

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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IS INTERNATIONAL LAW MEETING GLOBAL EXPECTATIONS? A CRITICAL PERSPECTIVE

AUTHORED BY - ANANYA RAKHEJA

Introduction

According to Jeremy Bentham international law is a set of norms that govern relations between different nations and other recognized international entities¹. It provides normative principles, methods, and a shared conceptual language to different actors, which include sovereign governments, international organizations, and, increasingly, people. The scope of international law has grown dramatically to include human rights, economic and commercial challenges, space law, and other topics². However, the complaints about international law, particularly the absence of a central legislative, an enforcement machinery, and a mandatory jurisdiction for courts, are mostly justified. These institutional flaws result in inconsistent implementation, selective enforcement, and a lack of accountability, making international law ineffective in tackling global concerns and upholding justice. These shortcomings impede the attainment of international law's major goals, which include providing a platform for marginalized perspectives, preserving a formal structure for political discourse, and striving for global justice³.

Where is the Legislature?

Sources of international law include treaties, resolutions, model norms, unilateral statements, and decisions made by international organizations. The treaty remains the primary means of incorporating new legislative measures into international law⁴. However, the absence of a sovereign international parliament complicates the international legislative process. Despite this, legislative activity in international law has been strong, with numerous new regulations produced by international assemblies and conferences.

¹ 'International Law' (*Encyclopedia Britannica*, 20 June 2024) <https://www.britannica.com/topic/international-law>.

² Mégret F, 'International Law as Law' [2012] *The Cambridge Companion to International Law* 64

³ Koskenniemi M, '2. What Is International Law For?' [2018] *International Law*

⁴ Mills A, 'Rethinking Jurisdiction in International Law' (*OUP Academic*, 13 September 2014) <https://academic.oup.com/bybil/article/84/1/187/2262836>.

One key concern with this decentralized legislative procedure is that it frequently results in a proliferation of rules that are inconsistent or overlapping. Because there is no central legislative, there is no one authority in charge of maintaining international law's coherence and consistent application. This can lead to a fragmented legal landscape in which multiple accords and resolutions conflict with one another or are construed differently by different countries. For example, the various interpretations and implementations of the Paris Agreement on Climate Change demonstrate how different governments can prioritize and enforce the same treaty differently, resulting in uneven global climate action⁵.

Likewise, regulatory conflicts may arise for governments parties to both environmental treaties, like the Convention on Biological Diversity, and economic accords, like the North American Free Economic Agreement (NAFTA), due to conflicting commitments⁶. In addition, States frequently need to reach an extremely high degree of consensus in order to create international law through treaties and other instruments. This may result in drawn-out negotiations or weaker measures that postpone the adoption of significant legal standards. For instance, the Kyoto Protocol was created through protracted debates and ultimately concessions that led to lesser commitments than originally suggested, delaying significant global action on climate change⁷. It is also possible for states or small groups of states to have disproportionate influence over the legislative process when unanimous or almost unanimous agreement is required. This could result in laws being adopted that do not represent the interests of the global community.

The 2015 migrant crisis exposed how a few dissident member states might seriously obstruct collective action, putting many migrants in a state of uncertainty and deepening the situation⁸. This was demonstrated by the European Union's problems to establish consistent refugee policies.

These instances highlight the difficulties that arise from the absence of a centralized legislative body in international law, which causes irregularities, hold-ups, and disproportionate influences that obstruct the efficient development and application of international legal norms.

⁵ Samahon L, 'No Provision, No Problem: How Climate Efforts Function without Explicit Enforcement' (Kleinman Center for Energy Policy, 17 November 2022) <https://kleinmanenergy.upenn.edu/news-insights/no-provision-no-problem-how-climate-efforts-function-without-explicit-enforcement/>.

⁶ Weiler T, 'The Significance of NAFTA Chapter 11 for the Development of International Economic Law' [2004] NAFTA Investment Law and Arbitration 3

⁷ 'The Kyoto Protocol' [2018] Routledge Revivals: Kyoto Protocol (1999) 159

⁸ '2015: The Year of Europe's Refugee Crisis' (UNHCR UK) <https://www.unhcr.org/uk/news/stories/2015-year-europes-refugee-crisis>.

Where is the Enforcement?

The inability of the international community to live up to its pledges is among its biggest problems. The major judicial instrument of the United Nations, the International Court of Justice (ICJ), has rendered judgements that could be unenforceable due to non-compliance. The effectiveness, legitimacy, and integrity of the ICJ and other international judicial bodies are threatened by the incapacity to implement court rulings.

For instance, in a speech to the UN General Assembly in September 2020, President Volodymyr Zelenskyy of Ukraine emphasized the institutional shortcomings of the UN and other international organizations in preserving world peace. He cited the UN's incapacity to implement resolutions because of the permanent members of the Security Council's veto power, especially Russia⁹. This has shown the futility of international enforcement systems by enabling Russia to occupy Crimea and freely back separatist movements in Ukraine.

In a similar vein, neither the Council of Europe nor the North Atlantic Treaty Organization (NATO) have been able to stop Russian aggression. These shortcomings are further demonstrated by the unwillingness of Western nations to directly support Ukraine's armed needs or to apply preemptive sanctions on Russia. Ukrainians have suffered horrendous repercussions as a result, casting doubt on the goals and efficacy of these multinational organizations.¹⁰ In order to handle the geopolitical realities of today, the global security architecture needs to be critically reevaluated and updated.

Where is the Jurisdiction?

To guarantee the legitimate coexistence of sovereign states, one essential component of international law is the regulation of jurisdiction. Nonetheless, this field of law is undeveloped and frequently criticized. The necessity of successfully implementing universal jurisdiction has not decreased with the establishment of the International Criminal Court (ICC). With just 110 governments having ratified the Rome Statute, the ICC's jurisdiction is narrow and its temporal reach is confined to crimes committed after July 1, 2002¹¹.

⁹ Herszenhorn DM, 'The Failed World Order' (*POLITICO*, 3 March 2023) <https://www.politico.eu/article/ukraine-russia-war-failed-world-order-united-nations-nato-council-of-europe-vladimir-putin/>.

¹⁰ Ibid.

¹¹ Mohamed M EZ, 'Ad Hoc Acceptance of Jurisdiction: International Criminal Court (ICC)' [2023] Max Planck Encyclopedia of International Procedural Law

The renowned Lotus Case¹² serves as an example of the difficulties in determining jurisdiction under international law. According to the Permanent Court of International Justice (PCIJ), governments are free to exercise jurisdiction outside of their borders as long as there are clear prohibitions in place¹³. The ruling has faced criticism due to its departure from conventional jurisdictional standards. These principles are often founded on specific and restricted grounds like nationality, territoriality, and protective principles.

Concerns over possible jurisdictional overreach, or states extending their laws and judicial reach in ways that could cause conflicts and jeopardize the international legal order, are raised by the considerable discretion granted by the Lotus judgement¹⁴. Some academics have made an effort to bring the Lotus ruling into line with conventional wisdom by arguing that it only pertains to territorial jurisdiction that is plenary or that it recognizes a variety of justifications for extraterritorial jurisdiction. These interpretations, however, are frequently viewed as revisionist and do not quite conform to the broad claims made by the PCIJ¹⁵.

One can argue in support of the current configuration of international law despite these concerns. One argument is that the reality of a world made up of sovereign states with a variety of interests and beliefs is reflected in the decentralized and consensus nature of international lawmaking. The need for agreement guarantees the wide acceptance of international laws and increases the likelihood that states will abide by them.

Furthermore, the effectiveness of international law is not always diminished by the lack of a centralized enforcement system. States frequently abide by international law out of reciprocity, self-interest, and a desire to keep up their good standing in the world community. Furthermore, there are several enforcement strategies in place, including economic sanctions, diplomatic pressure, and occasionally military involvement.

Moreover, although not having mandatory jurisdiction, international courts and tribunals have significantly aided in the creation and application of international law. Numerous significant decisions and judgements rendered by the ICJ, the ICC, and other international judicial bodies

¹² S.S Lotus (Fr. v. Turk), 1927 P.C.I.J (ser.A) No. 10 (Sept.7)

¹³ Mills A, 'Rethinking Jurisdiction in International Law' (*OUP Academic*, 13 September 2014) <https://academic.oup.com/bybil/article/84/1/187/2262836>.

¹⁴ Mehta R, 'Case Comment on S.S Lotus (France v Turkey)' [2021] SSRN Electronic Journal

¹⁵ Ibid.

have changed international legal norms and held people and governments accountable for their deeds.

The Way Forward: Suggestions for the Improvement of International Law

The establishment of a permanent international legislative assembly is one of the most important stages towards enhancing international law. Representatives from every sovereign state would make up this body, guaranteeing that all opinions are heard and that the legislative process is more inclusive and democratic. By standardizing the legislative process, a permanent assembly might lessen contradictions and overlaps in international laws and treaties¹⁶. Additionally, it would make it easier to create cogent legal frameworks that better address global challenges and represent the interests of the entire international community rather than just a select group of strong states.

Harmonizing current treaties and decisions requires cooperation between international organizations including the United Nations, World Trade Organization, and International Monetary Fund. The efficacy of international law is currently weakened by the potential for contradictory norms and policies resulting from a lack of coordination. These organizations can cooperate to align goals and forge a more cohesive approach to international governance by putting in place improved channels of communication and cooperation. To guarantee that international law is comprehensive and uniform, this could entail holding regular joint meetings, exchanging treaty and resolution databases, and working together on policy-making projects¹⁷.

The international community must create stronger enforcement tools to guarantee improved compliance. This may entail applying more diplomatic pressure to nations to respect international law, using targeted economic sanctions to punish violators, and, in the worst circumstances, using force to enforce international law. Furthermore, enabling regional organizations to implement international standards in their domains might contribute to the development of a more decentralized but efficient enforcement system. Such actions would encourage a culture of accountability among governments and aid in discouraging infractions.

Expanding the jurisdiction and power of international tribunals, like the International Criminal

¹⁶ Holcombe AN, 'Improvement of the International Law-Making Process' 37 Notre Dame Law Review

¹⁷ Ibid.

Court (ICC), is crucial to fostering greater accountability and justice. The ICC's capacity to successfully prosecute international crimes would be strengthened by ensuring that more governments ratify the Rome Statute and by extending the ICC's jurisdiction to cover a wider range of offences¹⁸. Increasing the resources and assistance available to international courts can also boost their efficacy and efficiency. The implementation of mechanisms for compulsory jurisdiction will guarantee that nations cannot avoid legal responsibility, so enhancing the consistency and dependability of international justice.

Conclusion

There is a good deal of justification for the critiques of international law that point out its structural flaws, such as the absence of a central legislative, an enforcement mechanism, and mandatory jurisdiction for courts. Due to erratic implementation, selective enforcement, and a lack of accountability, these flaws undermine international law's ability to uphold justice and address global issues. But it's equally critical to acknowledge the intricate workings of the international system and the manner in which governments manage and uphold international law in spite of these constraints. Continuous reform and strengthening of international law's institutions, increased coherence and consistency in lawmaking, and the development of stronger enforcement mechanisms are all necessary to improve the law's efficacy. The ultimate objective should be to establish a more fair and efficient international legal system that is better equipped to handle the problems facing the modern world.

¹⁸(*Joining the International Criminal Court*) <https://www.icc-cpi.int/Publications/Joining-Rome-Statute-Matters.pdf>.