



THE GEORGE WASHINGTON
UNIVERSITY LAW SCHOOL

GW Law School Public Law and Legal Theory Paper No. 2022-53

GW Legal Studies Research Paper No. 2022-53

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David Sloss and Laura Dickinson

Since about 2008, the rise of autocracy and the corresponding decline of democracy has been a key trend in international affairs. Freedom House reports that, as of 2022, “some 38 percent of the global population live in Not Free countries, the highest proportion since 1997. Only about 20 percent now live in Free countries.”¹ The growth of Chinese power is one of several factors contributing to these trends. Democratic decay affects the international legal order because, as Tom Ginsburg has convincingly argued, growing Chinese power and the spread of authoritarian governance are pushing international law in the direction of “authoritarian international law.”²

The United States has led the world in creating a liberal international order since World War II. Despite rising Chinese power and the growth of authoritarian international law, can that liberal order survive? To answer that question, it is helpful to distinguish among global law, regional law, and plurilateral international law. Since World War II, the most important international institutions have been either regional (*e.g.*, the European Union) or global (*e.g.*, the United Nations and the World Trade Organization). Several plurilateral institutions exist (*e.g.*, the OECD), but they have played at most a secondary role in the creation and enforcement of international law.

We assume that international law at the regional level in Europe will continue to reflect liberal values. However, growing Chinese power and the rise of authoritarian international law pose a significant threat to the continued vitality of liberal international law at the global level. To counter that threat effectively, the United States will need to collaborate with other liberal democracies, including those outside Europe, to develop new plurilateral institutions and plurilateral treaties to create a “liberal plurilateral order.” In fact, states are currently planting the seeds of a future liberal plurilateral order in their response to Russian aggression in Ukraine.

States’ responses to the war in Ukraine reinforce a point that was evident previously: most autocratic states do not support a liberal international order, rooted in a principled commitment to democracy, human rights, and the rule of law. Opposition from powerful autocracies, especially China and Russia, makes it increasingly unrealistic to try to maintain a *global* liberal order. However, state responses to Russian aggression demonstrate that liberal democracies from every continent are cooperating informally to uphold a *plurilateral* international order that is consistent with liberal values. In the longer term, a liberal plurilateral order will be more effective if it is codified in the form of new treaties and institutions. Thus, the war in Ukraine highlights the need for new plurilateral treaties and institutions to facilitate cooperation among liberal democracies from Asia, Africa, Europe, and the Americas. Such treaties and institutions could potentially reshape international law to help stem the rising tide of autocracy that has gained momentum over the past 10-15 years.

¹ Sarah Repucci and Amy Slipowitz, *Freedom in the World 2022: The Global Expansion of Authoritarian Rule* (Freedom House 2022).

² Tom Ginsburg, *Authoritarian International Law?*, 114 AM. J. INT’L L. 221 (2020).

The remainder of this Essay proceeds in three parts. Part One analyzes state responses to the war in Ukraine, showing that liberal democracies have responded very differently from autocratic states. Part Two focuses on international humanitarian law (IHL). It shows that liberal democracies, joined in many cases by hybrid states (those that are neither democratic nor autocratic), are fighting to defend IHL norms and to develop new accountability mechanisms to respond to Russian war crimes. Part Three suggests pathways for building on the current processes of informal collaboration to create new plurilateral treaties and institutions to develop a liberal, plurilateral order.

I.

The Response to Russian Aggression

Analysis of states' responses to Russia's invasion of Ukraine demonstrates that liberal democracies behave differently from autocracies in the international arena. We divide UN Member states into three groups: liberal democracies, autocracies, and hybrid states. Liberal democracies are states that score .6 or better on the V-Dem liberal democracy index.³ Autocracies are states that score below .3. States that score between .3 and .6 are hybrid states. Twenty-one UN member states are not included in the V-Dem index. We use Freedom House data to classify those states.⁴ Overall, the 193 UN member states include 66 liberal democracies, 75 autocracies, and 52 hybrid states.⁵

The UN General Assembly held two key votes in response to Russia's invasion of Ukraine. On March 2, 2022, UNGA voted to condemn Russian aggression, with 141 states in favor and only five opposed.⁶ Then, on April 7, UNGA voted to suspend Russia's membership in the UN Human Rights Council due to "gross and systematic violations and abuses of human rights and violations of international humanitarian law."⁷ 93 states voted in favor of the resolution; 24 voted against.⁸

The following table demonstrates that there is a strong correlation between the classification of states by regime type and their votes on the UN resolutions. Liberal democracies voted unanimously to condemn Russia's invasion of Ukraine. Fifty-eight of 66 liberal democracies (88%) voted to suspend Russia from the Human Rights Council. In contrast, fewer than half of the

³ The Varieties of Democracy Institute publishes data every year that provides detailed information about the global state of democracy. See <https://www.v-dem.net/vdemds.html>. V-Dem data includes five different indexes for measuring the quality of democracy. We use the liberal democracy index because it provides the best measure of protection for human rights.

⁴ Freedom House data is available at <https://freedomhouse.org/report/freedom-world>. Freedom House assigns every state a score on a scale from 1 to 100, with 100 being the most free. Twenty of the 21 UN member states that are excluded from the V-Dem index scored 77 or better on the Freedom House scale. We classify those 20 states as liberal democracies. Freedom House gives Brunei a score of 28. We classify Brunei as an autocracy.

⁵ A file with classifications and other data is on file with authors.

⁶ See Press Release, March 2, 2022, <https://www.un.org/press/en/2022/ga12407.doc.htm>

⁷ A/RES/ES-11/3, available at <https://research.un.org/en/docs/ga/quick/emergency> (visited May 13, 2022).

⁸ United Nations, General Assembly: Eleventh Emergency Special Session (April 7, 2022), <https://media.un.org/en/asset/k11/k11djc9qnp>

UN’s autocratic states voted to condemn Russian aggression. Among autocratic states, “no” votes on the Human Rights Council resolution exceeded “yes” votes by a margin of almost two-to-one.

Votes in UN General Assembly⁹

	Vote to Condemn Russia’s Invasion of Ukraine	Vote to Suspend Russia from Human Rights Council
Liberal Democracies (66)	66 Yes (100%) 0 No 0 Abstain	58 Yes (88%) 0 No 8 Abstain
Hybrid States (52)	41 Yes (79%) 0 No 11 Abstain	23 Yes (44%) 1 No 28 Abstain
Autocratic States (75)	34 Yes (45%) 5 No 36 Abstain	12 Yes (16%) 23 No 40 Abstain

The UN Human Rights Council includes 47 member states: 13 liberal democracies, 19 autocracies, and 15 hybrid states. On March 4, 2022, the Council voted to establish a commission of inquiry (COI) to investigate “violations and abuses of human rights and violations of international humanitarian law, and related crimes in the context of the aggression against Ukraine by the Russian Federation.”¹⁰ The voting pattern in the Human Rights Council was very similar to the voting pattern for the first General Assembly resolution. Ninety-two percent of liberal democracies (12/13) and 73 percent of hybrid states (11/15) voted in favor of the COI. Only 47 percent of autocracies (9/19) voted in favor. Only two states voted against the resolution: Eritrea and Russia. Both are autocracies.

Analysis of economic sanctions against Russia reinforces the point that liberal democracies responded to Russian aggression very differently than autocracies. The Peterson Institute for International Economics monitors economic sanctions against Russia. Forty states (39 UN members plus Taiwan) have imposed sanctions on Russia in response to the Ukraine invasion.¹¹ Not surprisingly, none of the UN’s 75 autocratic states imposed sanctions. In contrast, 35 liberal democracies and five hybrid states have imposed economic sanctions.¹² Thus, slightly more than half of the world’s liberal democracies have joined forces to impose sanctions in response to Russian aggression. Perhaps more importantly, almost every liberal democracy with significant economic power has joined the sanctions coalition. Specifically, 18 of the world’s 20 wealthiest

⁹ The figures for abstentions include states that abstained and states that did not vote.

¹⁰ A/HRC/RES/49/1 (March 7, 2022).

¹¹ Data on sanctions is available from the Peterson Institute for International Economics, <https://www.piie.com/blogs/realtime-economic-issues-watch/russias-war-ukraine-sanctions-timeline> (last visited May 12, 2022).

¹² We classify Taiwan as a liberal democracy; Taiwan scores .699 on the V-Dem liberal democracy index. The five hybrid states are Singapore, Hungary, Poland, Bulgaria, and Slovenia.

liberal democracies—all except Israel and Argentina—have imposed sanctions on Russia. Collectively, those 18 countries account for more than fifty percent of global GDP.¹³

The forty states that are members of the sanctions coalition are mostly from Europe.¹⁴ However, the coalition also includes six states from the Asia-Pacific region (Australia, Japan, New Zealand, Singapore, South Korea, and Taiwan) and two states from North America (the U.S. and Canada). The sanctions coalition does not include any states from Africa or Latin America.

II. International Humanitarian Law and the Emerging Liberal Plurilateral Order

International humanitarian law (IHL) is a cornerstone of the liberal international order that must be preserved and strengthened in the face of new threats posed not only by Russia, but also by other changes to the way modern wars are conducted. Forged out of the tragedy of warfare in the 19th and 20th centuries, IHL seeks to balance the reality of military necessity with humanitarian values. Its core tenets, some of the most widely accepted principles of international law, are enshrined in the four Geneva Conventions of 1949,¹⁵ the two Additional Protocols,¹⁶ and customary international law. Well-established international institutions—such as the International Committee of the Red Cross (ICRC), the United Nations, and international tribunals—have played a key role in implementing and interpreting this body of law.

Russia's brutal tactics in the war in Ukraine are putting IHL to the test. Although Russia is a party to many IHL treaties, it has engaged in numerous acts that clearly violate those treaties. Moreover, the stress test that Russia's conduct is placing on IHL is not the only one to emerge in recent years. As one of us has argued elsewhere, multiple contemporary forces have placed IHL under considerable strain, including the rise of non-state armed groups, privatization, the emergence of new military technologies, and urbanization.¹⁷

¹³ GDP information is based on IMF data from 2019. That data is published at <https://worldpopulationreview.com/countries/countries-by-gdp>

¹⁴ The coalition includes the 27 members of the European Union, plus five other European states: Iceland, Liechtenstein, Norway, Switzerland, and the United Kingdom.

¹⁵ Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 8; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287.

¹⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 U.N.T.S. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 1125 U.N.T.S. 609.

¹⁷ Laura A. Dickinson, *The Jus in Bello Under Strain: Diluted but not Disintegrating*, in *IS THE INTERNATIONAL LEGAL ORDER UNRAVELING?* (David L. Sloss ed., forthcoming, Oxford University Press 2022).

Yet the fact that IHL has weathered some of these challenges suggests it may well survive the others, including Russia's flagrant violations in Ukraine. This Part examines two encouraging developments in the Russia-Ukraine context that suggest IHL is in a good position to survive this stress test: (1) broad embrace of IHL norms; and (2) strong support for IHL accountability processes. In each case, the involvement of a worldwide coalition of liberal democracies and hybrid states is striking, and may indicate that IHL is a domain where the seeds of a new liberal plurilateral order are taking root.

A. Norms

The resilience of IHL has emerged in the strong statements of world leaders condemning Russia's clear violations. From UN and other international organization leaders, to governments around the world, to prominent voices in civil society, a large swath of the international community has excoriated Russia for its numerous IHL violations in Ukraine. Indeed, when Russian forces bombed maternity hospitals and schools or executed civilians in the streets, public outrage grew so strong that it kindled a growing interest in IHL among the public at large in many countries, garnering extensive coverage in the global media.

Notably, condemnation of Russia's IHL violations extends well beyond the European region and includes large numbers of liberal democracies and hybrid states, even as authoritarian countries have remained silent or tacitly supported Russian aggression. For example, Japan's Chief Cabinet Secretary, Hirokazu Matsuno, called Russia's suspected massacre of civilians near Kyiv a "serious violation of international humanitarian law" and a "war crime."¹⁸ The transition team of the new South Korean President, Yoon Seok-yul, "strongly condemn[ed]" Russia's alleged massacre of civilians in Bucha and described it as "an act against humanity and a clear violation of international law."¹⁹ Officials from Australia,²⁰ Canada, and New Zealand have made similar statements,²¹ as have government leaders from the Marshall Islands and Colombia.²² Collectively, these statements reflect strong support for international humanitarian law as a cornerstone of the international legal order, embraced by liberal democracies and hybrid states around the globe.

B. IHL accountability processes

¹⁸ *Japan Condemns Russia for "War Crime" in Ukraine*, JAPAN TIMES, April 6, 2022, <https://www.japantimes.co.jp/news/2022/04/06/national/japan-ukraine-civilian-killings-war-crime/>.

¹⁹ *Transition Team Condemns Russia's Alleged Massacre of Civilians in Ukraine*, YONHAP NEWS AGENCY, April 8, 2022, <https://en.yna.co.kr/view/AEN20220408005500315>.

²⁰ *Australia and the UK Work Together to Get Vital Aid to Ukraine*, Australian Ministry of Foreign Affairs, March 22, 2022, at <https://www.foreignminister.gov.au/minister/marise-payne/media-release/australia-and-uk-work-together-get-vital-aid-ukraine>.

²¹ See Michael Nielson, *Russia Ukraine War: NZ Supports International Call for War Crimes Accountability*, NZ HERALD, May 15, 2022, <https://www.nzherald.co.nz/nz/russia-ukraine-war-nz-supports-international-call-for-war-crimes-accountability/IJLKMf24BBaWXRPIKUPLSNVEHU/>.

²² *Albania, Colombia, Denmark, Marshall Islands, the Netherlands and Ukraine Launch Group of Friends of Accountability following the Aggression Against Ukraine*, Permanent Mission of Albania to the United Nations, March 25, 2022 [hereafter *Albania et al.*], <http://ambasadat.gov.al/united-nations/albania-colombia-denmark-marshall-islands-the-netherlands-and-ukraine-launch-group-of-friends-of-accountability-following-the-aggression-against-ukraine/>

The war in Ukraine has also revealed the strength of IHL accountability processes, spawning a multi-layered array of investigative and prosecutorial efforts, including the COI discussed above. Perhaps the most significant international institution pursuing accountability for Russian atrocities in Ukraine is the International Criminal Court (ICC). Although Ukraine is not a party to the Rome statute,²³ the ICC has jurisdiction over international crimes committed on Ukrainian territory because Ukraine issued declarations accepting the court's jurisdiction.²⁴ Almost immediately after Russia's invasion, ICC prosecutor Karim Khan announced that he would seek authorization to open an investigation.²⁵ A referral from 43 states parties soon followed.²⁶ The Prosecutor quickly opened an investigation into war crimes, crimes against humanity, and genocide committed on the territory of Ukraine by any person from Nov. 21, 2013 onward.²⁷

Significantly, states supporting the ICC investigation include not only European states, but also other liberal democracies from around the world. Non-European liberal democracies joining the referral include Australia, Canada, Chile, Costa Rica, Japan, and New Zealand.²⁸ Colombia, a hybrid state, also signed on.²⁹ It is striking that the United States, a liberal democracy not party to the Rome statute and therefore unable to join the referral, has nevertheless welcomed the investigation.³⁰ The US position is notable because the US faces domestic legislative restrictions

²³ Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. (entered into force on July 1, 2002).

²⁴ Ukraine Declaration No. 61219/35-673-384 (April 9, 2014), <https://www.icc-cpi.int/sites/default/files/itemsDocuments/997/declarationRecognitionJurisdiction09-04-2014.pdf>; Ukraine Declaration (Sept. 8, 2015), https://www.icc-cpi.int/sites/default/files/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf#search=ukraine.

²⁵ Statement, Int'l Crim. Ct., Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine (Feb. 28, 2022), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-decided-proceed-opening>.

²⁶ Statement, Int'l Crim. Ct., Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties, (Mar. 2, 2022) [hereafter Referrals from 39 States], <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states>; Statement, Int'l Crim. Ct., Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Additional Referrals from Japan and North Macedonia (Mar. 11, 2022) [hereafter Japan and North Macedonia Referrals], <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-additional-referrals-japan-and>; *Ukr.*, INT'L CRIM. CT. (noting that, in March 2022 and April 2022, Montenegro and Chile (respectively) joined the referral) [hereafter Montenegro and Chile Referrals], <https://www.icc-cpi.int/ukraine> (last visited June 2, 2022).

²⁷ See Referrals from 39 States, *supra* note __.

²⁸ *Id.*; see also Japan and North Macedonia Referrals, *supra* note __; Montenegro and Chile Referrals, *supra* note __.

²⁹ See Referrals from 39 States, *supra* note __.

³⁰ U.S. Dep't of State, Press Briefing, Statement of Beth Van Schaack, US Ambassador for Global Criminal Justice (March 23, 2022), <https://www.state.gov/briefings/department-press-briefing-march-23-2022/>; see also Missy Ryan, *U.S. Looks to Assist War Crimes Prosecutions Targeting Russian Leaders*, WASH. POST, April 25, 2022.

on certain forms of support for the ICC.³¹ Indeed, the US Congress is considering multiple bills that would loosen such restrictions.³²

In addition, the Organization for Security and Cooperation in Europe (OSCE) launched an investigation into war crimes and other atrocities in Ukraine following the Russian invasion.³³ Initiated pursuant to the so-called Moscow Document and known as the “Moscow Mechanism,” the investigation has already yielded a report that “found clear patterns of IHL violations by the Russian forces in their conduct of hostilities,” as well as some problems attributed to Ukraine, most notably in the treatment of prisoners of war.³⁴ The European Union has also pledged to support an investigation into war crimes in Ukraine, in part via the European Union Mission in Ukraine (established in 2014).³⁵

Perhaps the swiftest-moving accountability processes for war crimes in Ukraine have been domestic. And, like the other accountability initiatives, liberal democracies are leading the way. As of this writing, Ukraine has convicted three Russian soldiers of “violating the laws and customs of war.”³⁶ According to the prosecutor general, tens of thousands of investigators are spreading out throughout the country to gather evidence of war crimes and other atrocities.³⁷ The office receives between 200 and 300 new war crimes cases each day, a total of 15,000 so far, and has identified 80 individual suspects.³⁸

Multiple countries—all liberal democracies or hybrid states—along with several multinational bodies, have offered support to Ukraine’s domestic prosecutorial efforts. For example, France, Lithuania, the Netherlands,³⁹ and the UK⁴⁰ have sent investigators to Ukraine. The Council of Europe has supported such domestic efforts by establishing an expert advisor group

³¹ Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, Pub. L. No. 106-13, 113 Stat. 1501A-458, codified at 22 U.S.C. 7401(b) (2006); *see also* American Servicemembers’ Protection Act of 2002 (“ASPA”), codified as amended at 22 U.S.C. 7241-7433 (2006 and West Supp. 2009).

³² *See* Ryan Goodman, *How Best to Fund the International Criminal Court*, JUST SECURITY (May 27, 2022), <https://www.justsecurity.org/81676/how-best-to-fund-the-international-criminal-court/>.

³³ OSCE, REPORT ON VIOLATIONS OF INT’L HUMANITARIAN AND HUMAN RIGHTS LAW, WAR CRIMES, AND CRIMES AGAINST HUMANITY COMMITTED IN UKRAINE SINCE 24 FEBRUARY 2022 (April 13, 2022), <https://www.osce.org/files/f/documents/f/a/515868.pdf>.

³⁴ *Id.* at ii.

³⁵ Elena Sanchez Nicolas, *EU Will Support Investigation into War Crimes in Ukraine*, EUROPEAN UNION OBSERVER, April 13, 2022, <https://euobserver.com/ukraine/154729>.

³⁶ Claire Parker, Ellen Francis & Annabelle Chapman, *Russian Soldiers Get Prison Terms in Second Ukraine War Crimes Trial*, WASH. POST, May 31, 2022, at <https://www.washingtonpost.com/world/2022/05/31/ukraine-russian-war-crimes-second-trial-sentencing/>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Government of the United Kingdom, Press Release, *UK Dispatches War Crimes Experts to Help Ukraine with Investigations* (April 29, 2022), <https://www.gov.uk/government/news/uk-dispatches-war-crimes-experts-to-help-ukraine-with-investigations>.

and training prosecutors.⁴¹ Latvia, Estonia, Slovakia, the Czech Republic, Poland, the US, and the UK, along with the EU and the ICC, have formed a joint investigative initiative to fund and support Ukrainian investigations, share evidence, and coordinate investigative efforts.⁴² Dubbed the Atrocity Crimes Advisory Group, the initiative includes a cohort of senior war crimes prosecutors, investigators, military analysts, forensic specialists, and other experts who are advising Ukraine's general prosecutor, as well as mobile justice teams on the ground.⁴³ Beyond Europe, states that have supported these investigative efforts include the US, Australia,⁴⁴ the Marshall Islands,⁴⁵ Colombia,⁴⁶ and South Korea.⁴⁷

Finally, at least 18 other countries have started their own criminal investigations into war crimes perpetrated in Ukraine.⁴⁸ For example, relying on principles of universal jurisdiction, Germany has opened a "structural" investigation into war crimes in Ukraine, and two former ministers have lodged a formal complaint against 33 Russian officials.⁴⁹ Poland, where thousands of refugees are sheltering, has similarly initiated domestic criminal investigations and has already gathered "significant testimonies," video, and photographic evidence.⁵⁰ Spain and Sweden have also initiated domestic criminal investigations of war crimes in Ukraine.⁵¹ Beyond Europe, Canada has initiated a "national structural investigation into allegations of war crimes and crimes against humanity committed in Ukraine."⁵² In the United States, Russian atrocities in Ukraine have spurred a bipartisan effort to expand U.S. war crimes jurisdiction, opening the door to domestic prosecutions.⁵³

Russia's blatant atrocities in Ukraine present a challenge to the liberal international order. So far, the strong response across the international community is encouraging. The overwhelming

⁴¹ Council of Europe, *Council of Europe Expert Advisory Group Starts Its Work Supporting Ukraine's Prosecutor General Office*, April 21, 2022, <https://www.coe.int/en/web/kyiv/-/council-of-europe-expert-advisory-group-starts-its-work-supporting-ukraine-s-prosecutor-general-office>.

⁴² Parker et. al., *supra* note __.

⁴³ U.S. Dep't of State, *The European Union, the United States, and the United Kingdom Establish the Atrocity Crimes Advisory Group (ACA) for Ukraine*, May 25, 2022, <https://www.state.gov/creation-of-atrocity-crimes-advisory-group-for-ukraine/>

⁴⁴ Paul Osborne, *Australia Backs Russia War Crime Probes*, CROOKWELL GAZETTE, May 20, 2022, <https://www.crookwellgazette.com.au/story/7746850/australia-backs-russia-war-crime-probes/>.

⁴⁵ *Albania et al.*, *supra* note __.

⁴⁶ *Id.*

⁴⁷ *Transition Team*, *supra* note __.

⁴⁸ Loveday Morris, *An 'Unprecedented' Effort to Document War Crimes in Ukraine. But What Chance of Justice?*, WASH POST., May 28, 2022, at <https://www.washingtonpost.com/world/2022/05/28/ukraine-war-crimes-investigations/>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Lauren Baillie, *Ukraine: Justice for War Crimes Must Begin with Evidence*, U.S. Institute of Peace, April 7, 2022, <https://www.usip.org/publications/2022/04/ukraine-justice-war-crimes-must-begin-evidence>.

⁵² Royal Can. Mounted Pol., *A Statement by the Partners of Canada's War Crimes Program on the Conflict in Ukraine*, April 7, 2022, <https://www.rcmp-grc.gc.ca/en/news/2022/a-statement-the-partners-canadas-war-crimes-program-the-conflict-ukraine>.

⁵³ Charlie Savage, *Russian Atrocities Prompt Bipartisan Push to Expand U.S. War Crimes Law*, N.Y. TIMES, May 16, 2022, <https://www.nytimes.com/2022/05/16/us/senate-bill-war-crimes-ukraine.html>.

majority of non-authoritarian states, along with international organizations and many private actors, have reaffirmed their commitment to IHL norms and values and supported an enormous, multi-level effort to investigate and prosecute Russian atrocities. Moreover, this support can be found among liberal democracies and hybrid states around the globe, transcending regional groupings and reflecting shared values. This alignment suggests that, in the domain of IHL, we can see the seeds of a new liberal plurilateral order.

III. The Future Architecture of the International Legal Order

Parts One and Two show that state responses to Russia’s invasion of Ukraine have begun to sow the seeds of a liberal plurilateral order. Part Three contends that, for a liberal plurilateral order to flourish, more formal cooperation among liberal democracies is required, and that liberal democracies must begin to create new plurilateral treaties and institutions.

A. The Case for New Plurilateral Treaties and Institutions

For the past decade, China and Russia have been nurturing the growth of new international institutions, such as the Shanghai Cooperation Organization, that are committed to the development of authoritarian international law.⁵⁴ Those institutions contribute to the worldwide rise of autocracy and the corresponding decline of democracy.⁵⁵ Liberal democracies have a shared interest in resisting democratic decline and the continued development of authoritarian international law. Effective resistance requires more formalized cooperation among liberal democracies, in the form of new plurilateral treaties and institutions, particularly in two areas: reducing vulnerability to economic coercion, and building an information ecosystem consistent with liberal, democratic values.

Russia has exploited European dependence on Russian oil and gas as a tool of economic coercion to advance its objectives in Ukraine.⁵⁶ A Chinese invasion of Taiwan would trigger massive supply chain problems because several industries are highly dependent on Taiwanese manufacturers of critical computer chips.⁵⁷ These examples illustrate the danger that ensues when liberal democracies become overly dependent on powerful autocratic states—especially Russia and China—for critical materials and supplies.

It is neither realistic nor desirable to eliminate economic interdependence with China and Russia. However, compelling geopolitical considerations support a partial decoupling to reduce supply chain vulnerability in areas of strategic significance. Australia, India, and Japan recently introduced a “Resilient Supply Chain Initiative” (RSCI) to allay concerns about “security risks

⁵⁴ See Ginsburg, *supra* note 2.

⁵⁵ See *supra* note 1 and accompanying text.

⁵⁶ See Jonathan Hackenbroich and Filip Medunic, *The Kremlin’s Energy Warfare* (Apr. 29, 2022), <https://ecfr.eu/article/the-kremlins-energy-warfare/>

⁵⁷ See Alan Crawford et al., *The World is Dangerously Dependent on Taiwan for Semiconductors* (Jan. 25, 2021), <https://www.bloomberg.com/news/features/2021-01-25/the-world-is-dangerously-dependent-on-taiwan-for-semiconductors>

associated with production networks significantly embedded in, or connected to, China.”⁵⁸ The RSCI is a useful first step, but broader plurilateral cooperation is necessary to internalize supply chains within and among liberal democracies, and to reduce their vulnerability to Chinese and Russian economic coercion. A new plurilateral trade agreement that links democracies from Asia, Europe, Africa⁵⁹ and the Americas⁶⁰ could help reduce dependence on China and Russia for strategically important materials and equipment.

Information and communications technology (ICT) is another important issue requiring plurilateral cooperation among liberal democracies. Russia and China have both developed sophisticated, socio-technical models of information management that emphasize surveillance and censorship.⁶¹ Both countries are using modern information technology to spread misinformation about the war in Ukraine to global audiences in Asia, Africa, and Latin America.⁶² More broadly, Russia exploits modern information technology to subvert democratic governance in existing democracies⁶³ and China exploits ICT to spread so-called “digital authoritarianism” to hybrid and autocratic states.⁶⁴ Although it is impossible to prove causation, there are reasons to believe that Chinese and Russian propaganda about the Ukraine war may have induced some states to abstain or vote against key UN resolutions.⁶⁵

The United States and EU recently agreed “to develop a common analytical framework for identifying foreign information manipulation and interference.”⁶⁶ The goal is laudable, but the approach is flawed, because it represents a regional solution to a global problem. Chinese and Russian information warfare threatens democracies around the world, not just in Europe and North America. An effective response—designed to protect existing democracies and inhibit the use of ICT to spread digital authoritarianism—requires cooperation among leading democracies from Asia, Europe, Africa and the Americas.

No existing international institution has the right membership and substantive focus to facilitate plurilateral cooperation among liberal democracies in the areas of information technology

⁵⁸ Amitendu Palit, *The Resilient Supply Chain Initiative: Reshaping Economics Through Geopolitics*, THE DIPLOMAT, Sept. 10, 2020.

⁵⁹ Under our criteria, Cape Verde is the only liberal democracy in Africa. However, if one reduces the threshold on the V-Dem index from .6 to .55, South Africa, Ghana, and Senegal would also qualify. For political reasons, new plurilateral treaties and institutions founded on a shared commitment to democracy and human rights must include some African countries. Those three would be good candidates.

⁶⁰ Major liberal democracies from Latin America include Argentina, Chile, Costa Rica, Peru, and Uruguay.

⁶¹ See DAVID L. SLOSS, TYRANTS ON TWITTER: PROTECTING DEMOCRACIES FROM INFORMATION WARFARE (2022).

⁶² See Samantha Hoffman and Matthew Knight, China’s Messaging on the Ukraine Conflict (May 2022), <https://www.aspi.org.au/report/chinas-messaging-ukraine-conflict>.

⁶³ See SLOSS, *supra* note x.

⁶⁴ See Andrea Kendall-Taylor et al., *The Digital Dictators: How Technology Strengthens Autocracy*, Foreign Affairs, March-April 2020.

⁶⁵ See David L. Sloss, The US Should Ban China’s State Media from Social Platforms, May 19, 2022, <https://thediplomat.com/2022/05/the-us-should-ban-chinas-state-media-from-social-platforms/>

⁶⁶ EU-US Trade and Technology Council, Second Ministerial Meeting, Technology Outcomes (May 16, 2022), <https://digital-strategy.ec.europa.eu/en/library/eu-us-trade-and-technology-council-factsheet-technology-outcomes>

and supply chain resilience. Accordingly, leading democracies should establish new plurilateral treaties and/or institutions that bring together liberal democracies from different regions to reduce states' vulnerability to Chinese and Russian economic coercion and to fight back against Chinese and Russian information warfare.

B. Obstacles to a Liberal, Plurilateral Order

Creation of a liberal plurilateral order that includes states from Asia, Africa, and Latin America—as well as Europe and North America—will not be possible without strong, effective U.S. leadership. However, even with strong U.S. leadership, it is questionable whether other states will follow. President Trump's foreign policy was overtly hostile to liberal democratic values. During his Presidency, global public opinion data registered a sharp decline concerning the level of trust in U.S. leadership.⁶⁷ Moreover, the United States itself experienced significant democratic decline, as measured by scores on both the V-Dem liberal democracy index⁶⁸ and Freedom House's "freedom in the world" database.⁶⁹ There is a significant risk that U.S. voters will re-elect Donald Trump in 2024; that fact is well known to leaders of other liberal democracies. "Why should we enter into new agreements with the United States?," they might ask, given that the next President Trump may simply repudiate those agreements.

On the other hand, it is far too early to write the obituary for liberal internationalism. When historians write the history of this decade, Biden's "Summit for Democracy," convened in December 2021,⁷⁰ may ultimately be seen as a critical step toward the creation of a new liberal plurilateral order. Authoritarian international law has clearly made significant gains over the past decade, but liberal international law could still stage a comeback. States have planted the seeds of a liberal plurilateral order in their responses to the war in Ukraine. Only time will tell whether those seeds receive the water and sunlight they need to grow into a mature liberal plurilateral order.

⁶⁷ In a survey of people from 12 nations near the end of the Trump Presidency, only 17 percent said that they had confidence in the US President to do the right thing regarding world affairs. Pew Research Center, *America's Image Abroad Rebounds with Transition from Trump to Biden*, June 10, 2021, <https://www.pewresearch.org/global/2021/06/10/americas-image-abroad-rebounds-with-transition-from-trump-to-biden/>

⁶⁸ The US score on the V-Dem liberal democracy index declined from .852 in 2015 to .723 in 2020. *See* V-Dem data, *supra* note 3.

⁶⁹ According to Freedom House, the US aggregate freedom score declined from 92 in 2015 to 83 in 2021. *See* Freedom House data, *supra* note 4.

⁷⁰ *See* U.S. Dep't of State, *The Summit for Democracy*, <https://www.state.gov/summit-for-democracy/>