

THE CHANGING LEGAL INFRASTRUCTURE POST COVID-19 AND HOW TO RESPOND IT

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Abstract

"The COVID-19 pandemic creates political, economic, social, and cultural shifts that change the global landscape. Legal infrastructure should be prepared and well-adapted to respond to it, to further anticipate these massive shifts. The changing in international community behavior requires some adjustment and fine-tuning in the legal department. In this regard, the need of the hour is to ensure that legal infrastructure is well-adapted to the changing global landscape, and in turn, will support global efforts to stop the pandemic and prevent economic collapse. How well countries navigate through these challenges or capture opportunities and strengthen international cooperation will eventually determine success in defeating this common enemy. Thus, the global community must stand under one same norm: cooperation. This research is considered as a legal research focusing on examining existing rules and regulations, as well as a legal futuristic research in nature in trying to find which legal instrument should be developed in the future."

Keywords: legal infrastructure, COVID-19, security council, settlement of disputes and cooperation

A. Introduction

The unprecedented COVID-19 pandemic is a powerful reminder on how international community is heavily interconnected and vulnerable. No country, no matter how powerful or prosperous, is ready and able to overcome this cross-border pandemic alone. Now, the world faces one common enemy: COVID-19.

Those who championed international law once promised a world of winners, a fairer and more civilized society where international norms would triumph over

interests and disputes. However, with the recent geopolitical fragmentations and inward-looking policies sweeping across nations, the COVID-19 pandemic may have shattered this fantasy. The fact is that this global pandemic will create both winners and losers. Those who could not survive would become obsolete.

Thus, a clear consequence of this tragic pandemic is a change in the behavior of the international community. The changing in international community behavior requires some adjustment and

¹ The views expressed does not represent its institution

fine-tuning in the legal department. In this regard, the pandemic has created political, economic, social, and cultural shifts that changed the global landscape and the law or legal infrastructure should be prepared and well-adapted to respond to it. Though these shifts are certainly worrying, they also present opportunities to those who can navigate smartly through these challenges. The followings are some observations of these shifts and how to manage it.

Based on the preliminary introduction above, the research question is as follows: what will be the impacts or shifts caused by the COVID-19 in the international governance procedure, pacific settlement of dispute, democracy, and global goals and how to respond to it?

B. Research Method

As described previously, this research is a normative juridical legal research that focuses on the applicable legal provisions. This normative legal research will examine the law principles, law systems, law synchronization in analyzing the changing in global landscape and its impacts on legal infrastructures post COVID-19 and how to respond to it. In this case, the research applies a legal research method, which is a scientific activity that is based on certain methods, systematics thinking aimed at studying one or several specific legal phenomena by analyzing it.²

The research is classified as a legal research which focusses on positive law. Positive law will be interpreted more broadly, both sourced from national and international law.³

In library research, primary legal materials will be examined in the form of national legislation and international legislation, secondary legal materials in the form of papers, research, and tertiary legal materials in the form of dictionaries, encyclopedias and articles.

In addition to examining national legislation and related regulations in Indonesia (normative juridical research), a comparative juridical approach is used, namely a comparative study of law conducted by comparing the Indonesian legal system with other countries' legal systems in analyzing the changing or shifts on legal infrastructures post COVID-19.

This research also puts forward an analysis in which a formulation of legal regulation or legal institution can resolve a social or economic problem arising from COVID-19 pandemic.⁴

This research finally aims to examine what laws should be created in the future, by composing new legislation or formulating new policies, especially in responding the changing on legal infrastructures post COVID-19. Hence, a futuristic juridical approach (future law) is also used.⁵

² Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: UI Press, 1986). p. 43.

³ *Ibid.*

⁴ Sunaryati Hartono, *Penelitian Hukum di Indonesia pada Akhir Abad ke-20* (Bandung: PT. Alumni, 2006), p. 171

⁵ *Ibid.*, p. 146

C. Discussions

1. Skyrocketing Digital Culture and The Procedural Shift in United Nations Security Council

Nowadays, due to COVID-19 pandemic, digital engagements rises with various online platforms. Recent High-level meetings of the G-20, ASEAN and ASEAN Plus Three, as well as the Non-aligned Movement reflect the increasing of global dependency on online platforms as a means to communicate during the pandemic.

While this has indeed assisted societies to engage with one another, it also poses some salient challenges, at least from an economic and security standpoint. First, it has created a new divide or economic gap, between the haves and have not with regard to the technology. In other words, countries who are economically more advanced with digital ecosystems already in place, will certainly be at an advantage compared to those who do not have this luxury.

Increasing digital utilization also faces another challenge in the realm of cyber security. With more than half a million Zoom accounts sold in the dark web, digital privacy and consumer protection are definitely at risk.⁶ Interpol identifies that there are at least three types of cybercrimes amidst COVID19: malicious

domains (creation of fake domains to carry our spams and phishing), malware (embedded in coronavirus maps, websites, and spam emails), and ransomware (infected attachments that attack critical medical and public institutions).

The recent big debate over a US-drafted procedural note to allow members of United Nations Security Council to vote virtually has become the culmination of those standpoints between the benefits of digital engagement and the threats it might pose.⁷

The United Nations (UN) Security Council on 30 May 2020 for the first-time approved resolutions "remotely" after painstaking negotiations among UN Security Council experts who are teleworking due to the coronavirus pandemic.

The Security Council unanimously voted for four resolutions, including prolonging the UN mission in Somalia until the end of June, and the mission in Darfur until the end of May - two short periods decided due to uncertainty over the spread of the pandemic. The Council also endorsed a fourth resolution aimed at improving the safety and security of peacekeepers.

The resolutions are the first approved by the Security Council since it began to work virtually on March 12 and come

⁶ Lee Mathews, "500,000 Hacked Zoom Accounts Given Away For Free On The Dark Web", <https://www.forbes.com/sites/leemathews/2020/04/13/500000-hacked-zoom-accounts-given-away-for-free-on-the-dark-web/#153291e058c5> (accessed 28 May 2020).

⁷ Michelle Nichols, "U.N. council members want option to vote virtually, Russia says 'don't be afraid'", <https://www.reuters.com/article/uk-health-coronavirus-un/u-n-council-members-want-option-to-vote-virtually-russia-says-dont-be-afraid-idUKKBN217320> (accessed 28 May 2020)

Resolutions adopted by the Security Council in 2020

S/RES/2519 (2020)	14 May 2020	Reports of the Secretary-General on the Sudan and South Sudan <i>Letter from the President of the Council on the voting outcome (S/2020/408) and voting details (S/2020/405)</i>
S/RES/2518 (2020)	30 March 2020	Safety and security of peacekeepers <i>Letters from the President of the Council on the voting outcome (S/2020/249) and voting details (S/2020/268)</i>
S/RES/2517 (2020)	30 March 2020	Reports of the Secretary-General on the Sudan and South Sudan <i>Letters from the President of the Council on the voting outcome (S/2020/248) and voting details (S/2020/267)</i>
S/RES/2516 (2020)	30 March 2020	Somalia <i>Letters from the President of the Council on the voting outcome (S/2020/247) and voting details (S/2020/266)</i>
S/RES/2515 (2020)	30 March 2020	Non-proliferation/Democratic People's Republic of Korea <i>Letters from the President of the Council on the voting outcome (S/2020/246) and voting details (S/2020/270)</i>

as COVID-19 rapidly spreads in New York, which has become the epicenter of the disease in the US. Seeking to abide by quarantine and teleworking recommendations, the Security Council was obliged to create new rules after 75 years as the global guarantor of peace and security.

Following about a dozen days of talks, council members agreed that they would have 24 hours following closed-

door negotiations on draft resolutions to send their votes electronically to the UN Secretariat, who will release the results.

The new procedures have been described in a letter from the president of the Security Council (S/2020/252) to permanent representatives of Council members describing temporary measures to be applied during the COVID-19 period, in particular the written voting procedure.⁸

In order to proceed with the adoption

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Letter dated 27 March 2020 from the President of the Security Council addressed to the Permanent Representatives of the members of the Security Council

⁸ Security Council Report, "whats in the blue", https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/S_2020_253.pdf (accessed 28 May 2020)

of resolutions, China, in its capacity as the President of the Council for the month of March 2020, on the basis of agreement among Council members, is taking the initiative to set forth the following procedures.

First, following a request from a Security Council member or members presenting a draft resolution in blue, the President will circulate a letter to members of the Council announcing that the draft resolution, to be included in the letter as an annex, will be put to a vote, and requesting Council members to provide their votes in writing within a non-extendable period of 24 hours. There will be an announcement in the Council's work programme that the process is under way. The draft resolution will be translated into the six official languages of the United Nations before the end of the 24-hour period.

Second, within the 24-hour period, every delegation will send the Director of the Security Council Affairs Division a letter from its permanent representative or chargé d'affaires, submitted electronically to the Division, indicating its vote (in favor, against or abstention) on the draft resolution and, if applicable, an explanation of vote. The Division will acknowledge receipt, will keep votes confidential during that period and will communicate the result to the President of the Security Council upon the expiry of the 24-hour voting period. The Council member or members presenting the resolution will not be able to withdraw or amend the resolution once the voting period has begun. Any delegation that

fails to respond within the 24-hour voting period will be considered to have been absent from the vote.

Third, within 12 hours of the conclusion of the voting period, the President will convene a videoconference of the Security Council to announce the outcome of the vote.

Fourth, within three hours of the conclusion of the voting period, the President will circulate a letter, listing every delegation's vote and the outcome of the vote, to all Security Council members, the Member States concerned and the Security Council Affairs Division. If the draft resolution is adopted, the Division will, after receiving the letter from the President, circulate that resolution, with a date and number, to all Council members and the Member States concerned. There will be a six-hour period for members to make an explanation of vote in written form, if they so wish, upon receiving the President's letter on the voting outcome. The Member States concerned will also be able to make a written statement, with the agreement of the Council, in line with rule 37 of the Council's provisional rules of procedure. The voting result and all letters will be sent to the Division for its records and published on the Council website.

Fifth, resolutions adopted through the above written procedure will have the same legal status as those voted on in the Security Council Chamber.

Sixth, in addition to the above procedure, during the same period, the President of the Security Council will

announce to the public and Member States, 24 hours in advance, the intention to schedule videoconferences of members of the Council.

Seventh, the President of the Security Council may invite Member States that are not members of the Council to participate in a videoconference of members of the Council, when the interests of that Member are specially affected and there are no objections from any Council member. This will not apply to videoconferences of the members of the Council that are announced in advance as closed videoconferences.

Eighth, to ensure the transparency of those videoconferences, the President of the Security Council will, within 48 hours, circulate as a document of the Council a compilation document containing the interventions of the briefers and of all those Council members who request the inclusion of their statements in the document. To that end, the members will send their statements to the presidency in a timely manner. This will not apply to videoconferences of members of the Council that are announced in advance as closed videoconferences.

Ninth, these temporary, extraordinary and provisional measures will be in place for the duration of the restrictions on movement in New York owing to the COVID-19 pandemic, to enable the Council to discharge its mandate, and will not be considered as a precedent in the future. The implementation of these measures will be assessed at the end of April, and they may be renewed, adjusted

or discontinued, subject to agreement among all members.

Several members of the United Nations Security Council wanted to move sessions entirely to videoconferencing, but Russia objected on both legal and political grounds. Russia believes the 15-member body "shouldn't be afraid" to meet in person in the council chamber in New York.

Russia instead accepted only that the Security Council hold "informal" talks by video. The virtual votes temporarily end the famous spectacle of the Security Council, where diplomats theatrically raise their hands to vote or veto and can take advantage of the cameras to passionately attack other countries.

Several diplomats said that the new procedure made sense for technical votes on the renewal of missions but were not ideal for more controversial matters.

Some pundits believed that the new voting procedure gives extra unnecessarily bureaucratic sense since giving everyone 24 hours to file confidential votes may make sense for routine business, but it will become obstacle if the Council has to respond to an acute crisis fast.

These debates in the UN Security Council should become the trigger for a larger discussion to find solutions on the question of digital and technological divides/gaps and digital security to address recent development on the skyrocketing of digital culture.

International cooperation requires

to create a "digital trust" and a safer digital ecosystem for information sharing. Increasing "regulability" is also desirable. Regulability is the capacity of a government to regulate behavior within its proper reach. In the context of the Internet, that means the ability of the government to regulate the behavior of (at least) its citizens while on the Net.⁹ Applying Lex Informatica could be one of the ways to improve regulability.

Lex Informatica has a distinct enforcement properties. Legal regulation depends primarily on judicial authorities for rule enforcement. Rule violations are pursued on an ex post basis before the courts. Lex Informatica, however, allows for automated and self-executing rule enforcement. Technological standards may be designed to prevent actions from taking place without the proper permissions or authority.¹⁰

Furthermore, joint efforts are also required to strengthen cyber risk management measures to effectively counter cyber threats and prevent or mitigate attacks on critical information infrastructure. A legal debate over the much-needed international legal regime and application of international law to cyberspace must also come to the fore.

2. "Us Versus Them" Mentality and Pacific Settlement of Disputes

There are valid concerns whether the pandemic will give room--and even exacerbate--violent extremisms, xenophobia, and narrow nationalism.

The example of the "blame game on the origins of the virus" between the two most powerful economies, illustrates how this pandemic is also becoming a dangerously politicized agenda. However, there are also other similar worrying trends in other regions.¹¹

In the Middle East region, for example, some countries are blaming others for the increase of coronavirus cases and even for spreading the outbreak. If these tensions are not settled amicably, this region could fall into deeper political sectarian conflicts.¹²

Furthermore, countries in Europe have also closed their borders for the first time in fear of the spread of COVID19. These political skirmishes and distrust issues undermine the much-needed global efforts to combat COVID-19, putting many communities around the world at risk.

In combatting this common enemy, spreading the culture of peace and tolerance is highly needed. There should be no room for divisions when the focus should be on how to manage and mitigate

⁹ Lawrence Lessig, *Code Version 2.0.*, (New York: Basic Books, 2006), p. 23.

¹⁰ Joel R. Reidenberg, *Lex Informatica: The Formulation of Information Policy Rules Through Technology*, (Tax Law Review, Volume 76, Number 3, 1998), p. 23

¹¹ Wall Street Journal, "US intelligence agencies say coronavirus originated in China was not man made of genetically modified", <https://www.wsj.com/articles/u-s-intelligence-agencies-say-coronavirus-originated-in-china-wasnt-man-made-or-genetically-modified-11588260228> (accessed 28 May 2020).

¹² Reuters, "Saudi Arabia denounces Iran for accepting Saudi visitors amid coronavirus", <https://www.reuters.com/article/us-health-coronavirus-saudi-iran/saudi-arabia-denounces-iran-for-accepting-saudi-visitors-amid-coronavirus-idUSKBN20S2IT> (accessed 28 May 2020).

this virus together.

There are numerous legal documents and soft laws that gave emphasize on the culture of peace.

The Charter of the United Nations, including the purposes and principles contained therein, dedicated its sole purposes to save succeeding generations from the scourge of war. The Constitution of the United Nations Educational, Scientific and Cultural Organization also states that:

"since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed".

In this regard, the international community at large should always observe and be devoted to the prevention of conflicts, the peaceful settlement of disputes, peacekeeping, peacebuilding, mediation, disarmament, sustainable development, the promotion of human dignity and human rights, social inclusion, democracy, the rule of law, good governance and gender equality at the national and international levels. This way, global communities can contribute greatly to a culture of peace, including in addressing and mitigating COVID-19 pandemic.

In this regard, the importance of respect and understanding for religious and cultural diversity throughout the world, of choosing dialogue and negotiations over confrontation and of working together and not against each other, is even more

important than ever.

3. Effectiveness of Repressive Vis-à-vis Democratic System during COVID-19 Pandemic

The true trial of leadership is how well you can function and address a crisis. In the face of COVID19, some leaders opt for draconian measures, such as nation-wide lockdowns, to curb the spread of the virus. The actions they embark upon are then views acting in the name of national interest. If the intention is genuinely to address this public health crisis, it is understandable. But if the intention is to deviate and to gain more control of the population than it will become unacceptable.

COVID-19 pandemic will create both repressive and democratic leaders, and those who have missed out want to set things right. For instance, some might argue that Netanyahu's annexation plan to the West Bank during the time of crisis has been used to delay his corruption cases domestically. Some of the countries in the Middle East also use the reasons for this crisis to utilize social media to track down protesters and to strip down foreign journalists.¹³

President Donald Trump for instance, after much reluctance, has used the powers of the Defense Production Act to compel companies to manufacture items in short supply that would aid in the U.S. response to the deadly coronavirus.¹⁴

¹³ Hussein Solomon, "The Impact of COVID-19 on the Middle East and North Africa", <https://jcpa.org/article/the-impact-of-COVID-19-on-the-middle-east-and-north-africa/> (accessed 28 May 2020).

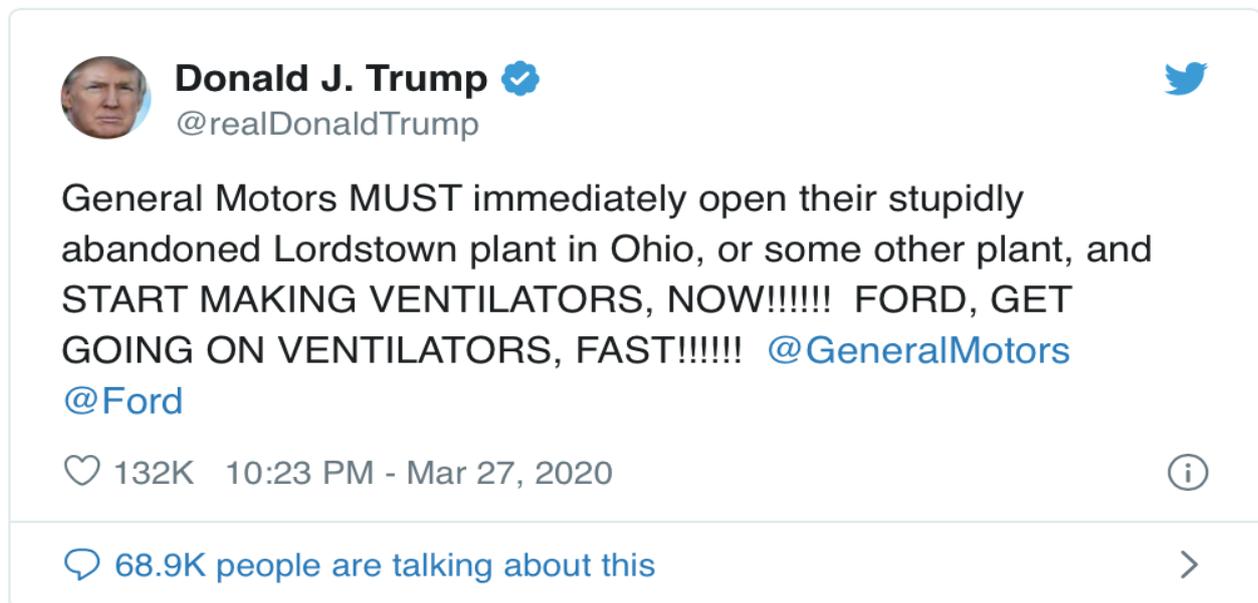
¹⁴ Yelena Dzhanova, "Trump compelled these companies to make critical supplies, but most of them were already doing it", <https://www.cnbc.com/2020/04/03/coronavirus-trump-used-defense-production-act-on-these-companies-so-far.html> (accessed 28 May 2020).

Under the Act which came from the Korean War-era law, the White House has asked companies to ramp up production of protective gear needed by health professionals on the front lines of the crisis as hospitals, stores and testing centers warn they're experiencing shortages in medical masks, ventilators, gloves, testing swabs and other essential equipment.

exploring and facilitating innovative ways to strengthen economic cooperation with partner countries, to fulfill needs of priority medical supplies and medicine.

Innovative cooperation between Indonesia with partner countries such as South Korea, Japan, India, and the UAE are a few examples.

Indonesia and South Korea are



In this regard, democratic nations must set examples, become role models, and prove themselves that democracy is not only going to become a powerful tool to resolve the pandemic at home; but it can also contribute to the global efforts in mitigating and addressing the COVID-19 pandemic.

As industries are reorienting and diversifying lines of production, they are also expanding the scope of their cooperation across borders to better adapt to the changing global supply and demand shock.

In this regard, governments are

working together in the joint production of Personal Protection Equipment (PPEs), ventilators, and masks. In this regard, raw materials are imported to Indonesia and then converted into final products.

Cooperation between Indonesian state-owned enterprises with Japanese and Indian companies are also taking place in the procurement of pharmaceutical ingredients for COVID19 medicines.

While the provision of medical supplies assistance from UAE is also directly followed by their purchases of Indonesian agricultural and SMEs products.

Indonesia also proposed the creation of

a forum for cooperation in the exchange of information that can facilitate collaboration between the private sector in producing and distributing the supply of mandatory medical equipment to handle the pandemic. The proposal was mentioned during the virtual biweekly Ministerial Coordination Group on COVID 19 (MCGC) meeting with Australia, Canada, Germany, Italy, Morocco, Peru, Singapore, South Africa, Turkey, and the United Kingdom.

This certainly highlights how international cooperation can go a long way in fulfilling a country's necessities and the greater global population.

Greater political coordination to better manage this crisis and to be collectively prepared for future pandemics at the regional and global level is also critical. The world's democratic nations must show their leadership in taking part to resolve the pandemic through a democratic-led process that promotes multilateral avenues.

Recent G20, ASEAN, and NAM Summits have shown that the spirit is geared to attain this common goal. The ASEAN and ASEAN+3 Summits last month have identified proposals to establish ASEAN COVID-19 Response Fund, ASEAN+3 Task Force on Pandemic, and ASEAN+3 Reserve of Essential Medical Supplies.

While the recent NAM Summit has agreed to establish a Task Force to

develop a database of medical and humanitarian needs of the NAM countries. Realization of these joint commitments will become a testament on how strengthening multilateralism will go far and beyond.

4. Impact of COVID-19 to Global Goals

According to a paper published by the United Nations University World Institute for Development Economic Research (UNU-WIDER)¹⁵, the economic impact of COVID-19 could increase global poverty for the first time in three decades, pushing more than half a billion people, or 8 % of all humanity, into poverty.¹⁶

What is more concerning is the grim possibility of a poverty tsunami that could sweep across developing countries and least developed countries due to COVID-19. Although they are lagging behind Europe and the US in terms of COVID-19 rate of infections and deaths, Sub-Saharan Africa, for example, are already facing devastating impacts. The International Monetary Fund and the World Bank project that, for the first time in 25 years, the said region will go into a recession.

According to the same projection, 80-85% of people "newly living in poverty" during this pandemic – on a less than \$1.90 USD a day in the case of a 10% contraction – would be in South Asia and Sub-Saharan Africa region.

This study also shows that the achievement of the 2030 Agenda,

¹⁵ United Nations, "Shared Responsibility, Global Solidarity: Responding to the socio-economic impacts of COVID-19", the research of UNSDG (2020), <https://unsdg.un.org/sites/default/files/2020-03/SG-Report-Socio-Economic-Impact-of-Covid19.pdf> (accessed 28 May 2020).

¹⁶ *Ibid.*

particularly on "no poverty and zero hunger", will be under considerable threat. In essence, COVID-19 could reverse a decade of global progress to reduce poverty.

In addressing the challenges above, the international community needs to be in a united front with a forward-looking and collaborative approach. Several pertinent areas of cooperation at least can be done in two folds.

First, in addressing poverty, while installing the right economic incentives, stimulus packages, and social safety nets have been the alternative to build economic resilience, bolstering bilateral trade and investment ties are also paramount.

Second, in addressing the health crisis in developing countries, international cooperation is needed to help increase their national capacities in the health sector, as well as in attaining medicines and medical supplies. The recent NAM Summit called for the provision of "healthcare for all", which calls for unhindered access to affordable medicine for developing countries. This is vital to the COVID-19 mitigation efforts and in also keeping global attainment of SDGs remains on the right track.

D. Closing

The COVID-19 pandemic has created political, economic, social, and cultural shifts to the global landscape.

On the international governance procedure, the big debate over a procedural note to allow members of United Nations Security Council to vote virtually has become the culmination of

the digital shifts posed condition due to COVID-19 pandemic.

On the pacific settlement of dispute, there are valid concerns whether the pandemic will not only give room--and even exacerbate—to more conflicts and confrontation, but also open up opportunities for prevention of conflicts and peaceful settlement of disputes.

On democracy, COVID-19 pandemic will create both repressive and democratic leaders. Thus, democratic nations must set examples, become role models, and prove themselves that democracy is not only going to become a powerful tool to resolve the pandemic at home; but it can also contribute to the global efforts in mitigating and addressing the COVID-19 pandemic.

On the attainment of global goals, the economic impact of COVID-19 could increase global poverty for the first time in three decades, pushing more than half a billion people, or 8 % of all humanity, into poverty. In addressing this challenge, the international community needs to be in a united front with a forward-looking and collaborative approach.

The need of the hour is to ensure that legal infrastructure is well-adapted to the changing global landscape, and in turn, will support global efforts to stop the pandemic and prevent economic collapse. How well countries navigate through these challenges will eventually determine success in defeating this common enemy. Thus, the global community must stand under one same norm cooperation.

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