

UPF UK: Should we mourn the demise of international law or find another way?

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March 6, 2026
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(Views of the writer may not reflect the views of UPF as a whole)

Key takeaways

Recent events suggest the international rule of law is being openly bypassed, normalising a "might is right" approach.

Article 51 of the UN Charter provides a narrow basis for self-defence; bypassing UN processes erodes legitimacy and restraint.

Interventions without clear endgames increase the risk of long-term instability, including regional chaos and global insecurity.

Economic fragmentation - tariffs, weakened dispute resolution, supply-chain insecurity - can deepen geopolitical risk.

A practical route forward may be stronger coordination among middle-ranking states and regional frameworks, reinforcing rules and accountability.

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The international rule of law is being openly flouted

With the fourth year of the unlawful invasion of Ukraine, threats to invade Greenland, the illegal extraction of the Venezuelan Prime Minister and now the unlawful attack on Iran (where, despite years of provocation, talks were proceeding in Geneva and there was no immediate threat to another country) there can be no doubt that the international rule of law, however uneasy its history, is now openly flouted and supplanted by some with the doctrine of might is right. The Westphalian concept of non-interference in the affairs of other states has been defunct for many decades and its death-knell was sounded with the many international instruments regulating the rights of citizens everywhere and controlling what states can do to them after the Second World War and the creation of the United Nations. Nevertheless, these instruments did not extend to states toppling other regimes or assassinating their leaders which remain unlawful.

Article 51 and the bypassing of the United Nations

The extraction of Maduro and now the decapitation of Iran's head of state open a new era in which the powerful no longer feel constraint at such intrusion. The US President has acted with the Israeli Prime Minister without reference to any international justification - unlike previous interventions there was no reference to the UN for a resolution authorising such an attack nor even to the US Congress. It is clear

that the President does not feel bound by international law. It is worth quoting Art.51 of the UN Charter (which allows self-defence) in full: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security." Neither the USA nor Israel has invoked this.

Constitutional restraint, and the weakness of "imminence" claims

The attitude by both countries of total irrelevance and bypassing of the UN is alarming in itself. Although going to war is often constitutionally the right of the executive (in the UK the power to declare war and deploy armed forces remains a Royal Prerogative exercised by the Prime Minister and Cabinet on behalf of the Sovereign without a strict constitutional requirement for prior Parliamentary approval) it may well be that there is a move in the USA to require Congressional approval - just as in the UK after the Gulf War there has developed a strong constitutional convention since 2003 requiring, whenever possible, a Parliamentary debate and vote. What is interesting, although perhaps as an afterthought to satisfy White House lawyers, is the US/Israeli assertion that the attack was a response to the likelihood of an imminent aggression by Iran evidenced by its alleged continuing nuclear programme and decades of rhetoric describing USA as the Great Satan and its proxy terrorist attacks on US citizens during that time. There is no doubt that these allegations against the Iranian regime are correct but it is unlikely that they will survive any competent legal opinion as to whether they come within the scope of Art 51.

The risk of intervention without an endgame

The attack on Iran is one of that long list of military interventions which either had no endgame plan or went in a wrong direction - Vietnam, the Gulf, Libya and Afghanistan. The President himself seems uncertain of what he would regard as a satisfactory outcome - is it Iran coming back to the negotiating table or regime change (he has claimed both in short succession) or, not contemplated, the complete implosion into lasting chaos of a major Middle-East power whose vacuum will affect the whole world. If this last ghastly outcome finds fruition then the President is going to have to make that fateful decision of boots on the ground which, frankly, it is unlikely that Congress and the American people will permit.

Is nostalgia enough - or do we still need rules?

Should we be worried or merely indulge in nostalgia? It is lawyers who defend most robustly the rule of law over the rule of force as an antidote to anarchy, yet lawyers are obsessed essentially with the past, with precedent, and are not that well-respected (I write as one myself!). Are lawyers right to cling to a doctrine that may be outmoded?

Yet it does not take a lawyer to recognise that without universal rules, applicable to and, most importantly, observed by all then any society whether it be domestic or the global commons has no rules of conduct to regulate behaviour. In essence, it becomes a free-for-all. Most of us would not choose to live in a local situation like that and the same applies to international relationships. Although the United States has engaged on foreign military intervention on a number of occasions since World War II (all of which have not been distinguished by long-term success) these have always been on the pretext of a provocation or action or with UN sanction so as to give the veneer of legality. Not on this occasion in which the President of USA has openly sought to encourage regime change - clearly beyond legitimate interference in the affairs of another state.

Trade, tariffs, and the security costs of fragmentation

Trade and commercial interests are often seen as paramount, especially to those involved in providing goods or services throughout the world. The demise of globalisation, the shortening of supply lines, the requirement to store good and parts rather than relying on just-in-time delivery through assured security of supply, the emasculation of WTO by the US refusal to appoint judicial oversight, the application of tariffs and both customs and fiscal barriers - all have caused many companies and others to retreat into narrow nationalism and find alternatives to reliance on foreign relations - so true, too, with geo-politics. A recent survey of 2,000 UK companies shows that in the face of Trump's tariffs (designed to "Make

America Great Again") they have loosened ties with the United States while targeting new territories including China, Japan, Australia and EU states: three-quarters of them reported that US sales had fallen or flatlined by the end of 2025 whereas exports to nine other countries had jumped with sales doubling to China over the year. That is just the UK; other countries with commercial interests will be making similar decisions. Trade so often leads where politics follows so the USA should be wary of external isolation whatever its domestic policy may be. That, in itself, then poses a threat to international security. Whatever its current faults, the USA is both a democracy and militarily still the most powerful country. Enforced or self-imposed isolation from what is happening in the rest of the world or behaving like despotically controlled countries in taking illegal action only weakens further the rules-based order.

Three routes forward: UN recommitment, courts, or middle-power leadership

Is there a way forward from this seeming international anarchy back to a rules-based order with incentives/sanctions to ensure compliance or does the modern world require a fresh look at how we govern international affairs? The de facto development seems to be a polarised world in which autocrats of the most powerful economic and military powers determine what happens to the rest of the world (not always with unanimity!): it has been termed the Donroe Doctrine (a perversion and misunderstanding of the Monroe Doctrine of two hundred years ago which, essentially, was protective to avoid foreign interference rather than assertive on controlling neighbouring states). It seems that the US President is content for Russia to forcibly exert control on what it regards as its own sphere of historic influence eg Ukraine (including the Baltic States?) - but, as yet, unsure of China doing the same in the South China Seas or Taiwan. This leaves massive uncertainty and a form of geo-political anarchy without any external oversight. Another way might be the re-assertion of the importance and adherence to the Charter of the UN (despite the immobilising effect of the use or threatened use of the veto by the P5) and its resolutions, universal jurisdiction of the International Court of Justice (Iceland recently accepted compulsory jurisdiction of the International Court of Justice becoming the 75th country to do so) and greater acceptance of the Rome Statute of the International Criminal Court (125 countries are now States Parties to the Rome Statute) but, realistically, in the current climate, this seems unlikely unless there is a major conflagration to bring it about such as the consequences of both World Wars (the League of Nations and the UN).

A pragmatic option: regional blocs and rules that cannot be easily torn up

A third and, in my view, a more realistic goal and way forward is for the middle ranking and commercially active nations to take greater control collectively such as through the Regional Comprehensive Economic Partnership (RCEP), the world's largest free trade agreement, signed in November 2020 by 15 Asia-Pacific nations (including all 10 ASEAN members) plus China, Japan, South Korea, Australia, and New Zealand or the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) as a major free trade bloc created in 2018, now comprising 12 members (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the UK) which eliminates 99% of tariffs on goods covering some 14.4% of global GDP (\$15.8 trillion). It may be that with the diminution of the authority of the UN regional alliances such as the EU and AU or ASEAN may need to assert greater control over not just trade and commercial life but also private life and human rights (already being done in many cases) such as has been achieved with the much-maligned but important European Convention on Human Rights created by the Council of Europe of 46 member states (which includes all 27 EU states) whose origin was in 1949. Such alliances may principally be commercial but increasingly could become vehicles for greater security and re-establishment of a universally respected and observed rule of law. There is then the myriad on international conventions and treaties (such as the Law of the Sea) which cannot just be torn up by the autocrats even if they seek to withdraw their countries from their provisions or ignore them altogether.

Conclusion: strengthening democratic cooperation and global norms

The reality is that there are a large number of international instruments (let alone domestic constitutions) which may not feature in everyday news but set out a panoply of behaviour which already regulate the way in which civilised nations have learned to live together. We have seen the UN General Assembly flex its muscles over the use of the veto - we should encourage leading middle-ranking states working in concert with one another to take the initiative in ensuring that the future lies not with a few autocratic (and often unhinged) leaders but with the more solid foundation of democracies, constantly improving but always exercising the will of the people in the sentiment of the Gettysburg Address.

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