

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

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REVISITING THE ROOTS OF INTERNATIONAL LAW IN NATIONAL LEGAL ORDERS: FROM THE WESTPHALIAN ERA TO PRESENT-DAY GLOBAL GOVERNANCE

AUTHORED BY - DIVYANSH SINGH

Abstract

In this task we will take a systematic look at the complex intertwinement of international law and national legal systems as it has evolved from the founding Westphalian period to the contemporary era of global governance. The Westphalian system established state sovereignty as the bedrock of international law. International law has developed in relevance, impacting national legal systems and international organizational law systems.

The emergence of international organizations and international treaties has reinforced the dominance of international law as a binding norm in international relations. National law is being influenced by international law and vice versa. This assignment will consider the relationship between international law and national legal systems by focusing on the pressures and the potential for development that stem from their interaction. By examining closely the evolutionary process of this rule and some of the modern challenges it poses, this study illuminates the importance of viewing international laws roots in domestic legal orders.

The assignment also investigates contemporary problems of international law such as globalization, terrorism, and climate change. The national legal orders contend with issues of modernization which require consideration to protect their national interest, as well as comply with and recognize their international obligations. The assignment considers the role of international law in these challenges and looks at how international law could be utilized to promote cooperation and governance on a global scale. By reflecting on the foundations of international law through the various state-based legal orders, the assignment contributes to the understanding of the multi-faceted nature of the relationship between international law and national legal orders.

In conclusion, this form of assignment increases an understanding of international law as an historical and significant factor within national legal orders and its more complex

participation in global governance, and why cooperation among nations is important.

1. Introduction

Both scholars and practitioners have been fascinated by the intersection of international law and domestic legal systems within national jurisdictions. This phenomenon has been observable since the establishment of the Westphalian state system, and throughout a considerably dynamic path of development for international law, it has established itself as a powerful factor in assisting countries with national policies and strategic responses to world issues. The purpose of this assignment is to consider the development of international law's beginning in national legal orders and to subsequently analyze how that relationship changed, within the context of the governance challenges the world is facing today.

The Westphalian state was concluded in 1648 and has been seen as the advent of "modern" international law. As sovereignty and non-interference became the basis of international relations, international law engaged with national legal orders in very limited and effective ways. The world soon became more connected than it ever had, and international law was able to impose its influence over aspects of national policies, along with being an effective tool in addressing global challenges.

International institutions, along with international treaties, continued to increase the presence of international law in the global sphere. National legal orders began to adopt international law, and international law began to influence national policies. These effects presented a complex relationship between international law and national legal orders by allowing the two to affect one another.

In recent years, globalization has made the relationship between international law and national legal orders more difficult. As goods, services, and ideas travel more freely across borders, national legal orders need to recognize the complexities of international law more than ever to address global challenges. In the meantime, international law seems ascendant in making sense of and responding to global challenges, ranging from climate change to terrorism and pandemics.

Even with the increasingly important role of international law in addressing global challenges, national legal orders continue to be crucial actors in shaping international law.

It is important that national governments and other national institutions recognize their role in implementing international law and all that the law addresses. The assignment will explore the relationship between international law and national legal orders and examine how they engage and work against each other.

2. The Westphalian System: A New Era in

International Relations

The Westphalian system, which began in 1648, legitimately begins the era of modern international law. Specifically, the many Peace of Westphalia treaties, which were written and signed in Munster and Osnabruck, with the use of the term treaties, ended Europe's Thirty Years' War, acknowledged the principle of state sovereignty; state sovereignty meant that establishing a government that had ultimate and supreme authority over a specific parcel of territory gave it the ability to run its own show free from the interference of others.

The Westphalian system arose from the complexity of the relationships of the many European states and their governments, as well as the Catholic Church and the Holy Roman Empire. Regarding the Westphalian system (as derived from the treaties), under the Westphalian state system, states began to operate independently and sovereignly; an international system was created that required states to respect each other as equals (not interfering in other state's affairs), and maintain the sovereign authority of the state over territory.

The Westphalian system contained various important characteristics, including:

1. ***Sovereignty***: countries were recognized as equal under law by other countries and had all power and authority in their territory.
2. ***Non-interference***: States pledged themselves not to interfere in each other's internal activities.
3. ***Territorial integrity***: states were recognized as having rights over their territory and the right to defend their borders.
4. ***Equality of states***: under international law, states were recognized as equal with the same rights and obligations.

The medieval system of international relations was drastically different from the Westphalian system. The medieval system was characterized by a complex web of overlapping

authority, consisting of feudal allegiances and allegiances to church that devalued sovereign authority. The Westphalian system provided a new basis for international relations, prioritizing states' independence and sovereignty.

- ***Impact of the Westphalian System on International Law***

The Westphalian system has had a significant influence on the development of international law. The Westphalian system made the sovereign state as the fundamental unit of international law, and today the sovereign state remains a fundamental building block of international law. The Westphalian system further developed the notion of equality of states, identifying all states as equal, with the same rights and responsibilities across international law.

The Westphalian system established new international treaties and institutions. The Congress of Westphalia was among the first international conferences to establish the Peace of Westphalia to put an end to the Thirty Years' War. The conventions adopted at Westphalia established the norm for concluding treaties in order for nations to conduct diplomatic negotiations of a nature to pursue clarity and enforceability under international law.

The Westphalian system developed the basis for international law for:

- State responsibilities (that the states have responsibilities on an international level and therefore can be responsible for breaches of international law),
- Diplomatic relations (the different conventions initiated through Westphalia established diplomatic relations between states, resulting in improved communications and exchanges),
- Treaty law (Westphalian conventions developed conventions on treaties, a primary source of international law), and
- International organizations (such as the United Nations) developed from the conventions and are significant players in international contributions.

The Westphalian able to respect each other's borders, and the principle of territorial integrity was established.

1. ***War and conflict:*** The Westphalian system provided rules and norms to conduct war and conflict (i.e. neutral states and laws of war).

2. **Trade and commerce:** The Westphalian system pushed the establishment of International Trade and commerce and provided rules and norms for foreign investments protection.

- ***Inheritance the Westphalian System***

The Westphalian system has had a significant and lasting impact on international relations and international law. The principles of sovereignty, non-interference and territorial integrity established by the Westphalian system remain foundational in international law and continue to influence the behavior of nation-states and the formation of international laws, institutions and collaborative treaties.

Critics of the Westphalian system contend there are drawbacks and limitations - that the emphasis on the sovereignty of the nation-state impedes international cooperation and contributes to ineffective responses to international challenges.

Regardless of these critiques and challenges, the Inheritance of the Westphalian system continues to be an important part of the evolution of international law. The principles and institutions of the Westphalian system still inform international relations today, and the legacy of the Westphalian System continues to manifest in the current international system.

The Westphalian System has evolved and adapted to challenges over time that have significantly changed the experience of global governance, including:

1. **Globalization:** The growing interconnectedness of the world has called into question traditional understandings of state sovereignty and the role of international law in regulating global governance.
2. **Human Rights:** The emergence of human rights law has undermined traditional concepts of state sovereignty and questioned the role of international law in protecting individual rights.
3. **International Organizations** The actions of international organizations, including the United Nations, have challenged the classic notion of state sovereignty and have questioned the part international law has played as an enabling component of global governance.

The Westphalian system offered a new start in the evolution of international law, offering

a definition of state sovereignty and an opportunity for states to engage with one another. The elements of the Westphalian model still shape the international system and international relations; Westphalian principles are still indispensable in the contemporary international system.

3. The Rise of International Law

1. *History of international law*

Although international law dates back to ancient civilizations and is evident through treaties and diplomatic relations in early Mesopotamia, Greece, and Rome, contemporary international law began in the 17th century with the Peace of Westphalia (1648), which established concepts of state sovereignty and the right of states to govern the territory under their jurisdiction.

2. *Advancement of International Law in the 19th & 20th Century*

The 19th and 20th centuries witnessed significant advancement in international law, including:

- ***Creation of international organizations:*** The Hague Conferences (1899 and 1907) and the League of Nations (1920) were significant developments in the growth of international law.
- ***Codification of international law:*** The Geneva Conventions (1864 and 1949) and the Vienna Convention on Diplomatic Relations (1961) codified important international law norms.
- ***Diversification of international law:*** International law began to encompass different areas of law, including, human rights, environmental law, and international trade law.

3. *Main Features of Modern International Law*

Today, aspects of modern international law play an important role in governance on a global level, in cooperation to address challenges on global level, and in the psycho-legal protection of human rights. Some of the main features of modern international law are:

- ***Globalisation:*** An aspect of modern international law that helps to address global challenges like climate change, pandemics, and economic crises.
- ***International institutions:*** The role of institutions like the United Nations, the

International Court of Justice, and the World Trade Organization that promote cooperation at the international level and dispute settlement.

- **Human rights:** International law serves to protect individual rights and promote accountability for human rights violations.
- **Environmental protection:** International law seeks to address environmental issues, including climate change, loss of biodiversity, and pollution.

4. *Impact of International Law*

International law has a notable effect on global governance and international relations. Some of the main impacts are as follows:

- **Promoting cooperation:** International law promotes cooperation among states and international organizations, which can lead to the resolution of disputes and respond to global challenges.
- **Protect human rights:** International law can protect individual rights and promote accountability for human rights violations, realizing justice and dignity for all.
- **Regulating global governance:** International law regulates global governance and provides a framework for international cooperation and decision-making.

In summary, the development of international law demonstrates our collective recognition of the need for cooperation and governance in a world that is increasingly interdependent. International law has developed to meet the problems resultant of globalization and to promote cooperation among states, and is an important mechanism for regulating global governance and protecting human rights.

4. Global Governance and International Law

1. **Global Governance:** Global governance is a multifaceted system of regulation composed of rule, norms, and institutions that structure global relations. Within the global governance agenda, there are many facets, including:

- **Economic Governance:** The purpose of economic governance is to promote global cooperation and stability: Registers international trade, finance and development.

- **Security Governance:** Regulates global security issues that impact international relations, including addressing common global security threats such as terrorism, pandemics, and violence, and dysfunction resulting in instability.
- **Environmental Governance:** Regulates the protection of the global environment and responding to issues such as climate change, biodiversity loss and pollution issues.

2. **International Law:** International law provides a basis for global governance. It outlines the rules and norms of state behavior. Three major principles of international law are:

- **Sovereign equality:** All states are treated equally while respecting each state's sovereignty and territorial integrity.
 - International rule of law - All states are bound by the same set of rules, and the rule of law is sovereign such that justice and accountability can be imposed on all states.
- **Multilateralism:** States are most likely to act when there is shared will, demonstrating collective action and cooperation toward addressing global issues.

3. **Recent Developments:** At the 2025 Shanghai Cooperation Organization (SCO) Summit, global governance and international law were high profile issues. Here are a few takeaways:

- **The Global Governance Initiative (GGI)** is a proposal made by Chinese President Xi Jinping. The GGI looked to establish a vision with emphasis placed on sovereign equality, international law, and people-centred, as opposed to state centric, cooperation.
- **The New SCO Development Bank** looked to finance development projects, with the aim of enhancing economic cooperation and the economy in all of the invited states.
- With respect to the **Eurasian Stability and Security Order**, Russia's President Vladimir Putin reinforced the need for a multipolar world, while rejecting a bloc politics or Cold War mentality.

4. Difficulties as well as possibilities: There are difficulties that global governance and international law face, such as:

- **Unilateralism and Protectionism** Some countries use unilateralism or protectionist measures beyond the bounds of international law which indicates an intention to undermine multilateralism and reduce opportunities for substantial global cooperation and global stability.
- **Global Inequality:** Unfair distribution of wealth, security and, access to natural resources weakens effective global governance.

However, global governance and international law present opportunities for:

- **Cooperation and Collective Action:** Use for the collective interests of global challenges and peace, security, and development.
- **Institutional Advancement:** Enhance and strengthen international institutionalism will promote the effectiveness of global governance.

5. Present-day Stressors

1. Environmental Stressors

- **Global Warming:** As global temperatures rise, ice caps continue to melt, and ecosystems change, it should be clear that this will have negative effects on climate, biodiversity, and human communities. The bulk of global warming is widely regarded as occurring mainly due to greenhouse gas emissions resulting from human activities and actions (e.g., deforestation, Industrialization, and agriculture deterioration).
- **Impacts:** Climate change will be fluctuations of increased temperatures, natural disasters, extreme weather events, and rising sea levels, that threaten human communities, food security, and the viability of living.

2. Humanitarian Stressors

- **Refugee Issues:** The number of displaced persons and refugees has ballooned as a result of conflicts, abuses, and natural disasters; this growth has placed pressure on local resources and caused humanitarian emergencies. The Syrian crisis involves large-scale displacements, human rights abuses, and the requirement to meet humanitarian needs through sustained humanitarian assistance.

- **Human Rights Abuses:** Conflict, terrorism, and social unrest have been causing grave human rights abuses globally, such as torture, arbitrary detention, and refrains on freedom of expression

3. *Demographic Stressors*

- **Over Populations :** Just what we need in the world today with a projected population estimate of over 9.2 billion persons by 2050 is even more acute stress on resources, infrastructure and the environment - all contributors to population growth are fertility rates, longevity and international migration
- **Aging Populations:** Among the challenges around many nations is an aging population, which has implications such as healthcare costs and pensions, as well as the potential reduction in the amount of contributory labor.

4. *Security Stressors*

- **Global Terrorism** As it is, terrorists and their threats are exacerbated with each violent act they commit, what might have not killed someone destroys their quality of life and ecaedes of development; therefore there are significant implications for loss of life, displacement and stresses upon economic variables.
- **War Crimes:** Wars have resulted in numerous war crimes, such as murder, mutilation, and sexual violence; they stress the need for accountability and justice.

5. *Other Stressors*

- **Sustainable Development** Striking the balance between developing the economy, protecting the physical environment, and mitigating the social impacts has been, and remains, a challenge requiring innovative thinking, collaboration and cooperation.
- **Global Cooperation:** The growing complexity of global issues, and the embedded insecurities and ambiguities surrounding them will require effective international cooperation, coordination, and collective problem-solving ¹.

6. Conclusion

To summarize, the relationship between international law and national legal orders is complex and multifaceted. Understanding how international law has evolved from the Westphalian state to today's global governance is essential at this moment as we are faced with profound global challenges, and we must foster the principles of effective cooperation among nations.

International law has contributed to the development of global governance, promoted cooperation, and, in a significant sense, protected human rights. Nevertheless, there are always competing challenges to this development, namely unilateralism, protectionism, and global levels of inequality.

As we chart a way forward, the challenges and issues must be addressed by turning international law into a more robust legal framework for social justice. This can only be achieved by strengthening international institutions, promoting multilateralism and cooperation between states.

By working together, states can address global issues and foster a more peaceful, prosperous, and just world. The future of international law and global governance will be determined by how we adapt to change, foster cooperation, and defend human rights.

Eventually, the relationship between international law and national legal orders will continue to change based on global issues, technology and the national and global distribution of power. We can empower ourselves to build an effective and just governance system undergirded by an informed understanding of these complexities.¹

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