

Although some observers view this new landscape as one of fragmentation and lacking in common purpose, others tend to agree with Florini that it is a “glorious profusion of state, nonstate, and hybrid entities.” These divided opinions characterize the distinction between governance of the internet (its technical infrastructure), where multistakeholder innovations have worked well and have received the support of most governments, and governance on the internet, which Donahoe views as experiencing “conceptual confusion about governing roles and responsibilities,” as well as an assertion of sovereign control.

#### *GLOBAL GOVERNANCE INNOVATIONS: DISRUPTION AND RESILIENCE*

Political movements and national leaders intent on reasserting national sovereignty and questioning the value of global governance institutions are only the latest political disruption faced by the IGO-centered global order. Proponents of untrammelled markets have questioned the value of the International Monetary Fund and the World Bank since the 1980s; anti-globalization activists on the left, on the other hand, continue to reject the support offered by the Bretton Woods institutions for regulated capitalism. The Group of Twenty (G20) summit in Hamburg reflected these competing challenges: the U.S. president held fast to his rejection of the Paris climate accord and his acceptance of protectionism as anti-globalization demonstrators filled the streets.

The populist and nationalist backlash against globalization and existing global governance institutions should not be overstated: the Conservative Party’s loss of its majority in the latest British election and the victory of Emmanuel Macron, an outspoken supporter of global cooperation, in the French presidential elections suggest its limits. Nevertheless, a shift in U.S. policy appears to be underway, and whatever the future of President Trump and the coalition he represents, the effects on other political actors could persist. Overall, the disruptive effects of nationalist or sovereigntist retrenchment in global governance appear greater and more immediate in arenas in which national governments and intergovernmental action remain dominant. Recent innovations in global governance, themselves both a product and a source of disruption in the older, IGO-centered model of global governance, could provide resilience in the face of nationalist challenges. In other words, innovation could produce greater stability in the face of domestically driven change in national policies.

Peace-building and human rights are much more susceptible to governance stagnation in the face of recent changes, since national governments remain central to both. An inward turn by the industrialized states could produce a setback in peace-building efforts at a time of major crises in South Sudan, Syria, and Yemen and long-standing conflicts in Afghanistan, Iraq, and Somalia. In contrast to NGOs or private foundations, national governments have the resources and political stature to promote the existing global agenda in peace-building; domestically driven retrenchment on the part of the most powerful states would diminish funding for this sector. In addition to flagging national commitment, Campbell and Sewall both point to other long-standing sources of ineffectiveness. For Campbell, IGOs and the national governments that support them often produce one-size-fits-all rules that do not take account of local contexts in which peace is to be built. Reduced effort on the part of influential national governments might, therefore, produce space for innovations that could eventually lead to greater effectiveness. For Sewall, the privileged role of host governments—the very governments participating in or emerging from conflict—has often obstructed peace-building efforts.

Innovations in human rights have been associated with liberal democratic states, and according to Lagon, governments and intergovernmental agreements remain essential actors in forwarding the human rights agenda. Retrenchment by powerful democracies will affect support for civil and political rights in particular. Amol Mehra points out the essential role of governments in enforcement of human rights standards, a role that nonstate actors cannot replace. In this issue area, unlike climate or trade, emerging powers, such as China, will not provide new leadership; in some cases, they will likely support inaction under the guise of noninterference in domestic affairs.

Even before the latest wave of nationalist and populist movements in Europe and North America, Maurer points out, increased concern over cybersecurity had contributed to renewed efforts by national governments to reassert control over internet governance. As Donahoe describes, though, the inherent transborder nature of the internet, the fact that digitization has such widespread effects, and the degree to which the private sector is deeply entrenched in digital governance have shaped governance in the digital domain for some time. These very features could also promise future resilience.

After President Trump announced that the United States would withdraw from the Paris Agreement on climate, one might have anticipated pessimism about global governance of climate.<sup>3</sup> However, U.S. policy change is less of an immediate threat in future governance of this issue area than others, since climate governance has witnessed the greatest innovation. As Florini points out, the Paris Agreement “remains in force regardless of whether the United States remains a party to it.” The G19+1 outcome of the 2017 Hamburg summit confirmed Florini’s assessment that the Paris Agreement remains robust.<sup>4</sup>

More important, although national governments are signatories to the agreement, their accord expressly recognizes both additional multilateral arrangements that aim to prevent climate change as well as the role of nongovernmental and subnational actors. Put differently, the Paris Agreement is only one element of climate governance. As Florini documents, the range of nonstate and subnational actors in this field is large and growing. Robert C. Orr explains how this complex and diverse ecosystem is in part the result of a conscious effort by the United Nations to construct alternative governance mechanisms in the wake of unsuccessful multilateral negotiations. That ecosystem will remain—and likely grow—even in the absence of commitment or activism by some national governments.

Greater resilience to nationalist rollback is most likely in arenas of global governance where national governments are less dominant. Some of the disruptors to global governance that led to innova-

tion also promise resilience to national policy change. Where national governments have been less central from the beginning or have been slow to act, more space has opened for local governments, private firms, and NGOs to devise new modes of governance. Governance of the internet, with its long-standing multistakeholder models, and the diverse ecology of climate governance are prime examples.

### *REIMAGINING GLOBAL GOVERNANCE: FUTURE INNOVATION*

To provide insurance and amplify resilience in the face of political uncertainty, more innovation in global governance will be required. Even in issue areas such as human rights that have depended on the support of national governments, innovation can provide additional supports in specific sectors. As Mehra points out, reimagining the corporate role to include enhancement of human rights has led to new governance arrangements that have had some success in modifying the behavior of private security providers (ICoCA, for example). Prominent corporations in the cyber domain have at times shown greater attention to human rights in that sector than their governments have. Mehra urges continued efforts along these lines.

In their endorsement of micro-peace-building and the empowerment of local actors, Campbell and Sewall highlight the importance of local initiatives. Campbell argues that all successful peace-building is local in the sense that it is designed to address the specific needs, opportunities, and strengths of particular conflict-affected institutions, enabling the localization of global norms. To carry out these nuanced interventions in dynamic conflict-affected contexts, global bureaucracies need to become more nimble and creative at the local level. Sewall suggests the importance of small-scale, indigenous efforts for peace-building success. Innovation might also solicit additional sources of support. The private sector—whether security companies or local businesses—can also behave in ways that exacerbate or ameliorate violence. In Colombia, parts of the private sector played important roles in the peace process.<sup>5</sup> NGOs, particularly those well integrated into the local setting, could nudge host governments (as well as other armed actors) toward better behavior.<sup>6</sup>

Innovations in climate governance could provide models for other issue areas. Orchestration by the United Nations, important in forging the Paris Agreement model in climate governance, might also serve to enable peace-building innovations. A transfer of the multistakeholder models of ICoCA, ICANN, or the Climate Action Network, which coordinates NGOs in order to influence other actors, would be a more ambitious undertaking.

Successful innovations have several common characteristics. First, they mobilize a diverse set of actors. Second, while they reflect strong commitments to principles, they also feature flexible processes that allow rapid responses to a changing environment. Third, although they have typically emerged as a result of nongovernmental and subnational agency, they have also generated support from national governments and IGOs. Finally, and particularly in the internet and climate domains, these innovations gain credibility from their foundation in demonstrated expertise.

Such innovations have grown in prominence, particularly when dealing with issues that have recently emerged on the global agenda. Pessimists might describe this as a consequence of the traditional global order's impending collapse in the face of political opposition, with plucky but ultimately impotent initiatives appearing in the cracks of an otherwise crumbling facade. However, innovation has the potential to be more constructive and influential.

Sympathetic observers are divided. Some see these new actors and institutions as adding to the resilience of global governance. Nevertheless, they remain dependent on IGOs and national governments for their effectiveness. As Orr implies, the multistakeholder concert can benefit greatly from an IGO conductor, such as the United Nations, in arriving at the right tune. Others believe these innovations could lay the foundation for a new architecture of global governance. It is too early to evaluate these divergent assessments. For now, it would perhaps be best to regard these innovations in global governance as scaffolding (to borrow a term from Sewall): new structures that can both prevent collapse and facilitate renovation.

## ENDNOTES

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# Global Accountability and Local Peace-Building

*Susanna P. Campbell*

Over the past two decades, international peace-building has become entrenched in the rules-based international order established in the aftermath of World War II. This entrenchment has taken two forms: one, peace-building, inclusive of peacekeeping, has become a primary response to civil war and political violence; and two, peace-building has relatedly become a focus of many intergovernmental organizations (IGOs), international nongovernmental organizations (INGOs), and states that are central to the liberal world order. With the recent populist surge in the United States and Europe, the survival of the liberal world order and its institutions is under increasing threat, and with them the international peace-building capacities embedded within.

Despite their commitment to saving the lives of the most vulnerable populations, the core institutions of the liberal world order—IGOs, Western INGOs, and Western donors—have been widely criticized for serving global elite interests, not those of impoverished populations.<sup>1</sup> The scholarship on international peace-building has been at the forefront of these critiques.<sup>2</sup> The United Nations, an IGO, has been criticized for its preoccupation with member state political processes, which inhibit the organization's capacity to work effectively with conflict-affected populations.<sup>3</sup> Elsewhere, Western donors have strengthened state institutions at the expense of society and failed to make peace-building central to their development cooperation.<sup>4</sup> INGOs, in turn, are often preoccupied with competition and donor priorities instead of responding directly to the local populations they claim to transform.<sup>5</sup> In other words, all of these institutions have been widely criticized for their inability to support effective peace-building at the local level.

Improved peace-building success is unlikely to result simply from reinforcing these global institutions through top-down approaches. Instead, success will likely come from crucial innovations that better enable these organizations to respond to the local-level institutions that they aim to transform. And such local-level accountability results from what might be characterized as bad behavior of individual country office staff who bypass the formal, upward accountability mechanisms to establish informal local accountability with critical domestic stakeholders and institutions.

## *CONCEPTUALIZING PEACE-BUILDING*

Even though most civil wars today have international dimensions, they happen at the local level.<sup>6</sup> Civil wars most affect local populations that have little power in the global system. International peace-building aims to address this domestic inequality, transforming the institutions that caused a civil war into those that can sustain an equitable peace. Successful international peace-building “is a counterrevolutionary or revolutionary event. A civil war revolutionizes the polity, society, economy, and culture. . . . To create a self-sustaining peace, peace-building has to reverse all that.”<sup>7</sup>

Peace-building is an umbrella term that describes various interventions in countries affected by political violence. Peace-building interventions aim to prevent violence and relapse into violence after

conflict, and to create conditions for sustainable peace.<sup>8</sup> Peace-building occurs at the local level. Local, as used here, is synonymous with domestic or subnational and refers to activities or institutions that occupy a specific geographic or cultural space within the conflict-affected country.

Over the past few decades, international peace-building has become big business for many global governors.<sup>9</sup> Global governors are those “who exercise power across borders for purposes of affecting policy,” such as IGOs, INGOs, states, and multinational corporations.<sup>10</sup> Since then UN Secretary-General Boutros Boutros-Ghali introduced peace-building in the early 1990s, the number of IGOs, INGOs, and bilateral donors in the space has grown rapidly.<sup>11</sup> Many organizations that were founded to do development or provide humanitarian assistance now count peace-building as a core objective.<sup>12</sup> Private companies are also increasingly focused on international peace-building, either as subcontractors for international donors or as part of a commitment to corporate social responsibility. Even militaries now do significant peace-building work in the name of counterinsurgency or “winning hearts and minds.”<sup>13</sup>

Under the umbrella of international peace-building sits a broad range of potential activities. Because the causes of civil war and large-scale violent conflict are multifaceted and reverberate through all institutions in a state and society, almost any type of activity implemented in a war-torn country has the potential to qualify as a peace-building activity, given the appropriate spin. Rebuilding roads, constructing schools, training judges, building local courts, equipping police forces, providing seed funding for small businesses, establishing truth and reconciliation commissions, launching military attacks, developing taxation offices, and training leaders in conflict resolution techniques all qualify as peace-building activities. The implementing organization simply has to claim that its activities address a specific driver of conflict or peace in the country in which they are implemented.<sup>14</sup>

Although a broad set of activities could qualify as international peace-building, a standard set of supply-driven activities has emerged as the field has grown.<sup>15</sup> Standardization, professionalization, and measurement have taken over. These activities focus on reform of the security sector, including the police, military, and intelligence; reform of the judicial system and development of conflict resolution capacities; development of mechanisms to address crimes committed during the war (transitional justice); development of representative state institutions (promoting good governance); and creation of economic development at all levels of society through macroeconomic reforms.<sup>16</sup>

### *WHEN THE GLOBAL MEETS THE LOCAL*

In countries where the government is strong, represents the majority of the population, and delivers social services throughout its territory, the state and society can enable local-level change. But these strong democratic states are not where the majority of peace-building happens. Peace-building most often takes place in countries where the governments are not strong enough to ensure that international mandates and goals address the particular causes and manifestations of the country’s conflict. In these contexts, global governors often respond primarily to the preferences of states and global elites, often ignoring the perspectives of civil society, local communities, or opposition parties. What is needed is local accountability beyond the host state to enable global governors to be relevant to the needs, capacities, and preferences of the specific local institutions that they aim to transform.

Informal local accountability is realized when the country office of an intervening organization delegates authority to local actors that represent the diversity of interests in the organization’s peace-building intervention(s). Like informal governance mechanisms, informal accountability can manifest

in different ways.<sup>17</sup> The important distinction is that informal local accountability gives local actors authority to sanction the intervening organization for failing to achieve its aims in the country context. For example, the Integrated UN Office in Burundi was able to achieve its peace-building aims when it established these informal local accountability mechanisms. Its Cadre de Dialogue project—which facilitated dialogue among Burundi’s political parties between 2007 and 2009—established a monitoring group made up of individual participants who represented the diversity of the political spectrum.<sup>18</sup> Through this informal local accountability mechanism, the UN Mission in Burundi was able to ground part of its globally derived mandate in Burundi’s local reality.

### *THE IMPORTANCE OF BAD BEHAVIOR*

When country offices create informal local accountability, they do so because individual staff take the initiative to do so.<sup>19</sup> Delegating authority to local stakeholders, however, inevitably requires that these individuals bypass standard operating procedures that were created to ensure the country office’s accountability to the organization’s headquarters and its principals, not local stakeholders. As a result, the success of international peace-building relies in part on the willingness of individual agents to contravene the formal routines established by their superiors to hold them accountable.<sup>20</sup> In other words, seemingly bad behavior is necessary for good performance. As a *New York Times* op-ed by a former UN staff member argued, “Too often, the only way to speed things up is to break the rules.”<sup>21</sup>

In the face of decreasing support for international aid, multilateral organizations, and nongovernmental efforts, it is particularly important to support efforts to create informal local accountability and to better understand the seemingly bad behavior that enables it. By circumventing the standard operating procedures, innovative staff are able to give authority to local stakeholders in conflict-affected countries to hold the global governors accountable for local outcomes. Nonetheless, not much is known about who these rule breakers are and what enables them to build effective informal local accountability mechanisms. Other questions pertain to which type of rule-breaking behavior enables effective peace-building and which type undermines it, whether particular personalities are likelier to innovate than others, and if social networks facilitate or undermine rule-breaking behavior.

Understanding innovations in peace-building thus requires further study of the individual staff who enable global governors to perform positively. Top-down policy approaches only reinforce the hierarchical formal accountability of global governors. Instead, efforts should be made to understand and support innovative individuals who make these global organizations responsive to the local realities that they aim to transform.

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# Peace-Building and Global Governance

*Sarah Sewall*

The global governance of peace-building faces several challenges. One, peace-building in practice does not necessarily privilege peace. Its critical practitioners—UN agencies and states with large foreign aid programs—implicitly assume that the capacities and norms they support will sustain peace; instead, there are real tensions between peace and justice. Two, because peace-building aims to promote a rights-respecting state or government, peace-building activities are sometimes constrained by the target state itself. Three, peace-building efforts fail to fully harness nonnational actors and processes. To increase the effectiveness of peace-building, the primary global governors of peace-building need to develop ways to sustain disparate small-scale indigenous efforts to build peace even when the state opposes such support. However, even with global governors adopting this approach, the state could continue to play a spoiler role and local efforts could also be inconsistent with the normative agenda embedded in peace-building constructs.

## *THE STATE AS A CONSTRAINT*

Despite the evolution of peace-building efforts, a chronic gap remains between the promise and the reality of this work. In addition, peace-building suffers from definitional ambiguity, which allows global peace-builders to see themselves as promoting both rights and peace, and thus avoid grappling directly with dilemmas they face in practice.

While UN agencies and nations with significant foreign assistance programs remain the primary funders and advocates of peace-building, the core unit through which peace is built remains the nation-state. The state is the entity through which peace is or is not considered to have been achieved; and practically speaking, international and national peace-building support is channeled through the state. This is hardly a surprise since the United Nations itself and the international system are built upon the state. Yet tensions arise with the state over control of policy and resources, and more fundamentally because the peace-building community wishes to protect and empower all citizens equally, for at its heart this community promotes rights.

Peace agreements that result from negotiations between or among armed groups may not reflect popular sentiments or envision equal rights for all, but peace-builders become facilitators of these agreements. Where an agreement includes a process for changes in governance—such as an electoral system or decentralization of government—it is more likely formally to enable peace-building to empower a diversity of actors. In the alternative scenario—peace-building in weak but not necessarily post-conflict states—the state partner is almost by definition lacking in some form of legitimacy, thus compromising peace-builders.

If peace-builders simply build critical capacities of nascent or weak states, the peace-justice/rights tensions with the government itself are less pronounced. This is especially true of the security sector, in which peace-builders want to help the state gain a monopoly on violence as a prerequisite for peace,

and governments are eager to enhance their military and police forces. Sometimes peace-builders are able to build rights protections—at least initially—into their capacity-building support (e.g., rights training, creating oversight entities, or encouraging an ethnic or other demographic mix of forces). States generally prefer that the donor community provide technical or training capacity-building rather than work on policy development or implementation, which can be seen as impinging upon sovereignty.

States seek to shape most forms of peace-building. In economic development, states may strive to control where development occurs geographically, which industries or sectors are featured, and who benefits from investments or training programs. Similarly, the government may view health and education programs through an ideological or political lens, or simply as a matter of empowering or enriching itself. Gender or ethnic group inclusion can be another crosscutting fault line, especially immediately following or concurrent with internal conflict. Peace-building programs to create awareness of civil and political rights or to otherwise empower minorities or communities associated with political opposition can be among the most sensitive programs, from the government's perspective. The Kenyan government's posture toward international peace-builders, for example, combines national pride, distrust of the donor community's motives, and patent political calculations. This matters because the state ultimately determines what international peace-builders can do.

International actors depend on the state's consent. The United Nations is built upon member state sovereignty; states prize and are expected to reciprocate deference to sovereignty. Officials and bureaucrats need to constantly juggle what they see as their substantive mission and the mandate the host government is willing to recognize. At a practical level, the host state grants visas, enforces contracts, and provides security; so outsiders entering the country, moving cargo through customs, renting facilities, and seeking to protect their employees rely on the state in order to do their work. The government therefore exerts power through many small levers as well as a higher principle. This power can accrete to a de facto veto on what UN agencies or the nongovernmental organizations (NGOs) working on behalf of donor nations wish to do. It can frustrate the normative agenda of peace-building.

If the political leadership of a state is ethical, transparent, and responsive to citizens, peace-builders face fewer tensions between advancing normative goals and advancing peace. Yet most failing states lack such normatively congruent governments. Peace-builders' dependence on the state also limits their ability to directly criticize the state when it is perceived to act contrary to peace-building goals, however defined. Sovereignty as a value in itself conflicts with the normative agenda embedded in peace-building. Is it possible to step outside the conventional conceptualization of international politics, to envision a governance model that more fully involves partners other than the state—both as outside providers and as inside peace-builders?

### *BUILDING AND LINKING LOCAL ACTOR NETWORKS*

An alternative approach might be to dramatically expand micro-peace-building, enabling and linking community-based work at the local level. This approach would build on the current practices of some nations, foundations, and NGOs of extending small grants to local partners that share the goals and norms of the grantor. It is essentially a work-around in situations in which central state actors are corrupt, ineffective, discriminatory, or simply do not have the same peace-building priorities as the grantors. Small partners could include municipalities, towns, or national faith, worker, or other affiliation institutions, in addition to local civil society organizations. Ideally, funders would support existing

grassroots efforts rather than issuing requests for proposals that reflect donor notions of what is required.

Adopting a less state-focused approach would be a significant shift for the United Nations and nationally funded peace-building community. Such an approach poses both political and administrative hurdles. Politically, the state still retains the ability to block external support for actors within its borders. Thus, a collective shift in which UN agencies and partners agreed on a common practice for their support (so that states are less able to block individual proposals), paired with a partial shift in current UN and national peace-building funding resources (say, dedicating 20 percent to micro-peace-building) to complement but not replace centrally coordinated funding, would seem most likely to succeed in obtaining state acquiescence.

Equally important from a practical standpoint is the facilitation of efforts to administer micro-level financial and technical support, since it is cumbersome to provide many small grants in lieu of a single large program. Moving to a micro-model concomitantly requires more permissive and informal partnerships that place resources and power in the hands of local actors. A common clearinghouse approach and a collective effort could ease the way for state agencies in particular to give up control and to find less invasive and time-consuming ways to ensure transparency and accountability. A related challenge is finding ways to coordinate or link the individual small-scale actors and efforts such that they can reinforce one another and enhance productivity.

Moving toward micro-peace-building requires creating and sustaining new global platforms that are grafted into the international system to position and connect new actors and, in particular, to give a more direct voice to local communities. This approach could link the state-based actors that currently dominate the peace-building discourse and activity with other independent actors such as NGOs, foundations, and corporations, and with the grassroots actors that are essential for identifying, refining, and meeting specific peace-building needs.

Here, nascent efforts to galvanize and connect localized grassroots activity to counter violent extremism (CVE) offer instructive examples. The Strong Cities Network (SCN), launched in 2016, is run by a nonprofit organization to connect cities and municipalities in an information-sharing, best practices–collection network. SCN is planning to launch a new innovation fund to catalyze public-private partnerships to create alternative futures for at-risk youth. The independent Researching Solutions to Violent Extremism (RESOLVE) network has helped link local researchers worldwide since 2015. Partners are provided with research grants and technical support, and research is made available to practitioners in the field. Initially funded by the United States, the network has begun to diversify its funding.

The Global Community Engagement and Resilience Fund (GCERF) was created in 2014 by a multilateral counterterrorism coalition to function as an independent body that could seed local efforts. While it remains largely funded by states and works directly with central governments, GCERF by design promotes local community involvement in identifying and carrying out CVE work and thereby helps legitimate and protect those actors. The European Union launched the Radicalization Network in 2011 to link frontline individual practitioners working to prevent radicalization, providing a hub for individual expertise and learning.

These models suggest possibilities for adaptation to the peace-building challenge. One could imagine an organization, similar to GCERF, that is essentially a pass-through for vetting small grant partners and administering micro-grants. The CVE models also suggest value in creating regional or global networks of grassroots peace-building individuals or entities—providing technical support, capacity-

building, best practices exchanges, and awareness of how individual efforts could relate to one another and larger UN or national investments.

### *NO PANACEA*

These CVE models remain highly dependent on state funding and have difficulty attracting investments from the private and nonprofit sectors. State funding is not necessarily problematic when states are truly willing to relinquish control over the funds, but sustaining and diversifying that financial support over time could be the central challenge for global governance innovation in peace-building.

Donor organizations and states could be reluctant to support an approach that would require them to give up some degree of ownership, control of resources, decisions and values, or public credit. Donors also could still face state hostility to peace-building efforts with nongovernmental or municipal partners. Donors also will confront many practical and logistical challenges in sustaining networks comprised of many diverse local actors with limited capacity. Local actors will in turn struggle unless donors help them develop greater administrative, organizational, and substantive capacities to sustain themselves as members of an externally supported learning network as well as carry out their ongoing work.

Given the concentration of resources in states and the role of the state in the international system, the United Nations and leading foreign assistance providers will likely continue to dominate global peace-building efforts. It is difficult to envision the private sector doing more than augmenting state efforts, if that. If there were a renaissance in great power comity and international cooperation became more pronounced, trusteeship and more invasive forms of peace-building might be conceivable. Alternatively, the normatively inclined peace-builders might simply work with a smaller subset of committed state partners in hopes of more certain results. But if current trends hold and great power comity declines, or if global finances weaken, peace-building could, by default, fall to the leading regional power rather than be addressed by the UN system and states or entities with large foreign assistance programs. Moreover, a significant spread of conflict that threatened to overwhelm global or regional responses would also advance the importance all actors placed on peace, rather than the realization of rights, thus changing the character of peace-building.

In the interim, global governance leaders—the United Nations and leading powers—should look to augment their lackluster approach to peace-building by expanding partners and methods, collectivizing the management of microfinancing, and ceding their monopoly on defining the goals of peace-building. In this scenario, the status quo largely will continue but be augmented by an uneven evolution of a global mosaic of governance—self-organized pockets of substate and transnational actors whose policies and practices may be more legitimate and sustainable even as their goals diverge from the social compact most peace-builders envision.

# Human Rights Governance: Multistakeholderism Without States' Stake

*Mark P. Lagon*

In the realm of human rights, global governance has moved beyond solely formal channels and intergovernmental organizations (IGOs) but cannot become utterly detached from them. Amol Mehra addresses examples pertinent to business and human rights more fully in an accompanying memorandum, but one especially good example deserves mention here—one in which both voice and responsibilities were accorded to actors other than states.<sup>1</sup> Flowing from a mandate established by the United Nations' primary human rights body, the Human Rights Council, a special representative of the secretary-general was minted in the form of John Ruggie to take elaborate soundings from state, private sector, and civil society voices. Ruggie produced principles on the respective and joint responsibilities of states and business to protect, respect, and remedy rights. Despite subsequent efforts by states, such as Ecuador, to form more formal intergovernmental arrangements (i.e., treaties), the greatest value of the Business and Human Rights Guidelines, which the UN General Assembly adopted in 2011, was their reaching to actors beyond states for input and explicit, if informal, commitments.<sup>2</sup>

This example reflects the current landscape of human rights governance, which involves a robust role for nonstate actors and informal channels. Without the buy-in of states and intergovernmental actors, though, the effort would have been and will be fruitless.

In a context of failed states and atrocities and of accelerating globalization, the late 1990s ushered in a trend of worthy innovations, including the International Criminal Court (ICC), the replacement of the Human Rights Commission with the Human Rights Council, and more robust human rights and peer-review mechanisms of regional IGOs such as the African Union and recently the Association of Southeast Asian Nations (ASEAN). Their greatest value has been where they have collaborated with and empowered nongovernmental actors, though they remain intimately connected to states and formality.

Three subareas of human rights provide compelling examples. First is the realm of traditional political and civil liberties—in particular, freedoms of expression, assembly, and association that have fallen under heightened duress in the last dozen years.<sup>3</sup> The establishment of the UN Human Rights Council in 2006 has deepened the role of special procedures (rapporteurs, special representatives such as Ruggie, and working groups) and created a new mechanism, the Universal Periodic Review (UPR). These mechanisms have provided significantly more room to civil society to highlight the conduct of governments.<sup>4</sup> A particularly dynamic mandate was the special rapporteur on the rights to freedom of peaceful assembly and of association—specifically devoted to civil society—a position held by Maina Kiai until April 2017.

Second is the area of human trafficking, which bridges traditional human rights concerns of rule of law and access to justice on the one hand, and economic and social rights considerations of poverty, migration, and marginalization on the other. Since the promulgation in 2000 of the Palermo Protocols

to the Convention Against Transnational Organized Crime and the U.S. Trafficking Victims Protection Act, numerous IGOs, secular and faith-based NGOs, and businesses in various sectors (e.g., apparel, electronics, and travel) have launched efforts to address trafficking in the twin spheres of sexual and labor exploitation. Overlap and duplication have characterized this innovative governance, at both the IGO (UN Office on Drugs and Crime, UN Children’s Fund, International Labor Organization, Organization for Security and Cooperation in Europe, Organization of American States) and NGO levels.

Third is the area of health and epidemics, which lies more squarely in the ambit of economic and social rights but involves dimensions of acute political-civil discrimination, notably the critical populations ostracized and marginalized before and after contracting HIV—men who have sex with men (MSM), persons in prostitution (PIP), and intravenous drug users. Since 2002, highly innovative institutions have been established to address acute health dilemmas and the creative financing of programmatic work. The United States and other Western countries have been distinctly uncomfortable with the notion of a right to health being given the same status as, say, to expression, assembly, and association. Hybrid arrangements crystalizing by the time of the 2005 Gleneagles Group of Eight (G8) Summit include the Global Fund Against AIDS, Tuberculosis, and Malaria (GFATM) and Gavi, the Vaccine Alliance. GFATM has mobilized faith-based actors and businesses as much in operational efforts, based on their comparative advantages, as in advocacy for public sector resource mobilization. GFATM focuses heavily on children—it has markedly reduced mother-to-child HIV transmission—and contributed to a 69 percent decline in malaria among children under age five in countries where it has funded bed nets.<sup>5</sup> Gavi focuses on inoculating children. It is striking that these innovative arrangements have gone further than the UN Children’s Fund, an already nimble and civil-society-inclusive IGO.

### *RESILIENCE AND DISRUPTION IN A CONTEXT OF POPULISM*

Despite their previous support, several states appear less enthusiastic about innovation in human rights governance in the wake of populism (e.g., the United States as of the 2016 election, the United Kingdom after the Brexit referendum, Poland and Hungary’s growing illiberalism, a corruption-fraught Brazil, African democracies threatening to withdraw from the ICC, and the Philippines’ populist turn). As powerful democratic states withdraw moral and possibly material support from inter-governmental projects—the UN Human Rights Council, the ICC, or the European Union as a values-based community—the future of bolder innovations is in question.

One is tempted to think that informal or hybrid arrangements uncorked in the 1990s and early 2000s have the momentum to continue their work and might even skirt the sovereigntist skepticism about human rights on the part of some retrenching major democracies. Yet, if democratic governments join autocratic governments in their skepticism of human rights, innovations can hardly thrive. If states do not have a stake in hybrid arrangements, they may soon question the value of implementation or further innovation.

In the area of political and civil liberties, the Human Rights Council’s amplification of the voices of an epistemic community of experts and of civil society may have enjoyed its peak period during active U.S. membership (2010 to 2015), buoying the European Union’s role as well.<sup>6</sup> Absent U.S. and EU

commitment, successes such as those of Ruggie and Kiai, the UPR, and a rebalancing in favor of freedoms of expression and for religious minorities over misused (Islamic) anti-blasphemy laws will likely stall.

Momentum to tackle human trafficking appears to be intact; the political parties in power in the United States and United Kingdom are committed to the mission. Nonetheless, progress in tackling human trafficking faces limits and threats: metrics on the extent of the problem and effectiveness of interventions not receiving the needed focus of states, businesses stopping short of antitrafficking efforts that would increase operating costs (e.g., costs of scrutinizing deeper layers of supply chains), and NGOs with charismatic leaders duplicating one another's work. Without cooperation and assistance from businesses and civil society actors since 2000, states and IGOs could not have hoped to reduce, much less abolish, this contemporary form of slavery. The obverse is even truer. If states are not committed to finding and rehabilitating victims, punishing perpetrators, and preventing trafficking, multi-stakeholder efforts will stall.

In the realm of health rights and epidemics, the GFATM has driven states to increase domestic investments in fighting AIDS, tuberculosis, and malaria by withholding 15 percent or more of its funding until the states where programs are implemented commit some of their own resources. GFATM's country coordinating mechanisms are hybrid governance partnerships in microcosm. Yet, absent state support, GFATM and its civil society partners cannot ensure that critical populations (MSM, PIP, and intravenous drug users) have access to treatment without ostracism to implement its Gender Equality Strategy for tackling the three diseases it seeks to curb. GFATM needs to elicit more action by states on gender issues. If, moreover, the resource mobilization by core global north democracies were to wane, the GFATM's leverage to promote health with a human rights lens would be diminished.

### *FUTURE INNOVATIONS*

Several follow-on innovations are desirable in human rights governance. In the area of political and civil liberties, a Global Trust for Rule of Law, based on the GFATM model, could transcend the scattered duplication of manifold UN-sponsored programs and the failure to evenly implement laws and ratified treaties.<sup>7</sup> In human trafficking, efforts promoted by Humanity United, the Walk Free Foundation, and the End Modern Slavery Initiative Act championed by Senator Bob Corker (R-TN), have all focused on creation of a focal foundation to forge compacts with governments (in the style of the Millennium Challenge Corporation) to scale anti-trafficking programming. In pandemic diseases, a new generation of innovations (e.g., wambo.org, a kayak.com analog that GFATM has set up for comparative-pricing purchase of vetted medicines) could make treatment available more widely. Moreover, organizations that form partnerships with international financial institutions to expand resources and engineer loan buydowns would empower developing countries' governments to fight the diseases. These innovations are "needed to move from the current progress of the GFATM and major bilateral programs, which have saved twenty million lives from three diseases in the last fifteen years, to ending the epidemic status of those diseases."<sup>8</sup>

And yet what is feasible in a context of the core liberal states of the global north becoming at best ambivalent about or at worst retreating from human rights is a different question. The wide array of informal action is unlikely to persist and prosper if core liberal states now pull back. The ideas above require states and IGOs as partners. None will bloom without states and IGOs' action, not to speak of

even more ambitious efforts. A multistakeholder initiative could use the internet to shine light on corruption and human rights abuses and to catalyze non-violent movements against governments steeped in those ills as well as the disinformation and surveillance that those governments purvey, restoring the hope for social media as a useful tool for democracy advocates worldwide. However, it remains to be seen if civil society would have the capacity and the corporate community the will to propel such an initiative if core liberal states themselves are succumbing to disinformation and the temptations of increased surveillance. A single clearinghouse of metrics, best practices, and policy coordination for combating human trafficking also would be useful but impossible without state support, which is unlikely to coalesce if Western states' leadership wanes. And a rationalization of intensive disease-specific efforts with a more general strengthening of health systems and access to them is unlikely if left to the leadership of business (e.g., the pharmaceutical sector) and specialized hybrid entities, absent a prioritization by advanced industrial democracies.

This assessment points to questions for the future: Is a reversal of the populist and sovereigntist trend in major democracies a prerequisite for informal institutional innovation in human rights? Should actors such as NGOs, faith-based organizations, and businesses counter that reversal so that a new generation of hybrid institutional innovation can move forward? Or is the whole point of the informalist trend since the late 1990s that states and IGOs are obstacles, and a new form of governance is possible without them as catalysts and partners? Fat chance. Take the example of the Ottawa process producing the international convention to ban landmines in 1997.<sup>9</sup> If there was no intergovernmental vessel or locus to reintroduce the arrangement nurtured by civil society and policy entrepreneurs elsewhere, the latter could have hardly made new norms stick. Supportive states are not just a sufficient condition for hybrid innovation; they appear to be necessary partners.

## ENDNOTES

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# Filling the Void: New Architects of Human Rights Governance

*Amol Mehra*

The global political order is undergoing a historic transformation. Nationalist and populist movements have grown in power across the global north, including in the United States, the United Kingdom, the Netherlands, and France. These countries were the architects and proponents of the neoliberal economic order, working together and sometimes alone to lower barriers to trade, promote economic development, and increase access to markets for their businesses and consumers. They also led in setting and promoting the rules of the game, including around anticorruption and human rights.

This grand experiment in globalization is faltering, and not due to the efforts of the political left which has for years been raising alarm about the growing power of corporations in setting the agenda for governments. The now-rising right is trying to reshape the discourse. This new movement is marked by a feeling among people of being left behind by forces outside their control, including seeing industries that once sustained the middle class being eliminated by technology, innovation, and offshoring. These people sense that jobs just are not coming fast enough or in ways that can keep the middle class afloat.

The culprits are twofold. One, due to a globalization of people, immigration has pushed cultures together, causing them to bump into one another in ways that can sometimes be combustible. Two, due to a globalization of markets, companies are increasingly driving the conditions that governments set and can relocate to satisfy tax, labor, or other preferences with no regard to the communities where they operate. Helplessness pervades, and when it turns into hopelessness, it explodes.

Politicians, including U.S. President Donald J. Trump and former French presidential candidate Marine Le Pen, have blamed this globalization of people for the inequality affecting many. Building walls, dividing cultures, turning away refugees are all tactics that distract from the real reason why people are being left behind: governments will not regulate globalization.

## *THE NEW ARCHITECTS OF HUMAN RIGHTS*

Ponder this thought: what can companies not do at the moment? They can escape and evade tax liabilities, relocate their operations to less-regulated markets, set and influence elections, determine and shape policy, and minimize liabilities when harms occur. No one stands in their way because the current model of governance relies on businesses to function.

This outsourcing of responsibility has consequences, including critical ones for human rights. While governments traditionally ensured that international human rights standards were adopted domestically and promoted abroad, they are now ceding their regulatory roles, including on human rights.

Stepping into this void left by receding governments is a wide swath of stakeholders who are seeking to uphold principles of international human rights law and ensure protections. Some actors, including those within civil society, are alarmed by the rise of corporate influence over policymakers.

Others, including corporations, are being pushed by their own employees, consumers, and investors, and a realization that their social license to operate may mean going beyond doing no harm. Both sets of actors recognize that governance gaps exist and that they need to address those gaps. The challenge for these actors is that while innovations in governance around human rights can help address specific challenges or harms, they are difficult to scale without governmental regulatory standards.

The following examples provide some innovations where new models of governance are being developed.

### **Grounding Globalization: Worker Ownership and Empowerment**

Some efforts seek to shift economic power to create alternative structures for business and finance and to tackle inequality. Take for instance the Working World, a nonprofit that provides workers capital to create cooperatives through a revolving loan fund. Inspired by workers in Argentina who formed cooperatives out of their abandoned factories during the country's 2004 financial crisis, the Working World came to the United States in 2012. The Working World's success rates are telling: 98 percent of the nonprofit's loans have been paid back in full, 100 percent with profits from the projects invested in. One such project began in 2012. After two successive companies sought to close a window factory in Chicago, twenty-two workers from the former plant founded New Era Windows LLC as a worker-run cooperative with support from the Working World. Five years on, the company is thriving and exceeding sales forecasts.

This model of grounding globalization through worker ownership and empowerment presents a path forward to tackling the inequality that pervades many communities disaffected by globalization. Empowering workers through ownership creates agency and can spread wealth through communities. It also means that workers themselves set and enforce the conditions around them. Governments can clearly create incentives for the spread of such models. For instance, in their procurement, governments could require that a percentage of content be produced by worker-owned cooperatives.

### **Co-Regulation Through Multistakeholder Initiatives**

Creating co-regulatory spaces, or exploring ways in which stakeholders can create enforceable standards over business, is another innovation in governance. An example is the International Code of Conduct for Private Security Providers' Association (ICoCA) mechanism, whereby private security companies, civil society, and government develop a sector-wide code on human rights and humanitarian law applicable to their operations in complex environments that is enforced by ICoCA. The ICoCA addresses the systemic failure of governments to regulate the industry and provides a model of co-regulation whereby stakeholders work together to reform the sector.

The benefits are clear. Wherever a sector operates across many jurisdictions, each posing similar types of human rights and humanitarian law concerns, an international multistakeholder governance model can provide a path forward. Governments can support and incentivize the system by requiring that contractors be members of such organizations. In fact, the U.S. Department of State has done just this and made membership in good standing to the ICoCA a requirement in its lucrative Worldwide Protective Services contracts.

## Going It Alone

Companies increasingly understand that their human rights performance is of material concern to investors, relevant to their interactions with their own employees, and a growing target for their consumers. They may also understand that they have a role in improving the human rights situation where they operate and that they should exert leverage to the extent that they can.

Take, for example, the work of the Electronics Industry Citizenship Coalition (EICC). Founded in 2004 by a set of electronics companies seeking to set an industry standard on social, environmental, and ethical issues across the electronics supply chain, the organization's membership has grown to over 110 companies.

One EICC initiative provides an example of its efforts to tackle challenges, including around human rights. As defined by the EICC, the Responsible Raw Materials Initiative is an effort to “[mitigate] the salient social and environmental impacts of extraction and processing of raw materials in supply chains, leveraging direct and indirect partnerships and using international standards (e.g., Organization for Economic Cooperation and Development [OECD] Guidelines for Multinational Enterprises, United Nations [UN] Guiding Principles on Business and Human Rights) as [their] guideposts.”

Such an effort raises the bar across the industry and allows industry actors to collaborate with other stakeholders toward meeting their objectives. But such voluntary regulation itself does not create enough change. While EICC should be driving forward this important work, governments need to understand that industry has neither the same incentives nor the interests to do anything more than respect human rights. Therefore, governments still need to step in and ensure that human rights are protected.

## *THE ELEPHANT IN THE ROOM*

The examples above highlight three innovations that help fill the void of government regulation around human rights. These examples on worker empowerment, multistakeholder standard setting, and industry self-regulation show that many models are being developed to drive higher human rights performance across various sectors. For such innovations to succeed and grow, however, governments will need to become involved and use the various tools they have at their disposal to regulate, incentivize, sanction, and reward leaders and laggards on human rights.

Procurement provides one relatively powerful yet less extensive approach to regulation and should be explored to support and fuel other innovations. However, governments should use other regulatory tools such as the creation of strong and enforceable civil and criminal sanctions against violators of human rights, including violations perpetrated by corporations.

Globalization has clear governance gaps. While the efforts above can create patches around them, they ultimately need to be filled by strong government action. The future of efforts to promote human rights and human dignity lies in solving the challenges of globalization. Failure in this endeavor and continued growth in inequality will lead countries to slip further into isolationism and nationalism, subverting aims of bolstering human rights across this world.

# Governance Challenges in the Global Digital Ecosystem

*Eileen Donahoe*

The internet has become the infrastructure of the global digitized society and is affecting governance in all realms. While digital technology has facilitated dramatic expansion of the freedoms of expression, association, and assembly globally, it has also created dramatic security vulnerabilities and threats to liberty. Before addressing governance innovations and challenges in the distinct but interrelated fields of internet governance and cybersecurity, several features of digitized society that make governance difficult need to be recognized:

- *Transborder Mode of Internet Operation:* An essential characteristic of the internet is its global, transborder mode of operation. This feature is testing the post–World War II international governance framework, which rests upon the construct of sovereign nation-states defined by physical borders. International humanitarian law (which defines the limits of legitimate state use of force in relation to other states) and international human rights law (which defines the obligations of governments to citizens and people within their jurisdiction) rest on the presumption that governments have sovereignty over people and activities within their jurisdictions defined by geography. The internet provides instantaneous transborder connectivity and extraterritorial reach—to governments and nonstate actors alike—without reference to geography. This feature presents new security threats and governance challenges. The constant transborder flow of information and data is creating confusion over who has jurisdiction over this data flow and on what basis. Prime examples of these jurisdictional conundrums can be seen in cases such as *Google Inc. v. CNIL*, the French data protection authority (regarding the “right to be forgotten”), and *Microsoft Corp. v. United States* (regarding extraterritorial access to data).
- *Digitization of Everything:* The rapid adoption of digital technology means that everything individuals say and do (in the connected part of the world) can now be tracked and monitored by government and private sector actors. This presents a variety of challenges to democratic governance and to the enjoyment of human rights. First, and most obviously, it undermines the right to privacy, which is more important to the exercise of fundamental freedoms than is often recognized. If everything an individual says or does can be tracked and monitored, it will have a chilling effect on what individuals feel free to say, with whom they feel free to meet, and what information they feel free to access online. Digitization of everything also risks inverting the basic democratic order in which sovereign citizens watch the government by instead ensuring that governments and the private sector can watch and monitor literally everything said or done by citizens and consumers.
- *Privatization of Governance:* As digital technology has infiltrated all dimensions of society, there has been a corresponding trend toward the privatization of governance, whereby private sector actors are taking on traditional governance responsibilities for security and liberty. Democratic

government is built on the notion of a social contract: sovereign citizens agree to be governed in exchange for protection of security and liberty, and government is accountable to the people. This notion of a democratic social contract is being disrupted. Digital platforms have essentially become the public square for citizen discourse, and private sector platforms effectively govern the limits of free expression through terms of service, community guidelines, and algorithms. Similarly, private sector actors currently own, operate, and secure most of the critical civilian infrastructure and house the data of citizens and consumers. (Facebook's recent commitment to take on information operations and inauthentic amplifiers reflects a private sector move into a traditional government area of responsibility for security.) But the private sector does not have formal accountability to the public.

Furthermore, under international human rights law, the primary obligation to protect and not violate the human rights of citizens and people within their jurisdiction rests with government. In 2011, the Guiding Principles on Business and Human Rights were adopted by the member states at the UN Human Rights Council. These guiding principles established norms for private sector entities to respect and protect human rights where their business operations affect the enjoyment of rights. Many private sector entities voluntarily embrace the responsibility to protect human rights where they can. But formal governance obligations to protect human rights rest with government under international law.

These three features of the globally digitized environment are challenging all governance actors and will need more attention, especially if existing international humanitarian law and human rights law norms are to survive into the twenty-first century.

## *INTERNET GOVERNANCE: LANDSCAPE AND INNOVATIONS*

The starting place for a discussion on governance challenges and innovations in the realm of internet governance can be found in the critical distinction between governance of the internet and governance on the internet.

### **Governance of the Internet**

Governance of the internet refers to policies, standards, norms, and practices that govern the technical layers of the internet itself—at the architectural/hardware layer or at the naming-numbering protocol/software layer. The animating energy within the internet's founding governance community was open, multistakeholder, and merit-based. The shared goal was to create a reliable, globally interoperable mode of instantaneous communication available to anyone who could connect. The early modus operandi of this internet governance community was to test the efficacy of technology protocols in open dialogue, based on whether they would serve the purpose of creating a stable, globally interoperable internet. The community would converge upon the technical solutions that garnered the most support.

A significant innovation in governance of the internet took place in 1998, with the creation of the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN, sometimes referred to as the phone book or phone numbering system of the internet, was formed as a private sector, public purpose corporation in California. Policymaking at ICANN concerns issues such as generic names for top level domains (.com, .org, .edu) or country code names (.uk, .ca, .cn). The core function of ICANN

was and is to make sure that people anywhere can communicate via the internet through a stable unified global system of unique identifiers. To communicate on the internet, a unique identifier or destination—entered as a name and translated into a number—is needed so that intended recipients can be correctly located. As a governing entity, ICANN coordinates the activities of a variety of stakeholders, including domain name registrars and registries, that play different roles in this global system.

The multistakeholder model of ICANN is a prime example of governance innovation that does not rest exclusively on governmental decision-making. ICANN address management is done through a community of supporting organizations, advisory committees, and the board. It includes a governmental advisory committee, but government actors do not have the same presumed status as primary governance authorities, unlike in traditional multilateral forums.

In October 2016, the U.S. government transitioned away from its stewardship role for Internet Assigned Numbers Authority–assigned numbering functions at ICANN and handed off full responsibility for ICANN governance to the nongovernmental community. This move was based on an assessment that the community had demonstrated its ability to reliably manage global naming and numbering responsibilities since ICANN's founding in 1998.

### **Governance on the Internet**

Governance on the internet refers to the broad range of policies, regulations, and laws that govern activity on the internet at the content, social, and political layers, such as government policies for taking down illegal content, rules on accessing user data or communications for law enforcement or foreign surveillance, or norms on cyber offense.

Traditional governance activities of government as they relate to protecting security and liberty come into play with governance on the internet, as do international humanitarian law and international human rights law. In June 2012, the first UN resolution on internet freedom was passed by consensus at the UN Human Rights Council. This resolution laid down the foundational concept that human rights need to be protected online as they are offline. Similarly, in 2013 (and again in 2015), the group of governmental experts at the UN General Assembly First Committee agreed on that international humanitarian law is applicable in the cyber realm. But governments have been struggling to articulate how to apply international human rights and humanitarian law in the cyber realm.

Furthermore, as noted earlier, international human rights and humanitarian law rest on the traditional presumption that governments are the primary actors. But private sector actors have taken on much of the responsibility for digital security and are effectively governing the public square. Therefore, the present moment is one of conceptual confusion about governing roles and responsibility on the internet.

During the Brazilian-led Global Multistakeholder Meeting on the Future of Internet Governance (NETmundial) in April 2014, the global internet governance community converged upon the idea that multistakeholder governance on the internet is feasible and preferable to traditional multilateral governance models. The NETmundial outcome document highlighted human rights principles and open, accountable governance processes as the shared basis for moving toward broader global multistakeholder governance. This moment coincided with German and Brazilian initiatives at the United Nations, taken after disclosures made by Edward Snowden, to bring human rights, democratic values, and the rule of law to governance on the internet (see, for example, joint Brazilian and German efforts at the UN General Assembly and the UN Human Rights Council on the right to privacy in the digital age).

However, this moment of enthusiasm for global multistakeholder governance on the internet seems to have passed. With the growing awareness of systemic cyber vulnerability, conceptual confusion has combined with fear of digital insecurity to bring a retrenchment of sovereign government control over activity on the internet. Furthermore, at the geopolitical level, leadership on multistakeholder governance has evaporated: the Donald J. Trump administration has not embraced the general concept of multistakeholder internet governance after the October 2016 transition. Brazil has stepped back from its global role as champion of such internet governance due to domestic political challenges. The German government has shifted emphasis to the disruptive effects of digital technology on democratic discourse and processes, as reflected in its draft law imposing steep fines on digital platforms for failure to take down illegal content within twenty-four hours. The German draft law has been criticized by civil society for its illiberal approach to the international human right to freedom of expression as well as for the threat the draft law presents to the core concept of platform immunity from liability that has facilitated the free flow of information globally.

The bottom line is that civil society is increasingly concerned that even democratically oriented governments are backtracking on exploration of innovative multistakeholder internet governance arrangements, and progress on commitments to apply universal human rights and humanitarian law principles in the digital realm has slowed.

#### *CYBERSECURITY: LANDSCAPE AND INNOVATIONS*

With digitization of everything and the collapse of the online-offline distinction, digital security runs through every dimension of security—national security, international peace and security, consumer protection, economic security, security of critical infrastructure, and protection for dissidents and human rights activists. The combination of digitization and the inherently transborder mode of internet operations presents extreme challenges for governance actors responsible for security, as criminals, terrorists, hackers, and governments anywhere now have instantaneous extraterritorial digital reach to affect the security of people anywhere else.

A daunting range of new security threats use cyber vectors of attack—from cyber to kinetic attacks on critical infrastructure or weapons systems to hacking of democratic discourse and election processes, global ransomware attacks on businesses or hospitals, and undermining the integrity of widely reliable data. Notwithstanding the benefits of technology, there is a growing awareness of systemic cyber vulnerability and society-wide digital insecurity and a general sense of the powerlessness of governments to protect against these threats.

Added to this sense of insecurity is confusion over the optimal relationship between public and private sector actors, given that the private sector is often better positioned to ensure the stability and security of digital infrastructure and to protect data or access data for security purposes.

The starting place for grappling with governance challenges in the realm of cybersecurity is recognizing that responsibility for cybersecurity needs to run throughout society and multistakeholder participation in cybersecurity-related governance is essential. Traditional governance actors tend to work in isolated frameworks and often do not understand the inherent interconnectivity among all dimensions of digital security. For example, only recently have national security experts come to appreciate the threat of doxing to national security or the threat of ransomware to economic security. Furthermore, security experts are increasingly recognizing that cyberattacks on small targets—such as on Google accounts that have not enabled two-factor authentication—can have dramatic consequences

for national and international security. The bottom line is that cybersecurity governance needs to incorporate all dimensions of society.

Several existing strands of work related to cybersecurity governance need to be reinforced, including development of state norms restraining offensive use of cyber weapons and public education on digital security. Interestingly, several private sector actors have pushed for leadership on this front. For example, Microsoft President Brad Smith has called for a digital Geneva convention to restrain state-sponsored hacking of civilians. While the likelihood of a treaty on any subject is low, this rallying cry could represent an important shift in recognition that cybersecurity is ultimately about protection of citizens, consumers, and civilians. Apple's CEO Tim Cook also has called for a massive public education campaign on fake news and has urged governments, private sector actors, and citizens to be more forceful in preventing disinformation from disrupting democratic discourse.

One state-led innovation in cybersecurity governance that took off with great potential but has since waned is the Freedom Online Coalition (FOC). The coalition, which includes thirty governments, was created in 2011 with the goal of ensuring that human rights are protected online as they are offline. FOC has shown some degree of multistakeholder leadership through working groups that included civil society, technologists, academics, and the private sector, but it has struggled to assert its influence globally as member governments struggle with bringing their own cyber practices into line with human rights principles. The FOC working group on "An Internet Free and Secure" sought to bring about a paradigm shift in the members' understanding of the relationship between freedom and security online. The working group developed a set of practical recommendations for a human rights-based approach to cybersecurity, identifying digital security as a critical dimension of the fight to protect freedom online. A core idea behind the recommendations was the need for states to recognize that digital security of citizens, consumers, and civilians is essential to national security and that protections of digital freedom and digital security are mutually reinforcing in the global digital ecosystem. Much more work needs to be done within the national security community, as well as in the general public, to bring about this paradigm shift in awareness about the symbiotic relationship between freedom and cybersecurity.

### *THE CHALLENGE: CLARIFYING OPTIMAL GOVERNANCE AND SECURITY ROLES IN THE DIGITAL REALM*

Perhaps the most ominous threat in the global digital ecosystem, one that constitutes both an internet governance and cybersecurity challenge, is the threat to democratic governance from digital disinformation. Transborder information operations by nondemocratic forces, especially when combined with digital mechanisms that amplify the effects of disinformation on democratic discourse, are peculiarly daunting. This perplexing combination of instantaneous extraterritorial reach, connectivity of everything that is digitized, and confusion about governance roles when private sector social media platforms become the vector of attack, has wreaked havoc on traditional governing concepts in democracies. Figuring out the optimal roles and responsibilities of private sector technology companies and government in addressing digital disinformation will be essential to moving toward greater security. The challenge of the twenty-first century is to find a means of defending against digital disinformation without eroding democratic values and freedom.

# Contested Governance: Internet Governance and Cybersecurity

*Tim Maurer*

Internet governance is bit of an odd duck in the context of global governance. Over the past twenty years, the internet has become the platform for the global economy and the Achilles' heel of many states' national security apparatuses. Yet, governments have played and continue to play a surprisingly small part in the governance of the internet as compared to other areas of similar importance.

## *INTERNET GOVERNANCE*

To start, it is helpful to distinguish between the governance of the internet and governance on the internet, or, put differently, how the internet is designed and what it is used for.<sup>1</sup> Illustrating the former are the many standard-setting bodies, such as the Internet Engineering Task Force, with (mostly non-governmental) technical experts developing and deciding—through “rough consensus”—the protocols that run the internet.<sup>2</sup> An example of the latter is the growing number of heads of state calling on social media companies to do more to tackle the spread of extremist content and disinformation.<sup>3</sup> In addition, it is worth mentioning that the scholarship on internet governance sometimes exhibits a normative undertone promoting, explicitly or implicitly, multistakeholderism—the notion that nongovernmental actors, such as private companies and civil society organizations, are recognized as equal partners to governments in the transnational governance of the internet.

How important actors other than governments are in the context of internet governance becomes clear when considering the language of the 2005 outcome document of the World Summit on the Information Society (WSIS) that took place under the auspices of the United Nations. The WSIS 2005 Tunis Agenda for the Information Society states: “Internet governance is the development and application by governments, the private sector, and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the internet.”<sup>4</sup>

This passage is remarkable in the broader context of global governance, especially for an outcome document of a UN summit. Governments are not referred to as being at the top of a hierarchy compared to all other actors when it comes to governing the internet.

The term *multistakeholderism* framed and gave a name to this specific mode for how the internet is governed, with governments not in the driver's seat but as part of a broader ecosystem of actors that have influential and decisive roles. This multistakeholder approach has since become a rallying cry for internet governance activists and governments that try to push back against those states promoting the traditional intergovernmental, top-down governance model.

Putting WSIS in the broader context of trends in global governance, it is worth noting that WSIS was one of the last in a series of world summits that the United Nations convened starting in the early 1990s. With the end of the Cold War, space opened for innovations in global governance beyond the

intergovernmental, often hard law treaty-based, and bureaucratized mechanisms that were characteristic of much of the past years of the century. The multistakeholderism of internet governance that emerged is essentially the latest step in a broader evolutionary trend that ranged from subtle shifts, such as humanitarian assistance being provided with the consent instead of at the request of the host state, to new organizational forms such as the Financial Action Task Force.<sup>5</sup>

The modern internet's global proliferation coincided with this broader systemic change in international relations. The internet's worldwide expansion truly started after 1994, when legal restrictions in the United States for its commercial use were removed. Even more than before, companies subsequently drove the technology's evolution, building the infrastructure such as undersea cables and internet exchange points to connect more countries and people while adding more applications for the technology itself. The dot-com boom of the late 1990s was an early indication of how important the internet would become for the global economy.

## *CYBERSECURITY*

By the late 1990s, the most technologically advanced states also realized that the internet could be exploited for political and military purposes. Intelligence agencies were the first to recognize the potential of the new technology. Militaries soon followed suit, when increasingly more devices became connected to the network and hackers moved beyond stealing data. In 2010, news about the Stuxnet malware having infected the Iranian nuclear facility in Natanz revealed to the world how hacking had moved from script kiddies into one of the most sensitive and consequential tools of international affairs. Edward Snowden's actions in 2013 shed light on the extensive scope of the intelligence complex that the internet has enabled. More broadly, it also shed light on some of the most secret yet most important governance structures in the security field, namely the Five Eyes Agreement.<sup>6</sup>

As the security dimension of the internet's use became apparent, sovereignty and the role of the nation-state witnessed a resurgence. States such as China, Iran, and Russia started pushing back against the emerging governance structures for the internet. This included Russia's proposal for an international treaty on information security in the late 1990s and its joint effort with China to push for a greater role by intergovernmental organizations, namely the International Telecommunications Union and the United Nations, generally for policy processes relating to the internet. Other countries such as India, Brazil, and South Africa resisted taking a specific position on these issues for many years, but Brazil publicly endorsed the multistakeholder approach at the Multistakeholder Meeting on the Future of Internet Governance (NETmundial) in 2014, and India followed suit in 2015.<sup>7</sup> Ultimately, discussions about internet governance and cybersecurity are in many ways part of the broader discussion about sovereignty, its limits in the twenty-first century, and the role of the United States and democracies in the world.

At the same time, the picture is more nuanced among Western governments as well. The U.S. government has made the promotion of the multistakeholder approach a central talking point for any meeting on internet policy. In fact, it even agreed to relinquish its role as principal in the contractual principal-agent relationship with the Internet Corporation for Assigned Names and Numbers and, in 2016, the U.S. Department of Commerce transitioned the Internet Assigned Numbers Authority to a global multistakeholder body.<sup>8</sup> On the other hand, the U.S. Department of State has also drawn a clear line and considers the discussions on the internet's implications for international peace and security in

the UN General Assembly First Committee to be a discussion exclusive to states despite calls from other actors such as Microsoft for a seat at the table.<sup>9</sup>

### *UNCERTAIN OUTCOMES*

The best way to describe the status quo of internet governance and cybersecurity is therefore as contested governance. The roles and responsibilities of the actors involved remain unclear and hotly contested. The past decade has witnessed a resurgence of the nation-state and the concept of sovereignty. The discussion is part of a broader geopolitical battle but also reveals that how to govern this technology remains a challenge for liberal democracies. The broader trend is certainly moving toward more informal industry codes, best practices, and soft law. At the same time, questions of accountability, effectiveness at scale, and legitimacy loom large. Participation by the global south in various bodies remains low and dependent on resources. And many more informal entities face the question of how to avoid being captured by the most powerful, the wealthiest, or the loudest. How resilient the existing governance mechanism will prove depends on the outcome of these different dynamics in the coming years.

Finally, much like the concept of multistakeholderism that emerged in the specific context of internet governance but as an extension of innovations in other global governance areas, an open question remains whether this concept might spill over into other governance areas in which nonstate actors play similarly influential roles.

## ENDNOTES

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1. This distinction has become a standard differentiation in the field. See, for example: Bertrand de La Chapelle and Paul Fehlinger, "What Do We All Mean by 'Roadmap to Further Evolve the Multistakeholder Internet Governance Ecosystem'?", <http://content.netmundial.br/contribution/what-do-we-all-mean-by-roadmap-to-further-evolve-the-multistakeholder-internet-governance-ecosystem/250>.
2. Paul Hoffman, ed., "The Tao of IETF: A Novice's Guide to the Internet Engineering Task Force," 2012, <http://ietf.org/tao.html>.
3. "G7 Puts Pressure on Internet Firms to Remove Extremist Content," Reuters, May 26, 2017, <http://reuters.com/article/us-g7-summit-terrorism-idUSKBN18M259>.
4. "Tunis Agenda for the Information Society," World Summit on the Information Society, November 18, 2015, <http://itu.int/net/wsis/docs2/tunis/off/6rev1.html>.
5. "Strengthening of the Coordination of Humanitarian Emergency Assistance of the United States," United Nations General Assembly, December 19, 1991, <http://un.org/documents/ga/res/46/a46r182.htm>.
6. The Five Eyes agreement itself is a fascinating example of an informal, soft law-based institution.
7. Hannes Ebert and Tim Maurer, "Contested Cyberspace and Rising Powers," *Third World Quarterly* 34, no. 6 (2013): 1054–1074; "NETmundial," May 20, 2014, <http://netmundial.br>; "Indian Government Declares Support for Multistakeholder Model of Governance at ICANN53," ICANN, June 22, 2015, <http://icann.org/resources/press-material/release-2015-06-22-en>.
8. The U.S. Department of Commerce is now also starting to apply the concept of multistakeholderism to its domestic policymaking processes. See "Multistakeholder Process: Cybersecurity Vulnerabilities," National Telecommunications and Information Administration, <http://ntia.doc.gov/other-publication/2016/multistakeholder-process-cybersecurity-vulnerabilities>.
9. Brad Smith, "The Need for a Digital Geneva Convention," Microsoft on the Issues, February 14, 2017, <http://blogs.microsoft.com/on-the-issues/2017/02/14/need-digital-geneva-convention>.

# Innovations in Global Climate Governance

*Karen Florini*

Governance of the global climate is ultimately in the hands of Mother Nature, not mere mortals. Although humans can—and it is to be hoped, soon will—dramatically curtail their emissions of carbon dioxide and other heat-trapping gases, the atmosphere’s response to those gases is beyond human control. Likewise, the resulting temperature increases and associated effects are not subject to negotiation. As the U.S. Department of Defense has noted, these effects mean that climate change is “an urgent and growing threat to our national security, contributing to increased natural disasters, refugee flows, and conflicts over basic resources such as food and water,” which in turn will “aggravate existing problems . . . that threaten domestic stability in a number of countries.”<sup>1</sup> While the precise extent, timing, and location of climate effects cannot be foretold with certainty, a wait-and-see strategy on emission reductions would be unwise in the extreme: a host of geophysical factors ensures that temperatures would keep climbing for many years, even after emissions are curtailed. Meanwhile, the argument that future generations will be rich enough to adapt readily to the consequences of a changing climate ignores the possibility that severe climate change will itself derail future economic growth.

Fortunately, the need to begin reducing emissions now is increasingly well recognized in much of the world. This recognition prompted adoption of the Paris Agreement in late 2015 and its remarkably rapid entry into force the following year. The agreement remains in force regardless of whether the United States remains a party to it and despite President Donald J. Trump’s gross mischaracterization of the agreement’s provisions in his June 1 announcement that the United States would withdraw.

While the Paris Agreement is the principal policy mechanism for global climate matters, it is by no means the exclusive forum for climate action. A glorious profusion of state, nonstate, and hybrid entities are demonstrating impressive ingenuity in policy and technology, an abundance that makes it difficult to understand the array of groups active in the battle against catastrophic climate change, much less to parse their governance structures. A tentative taxonomy of these entities and a pair of examples within each taxonomic branch, along with a few governance observations, is provided in the following pages.<sup>2</sup>

From a climate practitioner’s standpoint, the critical governance issue boils down to two words: what works? Specifically, what works to scale up global deployment of climate-friendly outcomes as soon as possible? Essential elements include helping spread low-carbon norms, technologies, and innovative finance mechanisms, and aligning with other structures wherever possible in order to maximize efficiency and minimize organizational start-up delays.

Before turning to the taxonomy, it is worth noting that the Paris Agreement (or more accurately its accompanying decision) expressly emphasizes the role of nonstate actors, a term that broadly encompasses the private sector, subnational governments, environmental and development advocacy groups, the faith community, trade unions, labor, academia, youth organizations, and civil society writ large. Among other provisions, the decision calls for a high-level event featuring nonstate actors at each annual climate negotiations conference through 2020. In addition, to help strengthen synergies among

these groups, the decision provides that a “champion” be appointed each year by the nation that is taking up the presidency of the annual climate negotiations. Each champion serves for two years, overlapping for a year with the champion appointed in the prior year.

At the 2016 negotiations conference, the inaugural champions (from France and Morocco) launched the Marrakech Partnership for Global Climate Action to provide a “consistent and structured approach” for advancing these efforts. In May 2017, the current champions (from Morocco and Fiji) issued additional details in a note that identifies the partnership’s mission as “strengthen[ing] collaboration between parties and non-party stakeholders” so as to accelerate action and calls for “shared and distributed leadership.” It specifies a Climate Action Leadership Network of senior decision-makers; a Climate Action Collaboration Forum, open to groups that meet certain criteria on scale, transparency, results, and other factors; informal Communities of Climate Action Practice; and a support unit housed at the UN Framework Convention on Climate Change (UNFCCC), under which the Paris Agreement was adopted. The partnership emphasizes seven thematic areas: energy, land use, water, industry, human settlements, transport, and oceans/coasts. Also relevant is the Nonstate Actor Zone for Climate Action (NAZCA), a database outlining more than twelve thousand commitments by businesses, subnational governments, and other nonstate actors to reduce their own emissions.

#### *CLIMATE ACTION BEYOND THE PARIS AGREEMENT: A TAXONOMY*

Non-Paris climate action can be viewed as a tree with three main albeit somewhat overlapping branches: Paris “relatives,” non-Paris plurilateral and multilateral initiatives, and nonstate actor initiatives.<sup>3</sup>

##### **Paris Agreement “Relatives”**

These are entities mentioned in or explicitly focused on implementation of the Paris Agreement, in addition to the formal UNFCCC subsidiary bodies. The following are examples:

*Green Climate Fund (GCF)*: Although initially launched under the auspices of the UNFCCC in 2011, the GCF operates as an independent organization with a separate board comprised of twelve developed and twelve developing nations and its own secretariat. The GCF is intended to be a primary mechanism for providing support to developing countries on low-carbon, climate-resilient development and adaptation. Four observers are authorized to participate in board sessions, two representatives from accredited civil society organizations—one each from developed and developing countries—and two from accredited private sector organizations, also one each from developed and developing countries. Known as active observers, these individuals are selected by their sector and may serve for two two-year terms. At present, there are well over two hundred accredited civil-society and sixty private-sector observers.

*NDC Partnership*: Launched at the annual climate negotiations in 2016, the partnership is a coalition of developing and developed countries and international institutions that characterizes itself as a “club of ambition” to help countries achieve their Paris targets, known as nationally determined contributions (NDCs). The partnership’s initial focus is on helping countries connect with financial and technical

assistance through knowledge products such as the NDC Toolbox Navigator. Nongovernmental organizations, development finance institutions, and others are able to participate in the partnership as associate members.

### Non-Paris Plurilateral and Multilateral Initiatives

Beyond formal negotiating processes on climate, annual Group of Twenty and Group of Seven gatherings have often addressed climate and energy topics, as have regional plurilateral groups such as the Arctic Council (composed of the eight countries having territory within the Arctic Circle). In addition, a variety of specialized plurilateral entities also work on particular aspects of the climate issue. Two examples are below:

*Clean Energy Ministerial (CEM)*: A forum composed primarily of large emitters including the United States, European Union, China, and India, CEM's twenty-four member countries account for 75 percent of the world's emissions of greenhouse gases. Hosted by the International Energy Agency, CEM operates an annual forum for energy ministers, along with technical programs on critical topics such as highly efficient appliances and lighting, smart grids, and low-carbon cooling, typically involving the private sector as well as governments. CEM describes itself as having a distributed leadership model that "allows it to be more flexible and creative than consensus-based processes. . . . Any government interested in furthering a substantive idea on clean energy technology is encouraged to identify willing partners and proceed. There is no expectation that every government join every initiative; this allows CEM partners to focus their efforts on those initiatives in which they are most interested or most capable."<sup>4</sup>

*Climate and Clean Air Coalition to Reduce Short-Lived Climate Pollutants (CCAC)*: Although carbon dioxide is the principal greenhouse gas responsible for climate change, other substances also contribute significantly to climate disruption. Of these, several are more potent but less prevalent than carbon dioxide, most notably methane, black carbon (soot), and some hydrofluorocarbons. CCAC, a hybrid of fifty plus countries and another fifty plus NGOs and intergovernmental organizations, operates seven sectoral programs aimed at reducing major sources of these substances as well as crosscutting initiatives. CCAC is governed by a senior-staff-level steering committee, which makes recommendations to a working group comprised of all member organizations; the steering committee is comprised primarily of state partners but also has two nonstate partner slots that are selected by the nonstate partners. CCAC's minister-level High Level Assembly meets at least annually and provides strategic leadership.

### Nonstate Actor Initiatives

Independent of national governments, substantial and growing numbers of private sector entities, state and local governments, and civil society organizations are playing an increasingly prominent role in the climate sphere.

In addition to steps being taken by individual companies, examples of private sector initiatives by investors and industry sectors include the following:

*Breakthrough Energy Coalition*: Announced at the 2015 Paris climate negotiations, the coalition was formed by Bill Gates and other wealthy investors to deploy “patient and flexible” capital for new energy technologies; the coalition announced an initial \$1 billion fund in 2016.

*Oil/Gas Climate Initiative (OGCI)*: Led by the CEOs of ten companies that jointly produce 20 percent of the world’s oil and gas, OGCI collaborates on action to reduce the sector’s greenhouse gas emissions.

Subnational governments are also highly involved at various jurisdictional levels, with notable examples such as the following:

*Under2 MOU*: Known formally as the Subnational Global Climate Leadership Memorandum of Understanding, the Under2 MOU provides that signatories will reduce their greenhouse gas emissions 80 to 95 percent below 1990 levels, or limit emissions to two metric tons annually per capita, by 2050. A total of 170 jurisdictions from thirty-three countries—representing 37 percent of the global economy—have signed or endorsed the MOU.

*C40 Climate Leadership Group (C40)*: Comprised of more than eighty megacities and innovator cities, C40 emphasizes urban action to reduce greenhouse gas emissions through peer-to-peer interactions. Its member cities are home to more than six hundred million people and one quarter of the global economy.

Last but by no means least, a prodigious variety of civil society organizations, from academic consortia to think tanks to activist NGOs, work on climate issues. For many of these organizations, climate is a major or exclusive focus, while for others, it is part of a broader environmental, development, or faith-based agenda. Such groups vary widely in their geographic scope: some are active locally, others at the state level, others nationally or globally. Most are involved in formal or informal coalitions, or are themselves coalitions of groups. Examples include:

*We Mean Business*: A network of business-facing NGOs that interact directly with hundreds of companies and investors worldwide, We Mean Business emphasizes adoption of company-specific emission-reduction targets, voluntary emission reporting, and public policy involvement.

*Climate Action Network (CAN)*: An umbrella group of over one thousand environmental NGOs from around the globe, with formal regional networks in multiple locations, CAN fosters information exchange among its members and helps coordinate development of NGO strategy on international, regional, and national climate issues.

## ASSESSING THE GLORIOUS PROFUSION

The landscape of climate actors operating in proximity to and beyond the Paris Agreement is both extensive and varied, but few conclusions can yet be drawn as to which governance structures are most valuable in facilitating progress in reducing emissions and enhancing resilience. This topic is ripe for additional analysis by scholars and practitioners alike, as actions by nonstate actors will be all the more important in light of the U.S. withdrawal from the Paris Agreement. Indeed, a multi-sector We Are Still In initiative was immediately launched in response to Trump’s Paris withdrawal announcement, declaring that signatories “will continue to support climate action to meet the Paris Agreement.” Initial

participants include Amazon, Apple, Facebook, Google, and Microsoft, which according to the *Economist* are the world's five most valuable publicly listed companies. To date, additional U.S. endorsers include more than 1,600 businesses, 230 cities or counties, 9 states, 19 state attorneys general, and 300 higher education institutions. Thus, although the Trump administration is abandoning the Paris Agreement—an international accord that the United States played the leadership role in developing and that has been signed by nearly every other nation in the world—much of America decidedly is not.

## ENDNOTES

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1. "National Security Implications of Climate Risks and a Changing Climate," U.S. Department of Defense, July 23, 2015, <http://archive.defense.gov/pubs/150724-congressional-report-on-national-implications-of-climate-change.pdf?source=govdelivery>.
2. A more detailed version of this taxonomy appears in the July-August 2017 issue of the *Foreign Service Journal*. See Karen Florini and Ann Florini, "It's Not Just About Paris: International Climate Action Today," *Foreign Service Journal* 94, no. 6 (July-August 2017): 26–31, <http://afsa.org/sites/default/files/julyAugust2017fsj.pdf>.
3. Not discussed in this paper are two important international agreements adopted in 2016 that address specific sources of climate-relevant emissions: the Kigali Amendment to the Montreal Protocol, which provides for a global phase-down of certain hydrofluorocarbons (HFCs) that are potent heat-trapping substances, and the International Civil Aviation Organization's "Carbon Offsetting and Reduction Scheme for International Aviation" (CORSIA), which limits post-2020 growth in carbon dioxide emissions from international civil aviation.
4. Clean Energy Ministerial, "About the Clean Energy Ministerial," <http://cleanenergyministerial.org/About>.

# The New Climate Governance Paradigm

*Robert C. Orr*

The climate governance paradigm has shifted dramatically in the past decade. The formal member-state negotiation has given way to a more robust governance structure that also involves a range of other actors and is rooted in the real economy. The paradigm has moved from being exclusively the purview of intergovernmental negotiators (supported and pressed by the scientific and activist communities) to being the active concern of a more broad-based set of actors, including whole national governments, businesses, finance, civil society, and subnational governments. This has been accompanied by a conceptual reframing of the climate issue so that it is now seen not only as an existential threat but also as an opportunity to transform economies and grow in a fundamentally different way. At the same time, the negotiation for a legal agreement to shape the new regime evolved from a narrow zero-sum game, in which states largely sought to apportion the pain and cost of response, to a more inclusive, positive-sum exercise, in which state and nonstate actors alike are sharing in, and competing for, the potential gain. The Paris Agreement is in essence an opportunity agreement, which is both the product of and catalyst for a race to the top. This race is characterized not only by cooperation but also competition—in both the political and the economic marketplaces.

The new paradigm is the result of a combination of evolutionary and revolutionary innovations that are mutually dependent and reinforcing, and a melding of formal and informal governance mechanisms. In particular, four innovations in governance have been central to this paradigm shift:

- a whole-of-government approach in the intergovernmental process and, at the national level, led by heads of state and government;
- a symbiotic alignment of state and nonstate actors to form a purposeful multistakeholder process informed not only by efforts to create a cooperative framework but also by competitive market and political forces;
- a hybrid structure for the intergovernmental agreement, with a combination of legal and voluntary provisions, a blend of pragmatic and aspirational elements, and a built-in upward ambition trajectory; and
- a strategic orchestration of a broad range of actors toward the preceding three innovations.

## *SOURCES OF DISRUPTION AND RESILIENCE*

This new paradigm has injected much-needed strength, depth, breadth, and resilience to climate governance. At the same time, it is vulnerable to two main sources of potential disruption. The first is related to the buy-in to the regime, including the legal framework. The regime depends on all actors, including major governments, remaining committed to it. The second source of disruption is external. Geoeconomic and geopolitical shocks such as financial crises, wars, or the changeover of critical governments could have a destabilizing effect on the regime and could disincentivize actors from continuing to support the regime to the same degree. For both sources of disruption, the counteracting

sources of resilience are the same and are rooted in the four innovations noted above: the breadth and depth of commitment within national governments; a broadening of the base of actors and, critically, the incorporation of market-based actors, since those markets are evolving toward low-carbon trajectories; the voluntary-legal nature of the formal agreement; and the capacity to orchestrate these actors to maintain momentum for the race to the top.

The announcement by U.S. President Donald J. Trump on June 1, 2017, of his country's exit from the Paris Agreement is a significant disruption and will be a litmus test for the resilience of this paradigm. Further disruption in this vein could follow if other states defect from the agreement or if some signatories hide behind the U.S. pullout to throttle back on their responsibilities under the agreement.

However, the U.S. pullout is unlikely to cause a domino effect among governments to exit the agreement. Leading greenhouse gas emitters such as China, the European Union, and India have made significant commitments on renewable energy and energy efficiency because they now see these as issues of vital national interest. In addition, a move away from carbon emissions and toward renewable energy also serves the geopolitical strategic aim of energy security for many countries. These are powerful forces that are likely to keep governments committed to the goals of the Paris Agreement. But in the wake of the U.S. announcement, reaffirmations of commitment to the Paris Agreement by many global leaders, while reassuring and necessary to arrest a fallout, are not in themselves sufficient to guarantee the success of the agreement.

Equally important, public affirmations by U.S. cities, states, and companies of their intention to uphold the U.S. government commitments under the Paris Agreement provide significant avenues for advancing implementation by the United States even in the absence of the formal participation of the U.S. federal government. These moves also act as ballast for all other actors in the absence of the U.S. government. There has been a surge of U.S. business and subnational political actors rallying around the agreement and buttressing the prospect of surviving one of the largest potential political disruptions. This is accelerating the already notable groundswell of action by these new actors across the globe.

Continued orchestration; a tidal flow of multistakeholder, market-driven collective action; and firm commitments from all other governments should make it possible to mitigate the effects of a U.S. exit and potentially even reverse them. And in light of the U.S. exit, a common understanding of the four governance innovations that form the source of this resilience is now imperative for policymakers and thinkers alike.

#### *INNOVATION 1: A WHOLE-OF-GOVERNMENT APPROACH LED BY HEADS OF STATE AND GOVERNMENT*

Historically, participation in the deliberations for intergovernmental agreements has been led by ministries of foreign affairs and one or two relevant line ministries. Climate change was for decades no different. But with economy- and demography-wide ramifications, such narrow participation constituted a feeble attempt by the tail to wag the dog. Ministries of finance, energy, transport, agriculture, planning, health, and others have strong and often competing stakes in the domestic arena. The potential ambition of a cross-sectoral intergovernmental agreement is therefore severely limited if these domestic actors do not have seat at the table and if they do not have a clear political directive from their leader. A big tent is essential.

Recognizing this, in 2007, the UN secretary-general began to encourage the participation of heads of state and government at the UN Framework Convention on Climate Change (UNFCCC) conferences and also began to host summits on climate change himself to bring the issue to the center of discussion and to the apex of decision-making authority.

In the years leading up to the Paris Agreement, the personal attention of presidents and prime ministers was critical to aligning components of their own governments as well as to building trust and fostering cooperation among countries. These years also saw an increasing breadth of national delegations to the UNFCCC, with a wider range of national ministries represented. Concurrently, these delegations grew much larger in size and frequently included ministers, leading to more nuanced negotiations at the international level and reflecting horizontal action at the domestic level. Ripple effects were also seen as climate change started creeping into the agendas of relevant intergovernmental sectoral forums such as Group of Twenty's ministers' meetings.

The horizontal range of the national government in the tent and the active participation of the leaders are therefore both necessary conditions for a whole-of-government approach. By the late 2000s, there was a quorum of countries that met both these conditions, allowing an ambitious agreement to be reached. This consolidation is far from sufficient for the implementation of the agreement, however, and will need to be strengthened in all countries in the coming years.

## *INNOVATION 2: A MULTISTAKEHOLDER CONCERT*

Climate governance has for decades been fundamentally shaped by a multitude of actors in addition to national governments, whether intentionally or otherwise. Environmental activists, scientists and academia, cities, business and industry, investors, and consumers are all driving forces toward both higher and lower carbon emissions. Dissonance in objectives due to competing interests has been the defining characteristic of this system for decades. Even for those sharing the goal of climate change mitigation and adaptation, the demarcation of formal versus informal processes has created a hierarchy that has impeded collective progress. The difference now is that actors outside the formal space have been brought into a different relationship with the intergovernmental process through the concerted efforts of the presidents of the Conference of Parties and the UN secretary-general.

In particular, a race to the top within sectors has been instigated such that by directly working with industry, incentives are being created within industries to move toward low-carbon products and processes. In the oil and gas industry, for example, leaders such as Saudi Aramco and Total S.A. seized the opportunity provided by technological developments and changes in relative prices to shift their investments toward a broader portfolio of energy sources. This enables them to be competitive in the short run and to survive the decreasing competitiveness of fossil fuels in the long run. They took leadership roles in encouraging intra-sectoral voluntary cooperation among oil and gas companies to address important immediate issues such as gas flaring and methane emissions.

A curious effect of incentivizing the major industrial sectors and bringing them into the tent has been the injection of the competitive nature of markets into the negotiation space. With the titans of industry giving signals to their governments, the space to move beyond a zero-sum game opened up among countries. The utility of such an approach was evident even in the formation of the agreement. The encouragement of business and finance leaders gave license to governments of Brazil, China, the

European Union, the United States, and others to commit to more enabling policy and regulatory environments to tackle climate change. This in turn has attracted the attention of additional nonstate action. A race to the top has indeed started.

Yet, while successful and promising thus far, the multistakeholder approach is nascent and cannot be taken for granted. It requires significant deepening to be effective at the scale needed for effective implementation of the Paris Agreement.

### *INNOVATION 3: A HYBRID AGREEMENT*

Composed of voluntary building blocks with legal process requirements, the Paris Agreement represents a significant innovation among international legal agreements. At its core, it is best described as a hybrid agreement along two axes.

The first axis is pragmatic-aspirational. All signatories commit to the aspiration of limiting global temperature rise to well below 2° C, and with an eye toward 1.5° C. However, recognizing that this aspiration can only become reality through many small steps, signatories commit their nations to what they can pragmatically achieve at a given time, and agree to ratchet up every five years in order to achieve the goal. The idea of “bring your best” is a radical shift away from “swallow the smallest amount of poison,” which characterizes previous attempts to provide this global public good. The effect of this innovation is twofold. In addition to ensuring that increasingly ambitious action to reach the 2° C goal is taken over time, it also minimizes fears of freeriding in the future. This is a critical need in any collective action problem. The Paris Agreement is therefore inherently dynamic as opposed to static. Whereas parties to previous environmental agreements such as the Montreal Protocol have improvised a way to dynamism by negotiating amendments every few years, the Paris Agreement efficiently folds in this mechanism in advance.

The second axis is voluntary-legal. The national commitments are entirely voluntary. No country commits to any action it does not wish to undertake. At the same time, all countries agree to be bound by their own commitments and to report to all others the progress of their actions. This combination ensures it is a bottom-up as well as a top-down agreement that avoids interference in national sovereignty—whether real or perceived—by supranational authority or other sovereign states.

The appeal of this hybridity along both axes is evident in the universality of the agreement. Unlike the Kyoto Protocol, which was only binding on developed countries (representing 30 percent of global greenhouse emissions when it was signed), the Paris Agreement is binding on all parties to the UN-FCCC. The inherent north versus south divide of the Kyoto Protocol is greatly tempered in the Paris Agreement by ensuring all countries are in.

The Paris Agreement is an opportunity agreement, one that trades classic zero-sum logic of apportioning pain among countries for maximizing gain to each country and the world by taking both cooperative and competitive positions in a structured race to the top. In securing a strong foundation in political reality through nationally determined contributions, reflecting consensus on the collective aspiration through a concrete end goal, and also defining a pathway to decreasing the chasm between the two over time, the agreement is both pragmatic and aspirational—part now and part tomorrow—and injects a competitive dynamic among all stakeholders.

#### INNOVATION 4: STRATEGIC ORCHESTRATION

Each of the above innovations required significant orchestration to be accepted and adopted. The United Nations, in particular through the secretary-general, has played a critical role in this regard, which was publicly most visible in the 2014 climate summit. Given the history of the intergovernmental negotiations and the continuing disconnect between the formal and informal spheres, the 2014 climate summit convened by the secretary-general was designed to “raise political momentum” in the negotiations, and to spur “a race to the top” by inviting state and nonstate leaders to “bring [their] best.”<sup>1</sup> Media, government, and academic consensus is that this was achieved successfully, with action announcements made by 111 national governments, 22 subnational governments, 85 cities, 358 civil society organizations, 481 private companies and investors, and 16 indigenous peoples—and coming on the heels of the largest march for climate, with 2,646 events around the world, and 400,000 participants in New York alone.

*Orchestrating a whole-of-government approach:* Following the failure of the Copenhagen summit, the secretary-general continued to work with heads of state and government on this issue, even though it was a highly unpopular topic at that time. Nevertheless, at the Group of Seven and the Group of Twenty summits and regional forums, in the UN General Assembly, and in bilateral meetings, the secretary-general continued to advocate intensely for continued leaders’ involvement in the climate process and to achieve an agreement in 2015. As a result, the 2014 climate summit was not only the then-largest gathering of heads of state and government on climate in one day but it also featured a strong degree of horizontal diversity in government participation. Ministers of finance, foreign affairs, and the environment rubbed shoulders with ministers of energy, transport, agriculture, and health, all focused on the issue of climate change. This set the stage for Paris.

*Orchestrating a multistakeholder concert:* This is perhaps the most significant contribution of the United Nations in the current climate governance paradigm. Notably, for the first time in the history of the United Nations, at the 2014 summit the secretary-general defined leaders as both governmental and nongovernmental. Business, civil society, municipal, and gubernatorial leaders were given comparable importance as presidents and prime ministers. This was most visibly manifest in protocol on the day of the summit: government leaders were required to speak in parallel in separate rooms to fit everyone in and to limit their remarks to four minutes each. This blending of the formal with the informal in the home turf of formal processes was unprecedented and was met initially with some resistance. And yet, the French presidency would soon enthusiastically incorporate these innovations into the Paris process.

Nonstate participation and interaction with member states at the 2014 summit was carefully curated. To be seen and featured as leaders, these actors underwent a yearlong process of proposal refinement and coalition-building. Only after extensive involvement and an intense vetting process were select organizations invited as speakers at the summit. The criteria of worthwhile announcements were set in keeping with the mitigation gap as defined by the UN Environment Program’s gap report. Eight sectors (transport, forests, agriculture, renewable energy and energy efficiency, short-lived climate pollutants, cities and subnational regions, resilience, and finance) that contribute most to climate change were targeted. Using a sectoral approach ensured that leaders within a sector could set in motion a race to the top within their own sectors. This logic was carried through to the Paris conference and forms the basis of the action agenda today.

The secretary-general's office also worked with civil society in the organization of the People's Climate March held just two days ahead of the summit. Through discussions with the organizers of the march for over nine months, an agreement was reached that the march would be global, inclusive, and aim for a constructive tone. The numerous speeches given by leaders two days later evidently drew inspiration from the march.

#### *FUTURE INNOVATIONS IN CLIMATE GOVERNANCE*

Going forward, institutionalization of the race to the top in the implementation phase of the Paris Agreement will be critical. This will be challenging as the blend of competition and cooperation that helped achieve a negotiated agreement may be quite different than what is required for the implementation of various aspects of the agreement. Nevertheless, the momentum and enthusiasm for this approach are significant due to its success during the negotiation of the agreement. This should be cultivated with the specific needs of the implementation phase in mind.

The need to drastically widen the pool of actively involved nongovernmental leaders is paramount. The market alone has not yet delivered a chain reaction on this front, and sustained outreach, advocacy, and orchestration efforts will be needed. Finally, the race to the top will need to be embedded well at the national and local levels in countries all over the world in order to deliver the goals of Paris.

*ENDNOTE*

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1. "2014 Climate Summit: Chair's Summary," September 23, 2014, <http://un.org/climatechange/summit/2014/09/2014-climate-change-summary-chairs-summary>; "Join the Climate Race to the Top by Ban Ki-moon," May 9, 2014, <http://un.org/climatechange/summit/2014/05/join-the-climate-race-to-the-top-by-ban-ki-moon>; "Climate Summit to Open Opportunities for World Leaders to Show New Actions," February 10 2014, <http://un.org/climatechange/summit/2014/02/climate-summit-to-open-opportunities-for-world-leaders-to-show-new-actions>.

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## About the Authors

**Deborah Avant** is the Sié Chéou-Kang chair for international security and diplomacy and director of the Sié Chéou-Kang Center for International Security and Diplomacy at the Josef Korbel School of International Studies of the University of Denver. Her research has focused on civil-military relations and the roles of nonstate actors in controlling violence and generating governance. She is author or editor of *The New Power Politics: Networks and Transnational Security Governance* (with Oliver Westwinter), *Who Governs the Globe?* (with Martha Finnemore and Susan Sell), *The Market for Force: The Consequences of Privatizing Security*, and *Political Institutions and Military Change: Lessons From Peripheral Wars*, along with articles in such journals as *International Organization*, *International Studies Quarterly*, *Security Studies*, *Perspectives on Politics*, and *Foreign Policy*. Under her leadership, the Sié Chéou-Kang Center launched the Private Security Monitor, an annotated guide to regulation, data, and analyses of global private military and security services, and is an observer member of the International Code of Conduct Association (ICoCA). In 2013, Avant was awarded an honorary doctorate by University of St. Gallen for her research and contribution toward regulating private military and security companies. Avant serves on numerous governing and editorial boards and is editor in chief of the International Studies Association's newest journal the *Journal of Global Security Studies*.

**Susanna P. Campbell** is an assistant professor at American University's School of International Service. Her research and teaching address war-to-peace transitions, peace-building, peacekeeping, international development and humanitarian aid, global governance, international organization and international nongovernmental organization behavior, and the micro-dynamics of civil war and peace. She does mixed-method research and has conducted extensive fieldwork in conflict-affected countries, including Burundi, Democratic Republic of Congo, Nepal, Sudan, South Sudan, and East Timor. Campbell's first book, *Global Governance and Local Peace: Accountability and Performance in International Peacebuilding*, is forthcoming from Cambridge University Press. She is working on a second book project, *Aiding Peace? Donor Behavior in Conflict-Affected Countries*. Campbell received her PhD from Tufts University in 2012 and was a postdoctoral researcher at Columbia University's Saltzman Institute of War and Peace Studies and the Graduate Institute in Geneva.

**Eileen Donahoe** is executive director of the Global Digital Policy Incubator at Stanford University's Center on Democracy, Development, and the Rule of Law, where she works to develop global digital policies that address human rights, security, and governance challenges. She served as the first U.S. ambassador to the UN Human Rights Council in Geneva during the Barack Obama administration. After leaving government, she was director of global affairs at Human Rights Watch, where she represented the organization worldwide on human rights foreign policy. Donahoe is a member of the World Economic Forum Council on the Future of Human Rights; the University of Essex Advisory Board on Human Rights, Big Data, and Technology; the Freedom Online Coalition Working Group on Freedom and Security; and the Benetech advisory board. She is a distinguished fellow at the Center for International Governance Innovation and an affiliate at the Center for International Security and Cooperation at Stanford University. Previously, she was a technology litigator at Fenwick and West in

Silicon Valley. She holds a BA from Dartmouth College, an MTS from Harvard University, an MA in East Asian studies from Stanford University, a JD from Stanford Law School, and a PhD in ethics and social theory from the Graduate Theological Union at the University of California, Berkeley.

**Karen Florini** is vice president for programs at Climate Central, an independent, nonprofit, non-advocacy science and journalism organization that does research and reporting about climate change. She is also a visiting fellow at the Oxford University's Oxford Martin School. Florini recently completed nearly two years as the deputy special envoy for climate change at the U.S. Department of State. In that capacity, she helped lead the Global Climate Change Initiative, the Obama administration's whole-of-government mechanism for integrating climate change considerations into foreign assistance. She also led the State Department's collaborations with businesses, state and local governments, and civil society in the climate negotiations context, and headed the department's portfolio on short-lived climate pollutants. Before joining the State Department, Florini spent over twenty-five years at Environmental Defense Fund, a prominent U.S.-based nongovernmental organization, where among other responsibilities she served as managing director for international climate and led the environmental health program. Her thirty-plus years of service on nonprofit boards included eighteen years as a trustee of Oberlin College. She earned a bachelor's degree with majors in biology and environmental policy at Oberlin and a JD at Harvard Law School, where she served as editor in chief of the *Harvard Environmental Law Review*.

**Miles Kahler** is senior fellow for global governance at the Council on Foreign Relations and distinguished professor at American University's School of International Service. Previously, he was Rohr professor of Pacific international relations and distinguished professor of political science at the University of California, San Diego's School of International Relations and Pacific Studies. Kahler has been a fellow at the Woodrow Wilson International Center for Scholars (2012–2013) and Stanford University's Center for Advanced Study in the Behavioral Sciences (2007–2008) and senior fellow for international political economy at CFR (1994–1996). He is a member of the editorial boards of *International Organization*, *Global Governance*, and *Global Summitry*. He has published widely in the fields of international politics and international political economy, including articles and books on global governance, international financial institutions, and Asia-Pacific regionalism. His current research centers on emerging economies and global governance, new modes of global governance, and challenges to the nation-state as a dominant unit in the international system. He received an AB and a PhD from Harvard University, and a BPhil (MPhil) from Oxford University.

**Mark P. Lagon** is chief policy officer at Friends of the Global Fight Against AIDS, Tuberculosis, and Malaria. He is also centennial fellow at Georgetown University's School of Foreign Service. He served as president of Freedom House. He was simultaneously global politics and security chair for Georgetown's Master of Science in Foreign Service program and adjunct senior fellow for human rights at the Council on Foreign Relations. Previously, he was executive director of the anti-trafficking nonprofit Polaris. At the U.S. Department of State, he served on the secretary of state's policy planning staff and served as deputy assistant secretary for international organizations and as ambassador-at-large directing the Office to Monitor and Combat Trafficking in Persons. He was senior staffer at the U.S. Senate Committee on Foreign Relations, deputy director of the House Republican Policy Committee, and aide to former UN Ambassador Jeane Kirkpatrick at the American Enterprise Institute. He coedited, with Anthony Clark Arend, *Human Dignity and the Future of Global Institutions* and authored

*The Reagan Doctrine: Sources of American Conduct in the Cold War's Last Chapter.* Lagon is founding board member of the Global Business Coalition Against Human Trafficking, housed at Business for Social Responsibility. He received his AB from Harvard University and a PhD in government from Georgetown University.

**Tim Maurer** codirects the Cyber Policy Initiative at the Carnegie Endowment for International Peace. His research focuses on cyberspace and international affairs, namely cybersecurity, human rights online, and internet governance. Maurer is a member of several U.S. track 1.5 cyber dialogues and the Freedom Online Coalition's cybersecurity working group "An Internet Free and Secure." He was a member of the research advisory network of the Global Commission on Internet Governance, co-chaired the advisory board of the Global Conference on Cyberspace in The Hague, and developed the Global Cyber Definitions Database for the chair of the Organization for Security and Cooperation in Europe to support the implementation of the organization's cyber confidence-building measures. Maurer is the lead author of "Tipping the Scale: An Analysis of Global Swing States in the Internet Governance Debate," published by the Global Commission on Internet Governance. He coauthored the "International Relations and Cyber Security" entry for Oxford Bibliographies. His work has been published by CNN, *Foreign Policy*, *Jane's Intelligence Review*, *Slate*, *Time*, and other academic and media venues. Prior to joining Carnegie, Maurer was director of the Global Cybersecurity Norms and Resilience Project at New America and head of research of New America's Cybersecurity Initiative. He also spent several years focusing on humanitarian assistance and the coordination of the UN system, gaining experience with the United Nations in Rwanda, Geneva, and New York.

**Amol Mehra** is executive director of the International Corporate Accountability Roundtable (ICAR), an organization harnessing the collective power of progressive organizations to push governments to create and enforce rules over corporations that promote human rights and reduce inequality. Mehra is an international human rights lawyer by training, focusing on business and human rights, as well as corporate social responsibility. He has worked to build accountability frameworks in both domestic and international arenas, including over private military and security companies and around supply chains and extractive industries. He has also worked to strengthen measures related to nonfinancial disclosure, anticorruption, procurement, and due diligence regimes. In addition to his work as executive director of ICAR, Mehra serves as an advisory board member of Lawyers for Better Business and on the advisory councils for the American Bar Association's Center for Human Rights, the Ranking Digital Rights Project, and the Center for Business and Human Rights at the New York University's Stern School of Business. His writing has appeared in CSRWire, *Forbes*, the *Guardian's* Sustainable Business Section, the *Hill*, and the *Huffington Post*, as well as in various legal journals and periodicals and on NPR. Mehra holds a bachelor of commerce degree from McGill University and a JD with honors in international law from the University of San Francisco School of Law.

**Robert C. Orr** serves as dean of the School of Public Policy at the University of Maryland and UN under secretary-general and special advisor to the secretary-general on climate change. Prior to joining the University of Maryland, Orr served as assistant secretary-general for strategic planning in the executive office of the United Nations secretary-general from 2004 to 2014 and was the principal advisor to the secretary-general on counterterrorism, peace-building, women's and children's health, sustainable energy, food and nutrition, institutional innovation, public-private partnership, and climate change. Orr joined the United Nations from Harvard Kennedy School's Belfer Center, where he

served as the executive director. Prior to this, he served as director of the Council on Foreign Relations in Washington, DC. He has served in senior posts in the government of the United States, including deputy to the U.S. ambassador to the United Nations and director of global affairs at the National Security Council.

**Jason Pielemeier** is policy director at the Global Network Initiative (GNI), where he works with GNI's company, civil society, academic, and investor members to enhance free expression and privacy in the information and communication technology environment. Prior to joining GNI, Pielemeier led the Internet Freedom, Business, and Human Rights section in the U.S. Department of State's Bureau of Democracy, Human Rights, and Labor, where he was responsible for foreign policy related to human rights online and responsible business conduct generally. From 2010 to 2013, he served as a special advisor in the bureau, focused on security and human rights issues, including detention, detainee transfers, and security sector reform. Prior to joining the State Department, Pielemeier worked as a lawyer at Debevoise & Plimpton LLP and as a law clerk in the U.S. Federal District Court for the Eastern District of New York. Earlier in his career, he served as a Peace Corps volunteer and as country director of a land titling and conservation project in Guatemala. Pielemeier holds a bachelor's degree from Northwestern University and a JD from Yale Law School.

**Sarah Sewall** is a distinguished scholar at Johns Hopkins University's School of Advanced International Studies. She previously spent a decade on the Harvard Kennedy School faculty and had been the Minerva chair at the Naval War College. Sewall's public service includes positions in the U.S. Department of State (undersecretary for civilian security, democracy, and human rights), the Department of Defense (deputy assistant secretary for peacekeeping), and Capitol Hill (senior advisor to Democratic Senate Majority Leader George Mitchell).