

A Study on G20 and International Law: Expected Opportunities and Challenges

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Introduction

The G20 grouping represents the world's largest population and economies. To put it in context, the G20 represents 80 per cent GDP, 75 percent of international trade and 60 percent of the global population.¹ It reflects the confluence of developed and developing economies.² With other regional groupings failing to achieve much substance, the G20 can offer a much-needed push on several outstanding issues.³ The post-COVID-19 era has brought to light some disturbing trends like the rise in inequality, conflict in cyberspace, unequal financial system, climate emergency and the ongoing Russia-Ukraine war. The G20 focuses on these agendas, but one of the most discussed and debated is Multilateralism.⁴ To put things in perspective, the emergence of new international institutions, coalitions and processes is the reality in the 21st century. These developments have largely been felt in the domain of multilateralism. Since India assumed the presidency of G20 the expectations from G20 have risen. India's agenda is a greater emphasis on

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¹ Ministry of External Affairs,

<https://pib.gov.in/PressReleaseSelfframePage.aspx?PRID=1882356#:~:text=The%20G20%20members%20represent%20around,global%20economic%20and%20financial%20issues> (last visited on 30th July 2023); James McBride, Anshu Siripurapu, and Noah Berman, What Does the G20 Do? <https://www.cfr.org/backgrounder/what-does-g20-do> (last visited on 3rd August 2023).

² Pedro da Motta Veiga, Brazil and the G-20 Group of Developing Countries, https://www.wto.org/english/res_e/booksp_e/casestudies_e/case7_e.htm (last visited on 4th August 2023).

³ Rajeesh Kumar, Explained | Multilateral reforms as a priority in the G-20, <https://www.thehindu.com/news/national/explained-multilateral-reforms-as-a-priority-in-the-g-20/article66588852.ece> (last visited on 5th August 2023).

⁴ About G20, <https://www.g20.org/en/about-g20/> (last visited on 5th August 2023).

inclusivity and a progressive future. According to Prime Minister Shri Narendra Modi, “Multilateralism is in crisis today, and the architecture of global governance created after the Second World War was to serve two functions, i.e., to prevent war and to foster international cooperation on the issue of common interest.”⁵ From the experiences of the last few years, it is evident that global governance has failed and the implication of these failures is felt by the developing countries, especially in the realm of food and energy security.⁶ India has voiced for reforms in multilateral systems, especially in the United Nations Security Council (UNSC) and has been at the forefront of addressing challenges like financial stability, terrorism, disaster management, transnational crime, and corruption.⁷ In these areas, the G20 has the capability to foster concrete results. This article attempts to highlight the role of international law in nurturing multilateralism, which is one of the primary agendas of G20. Accordingly, the article is split into two segments. The first section attempts to map the role of multilateralism and its significance in the backdrop of G20 under India’s presidency, and the second section traces the role of international law in enhancing the discourse on multilateralism.

Multilateralism: Need of the Hour

As the United Nations Secretary-General (UNSG) pointed out, of the 10.5 billion people projected to be born in the 21st century, around 85 per cent would be from Asia and Africa.⁸ However, these States are underrepresented

⁵ Prime Minister’s Office, PM addresses meeting of Foreign Ministers of G20, <https://pib.gov.in/PressReleasePage.aspx?PRID=1903533> (last visited on 7th August 2023).

⁶ Shoba Suri, G20 agenda for improved food security under India’s Presidency, Observer Research Foundation, 24th April 2023, <https://www.orfonline.org/expert-speak/g20-agenda-for-improved-food-security-under-indias-presidency/>

⁷ United Nations, Amid Strained Multilateral System, States Must Recommit to United Nations Charter Obligations, Prioritize Human Rights, Secretary-General Tells Security Council, 24th April 2023, <https://press.un.org/en/2023/sc15263.doc.htm>

⁸ United Nations, <https://www.un.org/en/global-issues/population>, (last visited on 7th August 2023).

in the international system which could pose a long-term challenge that compounds global inequality by hampering the interests of countries. For example, the United Nations Security Council (UNSC), which is the principal organ under the United Nations (UN) for the purpose of maintenance of international peace and security, does not have sufficient participation from Asian and African States.⁹ This is problematic as most UNSC resolutions target the Asian and African States. The G20 could provide the necessary platform for ensuring capacity building in terms of the international system to act. India has been a vocal advocate of multilateralism and has consistently articulated for its reform.¹⁰ In 2022 India led a UNSC debate that focused on reforming multilateralism. This was not only to effectively respond to the ongoing challenges but also to address challenges that might arise in the future.¹¹ It is undeniable that today, multilateralism is in crisis in preventing war and fostering international cooperation vis-à-vis giving voice to the global south. Multilateralism seeks to promote cooperation among the States. Multilateralism can manifest through negotiations, diplomacy, international organizations, treaties, etc. However, it does not convey the message of universality as hardly a few treaties have universal participation. In International law, it indicates three or more States participating in the negotiations or becoming parties to the treaties.¹² G20 essentially represents

⁹ United Nations Security Council, Countries Never Elected Members of the Security Council, <https://www.un.org/securitycouncil/content/countries-never-elected-members-security-council> (last visited on 8th August 2023).

¹⁰ Choedon, Y, *India's perspective on the UN Security Council reform*, India Quarterly, 63(4), pp.14-48, (2007).

¹¹ Ministry of External Affairs, Statement by External Affairs Minister at the United Nations Security Council Open Debate on 'Maintenance of International Peace and Security: New Orientation for Reformed Multilateralism', December 14, 2022, <https://www.mea.gov.in/Speeches-Statements.htm?dtl/35997>

¹² André Nollkaemper, Unilateralism/Multilateralism, Max Planck Encyclopaedia of International Law, file:///C:/Users/Atul%20Alexander/Downloads/UnilateralismMultilateralism%20-%20Andre%CC%81%20Nollkaemper.pdf, para 4 (last visited on 9th August 2023).

a regional multilateral approach with the aim of international cooperation. An example of this would be a regional organization endorsing the ‘use of force’, with or without the United Nations Security Council (UNSC) approval. The rise of multilateralism is courtesy of the UN system and the fall of the Berlin Wall. As pointed out by André Nollkaemper, “...the number of multilateral treaties registered with the UN increased from 371 in the period 1969-1989 to 1286 in the period 1989–2009.”¹³ Multilateralism has also resulted in the rise of regional blocs with specific objectives and narratives; Currently, under India's presidency, the G20 is continuously articulating multilateralism to build international cooperation and take the world together as one family.¹⁴ The existing multilateralism is in dire crisis because of geopolitical interest trumping community aspirations. The G20 can either go for radical reform or incremental steps to realize these aspirations.

Reforming Multilateralism: Incrementalism or Radicalism

With multilateralism at the forefront of the G20 agenda, an evaluation needs to be made as to whether the multilateral reform ought to be radical or incremental. The international institutions are unable to tackle the global crisis of pandemic, war and climate because of lack of consensus and geopolitical tensions.¹⁵ Moreover, global institutions are hard to reform as global superpowers do not give up their power easily. Therefore, some advocate for G20's role in bringing radical transformation in creating new

¹³ *Id* at para 19.

¹⁴ Juha Jokela, *The G-20: A Pathway To Effective Multilateralism?*, European Union Institute for Security Studies, April 2011, https://www.iss.europa.eu/sites/default/files/EUISSFiles/The_G20_-_a_pathway_to_effective_multilateralism.pdf; Asian Development bank, *India's G20 Presidency: An Opportunity to Steer the World Toward Inclusive and Sustainable Growth*, 19 June 2023, <https://www.adb.org/news/features/indias-g20-presidency-opportunity>

¹⁵ United Nations, *With Climate Crisis Generating Growing Threats to Global Peace, Security Council Must Ramp Up Efforts, Lessen Risk of Conflicts, Speakers Stress in Open Debate*, 13 JUNE 2023, <https://press.un.org/en/2023/sc15318.doc.htm>

institutions rather than reforming the existing ones; this is possible and likely considering the reforms to the existing system are stuck because of several roadblocks. For instance, the World Trade Organisation (WTO) dispute settlement is dysfunctional because the United States has blocked the appointments of the Appellate Body¹⁶ thereby leading to the impossibility of appealing any panel reports; therefore, as Simon Lester puts it, “It is extremely difficult right now for WTO members to enforce WTO obligations through complaints against measures they believe are in violation.”¹⁷ Further, it is impossible for the UNSC to pass an assertive resolution on the Russia-Ukraine conflict because of the Russian Veto.¹⁸ Hence, there is a wide consensus that multilateralism is in crisis like never before. This is because of the power politics and rise of nationalistic sentiments.¹⁹ In the words of Joseph Borrell, “these are hard times for multilateralism”, speaking in the context of the Russia-Ukraine conflict, he believes that, in the UNGA resolution against Russia in March 2022, none of the G20 countries opposed the Russian aggression.²⁰ Many States are silent on Russian aggression because of its strategic relations with Russia in terms of national interest, the double standards of the West and the historical ties with Russia. The economic grouping like the G20 is unable to curb the Russia-Ukraine conflict

¹⁶ Purvaja Modak and Rachel Thrasher, A Framework for a Reformed WTO Appellate Body, [https://www.orfonline.org/research/a-framework-for-a-reformed-wto-appellate-body/#:~:text=The%20United%20States%20\(US\)%20has%20blocked%20all%20appointments%20to%20the,substantive%20issues%20that%20need%20resolution.](https://www.orfonline.org/research/a-framework-for-a-reformed-wto-appellate-body/#:~:text=The%20United%20States%20(US)%20has%20blocked%20all%20appointments%20to%20the,substantive%20issues%20that%20need%20resolution.) (last visited on 12th August 2023).

¹⁷ Simon Lester, Ending the WTO Dispute Settlement Crisis: Where to from here? March 2nd 2022, available at <https://www.iisd.org/articles/united-states-must-propose-solutions-end-wto-dispute-settlement-crisis>

¹⁸ UN News, Russia vetoes Security Council resolution condemning attempted annexation of Ukraine regions, 30th September 2022, <https://news.un.org/en/story/2022/09/1129102>

¹⁹ Multilateralism Is in Crisis – Or Is It?, Geneva Graduate Institute, <https://globalchallenges.ch/issue/7/multilateralism-is-in-crisis-or-is-it/> (last visited on 13th August 2023)

²⁰ Joseph Borrell, G20: G20: difficult times for multilateralism, July 10th 2022, https://www.eeas.europa.eu/eeas/g20-difficult-times-multilateralism_en

because multilateralism at its core is weak and lacks teeth which was evident when the Russian foreign minister Lavrov left the G20 meeting after Russia intervened in Ukraine.²¹ Conversely, G20 can be a platform to raise awareness and work on the minimum agendas. It can agree on the common ground to face the transnational challenges, review the best practices of international organizations and balance geopolitical interest and public good. The real challenge lies in building consensus; most of the systems of multilateralism were built during the time of the Second World War. At least in the post-World War era, there was stability under the aegis of the United States and U.S.S.R.; however, in recent times, multiple regional blocs have emerged with their agenda and ideologies. This could disrupt and risk the prospects of consensus-building exercises.

International Law as a Tool for Incremental Reforms

International law does not intend to change the world but can regulate the conduct of States and international organizations like G20. Despite G20 not being an international organization, G20 can draw lessons from international law to better coordinate and enhance its effectiveness; this can be done at two levels, firstly through pragmatic reforms to the existing multilateral regimes like the UNSC and secondly by drawing lessons from international organizational law. Any attempt to radically overhaul the existing multilateral system is left to international politics and goes beyond the scope of international law.

²¹ *Id.*

Reforming United Nations Security Council

Some writers espouse G20 as an alternative to the UNSC; According to Sreenivasan, “Any reform of the UNSC, particularly the expansion of its permanent membership, will be strongly resisted by the permanent members and a large majority of the General Assembly because it does not benefit anyone except those who aspire to be permanent members.”²² In short, the G20 as a possible alternative to UNSC is highly unlikely. The former President of the United States, Barack Obama, in 2010 pledged his support for India’s permanent membership at the UNSC; his views came before the G20 summit that year but no substantial gains have been made ever since. Legally, the UN Charter has been amended in the past, but it is in the context of procedural changes. For instance, in 1965, the non-permanent membership was expanded to ten from six. However, no substantive amendments were made. The amendments to the UNSC or the UN, in general, are highly unlikely as it has to be affirmed by all the permanent members of the UNSC.²³ The United Nations General Assembly (UNGA), consisting of all members of the UN, has attempted to replace the UNSC on questions of international peace and security through mechanisms like Uniting for Peace Resolutions (UPR)²⁴; again, these are mere recommendary.²⁵ The International Court of

²² T.P. Sreenivasan, The G-20 can be the UN Security Council alternative, available at <https://www.thehindu.com/opinion/op-ed/the-g-20-can-be-the-un-security-council-alternative/article66244029.ece>

²³ Anjali Dayal and Caroline Dunton, The U.N. Security Council Was Designed for Deadlock — Can it Change?, March 1st 2023, <https://www.usip.org/publications/2023/03/un-security-council-was-designed-deadlock-can-it-change> (last visited on 11th August 2023).

²⁴ Atul Alexander, Legalising Illegality: Humanitarian Intervention through Uniting for Peace Resolution vis-a-vis Afghanistan, https://www.researchgate.net/publication/370290683_Legalising_Illegality_Humanitarian_Intervention_through_Uniting_for_Peace_Resolution_vis-a-vis_Afghanistan (last visited on 12th August).

²⁵ Carswell, A. J. (2013). Unblocking the UN Security Council: The uniting for peace resolution. *Journal of Conflict and Security Law*, 18(3), at p.453.

Justice (ICJ) is incompetent to review the decisions of the UNSC, as it lacks the authority for judicial review.²⁶ Hence, in terms of hierarchy, the UNSC is head and shoulders above other organs of the UN. Therefore, most of the resolutions of UNSC go unchallenged. After the disintegration of the U.S.S.R, the UNSC expanded the scope of 'Peace and Security' to include within its purview issues like pandemics, climate change, armed conflict, sanctions, literally intruding on every major international issue.²⁷ However, the UNSC is underrepresented from Asian, African and Latin American States that are the sites of these security threats. This is also contrary to the sovereign equality of States that the UN represents.²⁸ With the shift in the power dynamics to States like India, Brazil and South Africa, they have become major players in economic and political affairs; it is time for the UNSC to accommodate their voices. A radical reform in this direction would mean a systemic overhaul of the UN, which is unlikely because regional agencies like G20 or BRICS lack a shared or collective vision.²⁹ For instance, China wants to expand its membership of BRICS for geopolitical gains;³⁰

²⁶ Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom), <https://www.icj-cij.org/sites/default/files/case-related/88/088-19980227-JUD-01-00-EN.pdf>

²⁷ See Hardt, J.N., 2021, The United Nations Security Council at the forefront of (climate) change? Confusion, stalemate, ignorance. Politics and Governance, 9, pp.5-15; Jeremy Farrall, The UN Security Council's Response To Covid-19, <https://law.anu.edu.au/research/essay/covid-19-and-international-law/un-security-council%E2%80%99s-response-covid-19>

²⁸ United Nations Charter, <https://www.un.org/en/about-us/un-charter> (last visited on 14th August 2023).

²⁹ Chatham House, G20's lack of progress highlights challenge for COP26, November 1st 2021, <https://www.chathamhouse.org/2021/11/g20s-lack-progress-highlights-challenge-cop26>

³⁰ Ankit Tiwari, India's hesitation as China pushes for BRICS expansion, 22nd August 2023, <https://www.lowyinstitute.org/the-interpreter/india-s-hesitation-china-pushes-brics-expansion#:~:text=Reports%20that%20emerged%20after%20the,fundamental%20characteristic%20of%20the%20 bloc.>

However, India and Brazil strongly oppose the same, and the differences between these agencies make it impossible to have any radical change.³¹

The structural reforms in the UNSC appear unlikely, as the existing structures are the products of the same States that are the source of the problem.³² On the other hand, the G20, in the current scheme of things, can offer incremental changes by utilizing the tool of international law – like putting pressure through regional agencies like the G20 for possible reforms in the UN, the agendas in the G20 could be taken forward through organs like the UNGA that reflects the collective voice of the international community. States can abandon the UNSC and emphasize the UNGA as an alternative for resolving disputes, as the UNGA is also competent to decide on the questions of international peace and security; the shift might take time; however, with the collective will of the State, it is possible. In tandem with the UNGA and the outside support of agencies like G20, the ICJ could render advisory opinions, which, although non-binding, can send a strong signal to the UNSC. The G20 could act as a conduit for these reforms, and the voice of the G20 could be brought through the UNGA. For this to transpire, G20 should possess the organizational capacity for it to be taken seriously.

G20 and International Organizational Law: New Paradigm in International Law

International law regulates the conduct of States, and in recent times, international organizations have become an integral part of the corpus of

³¹ *Id.*

³² See William Schabas, Race, Human Rights and the Global South at the First Session of the UN General Assembly. Max Planck Yearbook of United Nations Law Online, (2022), 25(1), 625-644. https://doi.org/10.1163/18757413_02501015

international law.³³ Although the G20 is a forum pertaining to economic, international relations and political percept, international law can contribute to enhancing the role of the G20 in international affairs.³⁴ The function of international law is to create bindingness in terms of legal obligations, communicative, value declaratory, justifying and legitimacy. Regarding the communicative role, it can facilitate or offer an important platform to mediate about value declaratory international law that induces convergence in a more legitimate and explicit manner. On justification and legitimacy function, States use international law to endorse their political acts; of course, States violate international law only if it is profitable.³⁵ The tendency is to abandon the question of international politics while interpreting international law.³⁶ Some scholars consider this tendency as a departure from professional responsibility. Therefore, the potential of international law in international politics/relations still needs to be explored. Despite previous attempts to bridge the gap between international law and politics, criticism and counter-criticism from each discipline are forthcoming. International Relations scholars accuse international law scholars of being utopic a sought of realist critique of international law. International law scholars respond to these

³³ Kristina Daugirdas, 2016, *How and Why International Law Binds International Organizations*, 2016, Harv. Int'l L. J. 57, no. 2, at p.325.

³⁴ See Peter Holcombe Henley and Niels M Blokker, *The Group Of 20: A Short Legal Anatomy From The Perspective Of International Institutional Law*, 2013, Melbourne Journal of International Law, https://law.unimelb.edu.au/__data/assets/pdf_file/0009/1687491/07HenleyBlokker-Depaginated.pdf

³⁵ See Yasuaki Onuma, *International Law in and with International Politics: The Functions of International Law in International Society*, (2003), European Journal of International Law, pp. 105–139, <https://doi.org/10.1093/ejil/14.1.105>

³⁶ Martti Koskenniemi, *The Fate of Public International Law: Between Technique and Politics*, 4th January 2007, <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1468-2230.2006.00624.x> at p.1.

criticisms by claiming that almost all States comply with international law and as authoritative decision making and critics as mere theory.³⁷

G20 can benefit from international law in multiple ways, especially adding more legitimacy to the institution. Firstly, it needs to be analyzed whether the G20 constitutes an international organization, as per the definition under international law. The tag of an international organization comes with several advantages and can regulate the political conduct of States.³⁸ International organization, as per the definition of international law, has several components; according to Article 2(a) of the *Articles on the Responsibility of International Organisations* ('ARIO'), 2011- international organization means: "an organization established by a treaty or other instrument governed by international law and possessing its international legal personality. International organizations may include as members, in addition to States, other entities ..."³⁹. The definition of an international organization under the ARIO results from widespread consultation and consensus. For G20 to be more effective with regard to international cooperation rather than being a mere informal institution, certain institutional reforms must be implemented for which international law could be an indispensable tool. Further lessons could also be learned from other international organizations, which can provide useful guidance. Going by the definition, international organizations are to be established through treaties or other instruments governed by international law, but in practice, there are bodies that lack a treaty basis. For

³⁷ Yasuaki Onuma, *International Law in and with International Politics: The Functions of International Law in International Society*, (2003), *European Journal of International Law*, at p.111, <https://doi.org/10.1093/ejil/14.1.105>

³⁸ See Audra I. Mockaitis, Lena Zander & Helen De Cieri (2018) The benefits of global teams for international organizations: HR implications, *The International Journal of Human Resource Management*, 29:14, pp. 2137-2158

³⁹ Draft articles on the responsibility of international organizations 2011, https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf

instance, the Organization of the Petroleum Exporting Countries (OPEC) and organizations formed through resolution or conference of parties.⁴⁰ G20 does not per se fulfill this requirement, as it was created by a statement made in September at the G7 meeting in Washington. As per the G7 finance minister's statement, "...propose[d] to establish a new mechanism for informal dialogue in the framework of the Bretton Woods institutional system, to broaden the dialogue on key economic and financial policy issues."⁴¹ It is evident from the ministers that the real intention was to create an informal 'group' rather than a full-fledged international organization.

Another feature of an international organization is that it should possess its 'own legal personality'; in the *Reparations for Injuries Suffered in the Service of the United Nations (Advisory Opinion)*, the ICJ recognised the legal personality of the United Nations (UN), this according to the ICJ is a prerequisite to achieving purpose and principles provided under the UN Charter⁴², but the ICJ did not provide a comprehensive methodology for establishing international legal personality. It is clear from G20's statement and subsequent practice that it does not fulfill the requirement; as per the Cameron Report, G20 was not created with an international legal personality.⁴³ Schermers and Blokker refer to a requirement that an organization have 'at least one organ with a will of its own'.⁴⁴ The lack of

⁴⁰ Peter Holcombe Henley and Niels M Blokker, *The Group Of 20: A Short Legal Anatomy From The Perspective Of International Institutional Law*, 2013, *Melbourne Journal of International Law*, https://law.unimelb.edu.au/_data/assets/pdf_file/0009/1687491/07HenleyBlokker-Depaginated.pdf at p.33.

⁴¹ *Id.*

⁴² *Reparation for Injuries Suffered in the Service of the United Nations*, <https://www.icj-cij.org/sites/default/files/case-related/4/004-19490411-ADV-01-00-EN.pdf> at p.185.

⁴³ *Governance for growth: Building consensus for the future*, <http://www.g20.utoronto.ca/2011/2011-cameron-report.pdf>

⁴⁴ Henry G Schermers and Niels M Blokker, *International Institutional Law* (Martinus Nijhoff, 5th ed, 2011) 32 (30).