

INTERNATIONAL LAW AS “LAW”: AN ANALYSIS OF VETO POLITICS AND WEAK ENFORCEMENT MECHANISMS

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ABSTRACT

International Law has historically been given prime importance. Many jurists have discussed and criticized international law in their works, especially the works like *Al - Siyar al - Saghir* and *Al - Siyar al - Kabir* by Imam al-Shaybani. This paper examines the contemporary crisis of enforcement in the realm of modern international legal order. It has been tried to prove that contemporary international law, in its practical operation, fails to be recognized as a law in the true sense, and is against the spirit of law. The reason being so is that international law does not meet the essential characteristics of a law. This study critically examines how the structure of the United Nations, specifically the veto powers exercised by the five permanent members of the Security Council under Article 27 of the UN Charter, undermines the principle of sovereign equality as embodied under Article 2(1) of the Charter, and weakens the impartial enforcement of international law. The paper seeks to critically evaluates the true nature of international law in jurisprudential sense, vis a vis the crisis of enforcement in international law.

Key Words: Crisis in Enforcement, Practical Operation, Not a Proper Law, Structure of UN, Security Council, Equality before Law

1. INTRODUCTION

International law is commonly described as the body of rules, principles, customs, and treaties that govern relations among states and other subjects of international law. In the contemporary era, the entire international political order, diplomatic framework, economic system, and global security architecture are founded upon the principles of international law. Despite its significance, one of the most persistent criticisms of international law concerns its enforcement. Unlike domestic legal systems, international law lacks a centralized legislature capable of enacting universally binding rules, an executive authority capable of enforcing those rules uniformly, and a judicial mechanism capable of ensuring compulsory compliance with its decisions. Consequently, the effectiveness of international law often depends upon the voluntary compliance of states.

The present paper revolves around the enforcement mechanism of international law and the decisions rendered by international courts. It seeks to examine why international legal obligations are frequently violated despite the existence of formal institutions designed to ensure compliance. Numerous factors hinder enforcement, including the doctrine of state sovereignty, the requirement of state consent, geopolitical interests, unequal distribution of power among states, and the veto powers granted to the permanent members of the Security Council.

2. LEGAL FRAMEWORK GOVERNING ENFORCEMENT OF INTERNATIONAL LAW

The modern international legal order derives much of its authority from the Charter of the United Nations. The Charter proclaims the principle of sovereign equality among states and establishes mechanisms intended to maintain international peace and security.

Article 2(1) of the UN Charter declares that the Organization is based upon the principle of the sovereign equality of all its members. This provision reflects the foundational notion that all states, regardless of their size, population, military capability, or economic strength, possess equal legal status under international law.¹

Similarly, Article 25 of the Charter provides that member states agree to accept and carry out the decisions of the Security Council. In theory, this provision establishes a binding obligation upon all member states to comply with Security Council decisions.² The Charter further grants enforcement powers to the Security Council through Articles 39 to 42. These provisions authorize the Council to determine threats to international peace and security and to adopt measures ranging from economic sanctions to military action.

The International Court of Justice serves as the principal judicial organ of the United Nations. Article 94 of the Charter requires member states to comply with decisions rendered by the Court in cases to which they are parties.³ If a state fails to comply with an ICJ judgment, the aggrieved party may bring the matter before the Security Council.⁴

The Statute of the International Court of Justice similarly establishes the Court's authority and identifies the sources of international law. Article 38 recognizes international conventions, international custom, general principles of law, judicial decisions, and scholarly writings as sources of international law.⁵ While these provisions create a sophisticated legal framework, their practical effectiveness depends largely upon political institutions and state cooperation.

3. ANALYSIS OF CHALLENGES IN ENFORCEMENT

3.1. Sovereignty and State Consent

¹ Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 2(1).

² Ibid

³ Ian Brownlie, *Principles of Public International Law* (8th edn, Oxford University Press 2012) 45.

⁴ Article 94, UN Charter

⁵ Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 33 UNTS 993, art 38(1).

One of the most significant obstacles to the enforcement of international law is the doctrine of state sovereignty. States are generally regarded as independent entities possessing supreme authority within their own territories. Unlike domestic legal systems, where citizens are automatically subject to state authority, international law often depends upon consent. States must generally consent to treaty obligations, accept the jurisdiction of international courts, and cooperate with enforcement mechanisms.⁶

The jurisdiction of the ICJ itself is largely consent-based. A state cannot ordinarily be compelled to appear before the Court unless it has accepted the Court's jurisdiction through treaty obligations, special agreements, or declarations recognizing compulsory jurisdiction. This consent-based structure creates a fundamental limitation. If compliance with legal obligations depends upon the willingness of states, enforcement becomes uncertain and inconsistent.⁷

3.2. The Veto Power and Sovereign Inequality

Perhaps the most controversial feature of the contemporary international system is the veto power granted to the five permanent members of the Security Council: China, France, Russia, the United Kingdom, and the United States. While Article 2(1)⁸ proclaims sovereign equality, the veto power effectively creates a hierarchy among states. A single permanent member may block enforcement action even where overwhelming international consensus exists regarding violations of international law. The existence of veto power therefore creates an apparent contradiction between the principle of sovereign equality and the practical realities of international governance.

3.3. Absence of a Centralized Enforcement Authority

Another major weakness of international law is the absence of a centralized enforcement authority. Domestic legal systems typically possess police forces, prosecutors, and correctional institutions capable of enforcing judicial decisions. International law possesses no equivalent institution. The United Nations does not maintain a permanent global police force. International courts do not possess independent enforcement mechanisms. Their effectiveness depends upon cooperation from states. Consequently, judgments of international courts may remain unenforced for years or even decades. Where powerful states refuse compliance, the international community often lacks effective means to compel obedience.

3.4. Political Selectivity and Double Standards

Critics frequently argue that international law is applied selectively. Certain states are subjected to sanctions, investigations, and military interventions, while others avoid similar consequences despite allegations of comparable conduct. If legal obligations are enforced against some states but ignored in relation to others, the legitimacy of the entire legal system comes into question.⁹

⁶ Peace of Westphalia, 1648

⁷ Françoise Bouchet-Saulnier, *The Practical Guide to Humanitarian Law*, trans Laura Brav and Camille Michel (3rd edn, Rowman & Littlefield 2013).

⁸ Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, art 2(1).

⁹ Jane Ezirigwe, 'Double Standards in International Law: Critical Reflections for an Academic Lens for Teaching and Research' (Opinio Juris).

Such concerns are particularly relevant in cases involving major military powers, strategic allies, and permanent members of the Security Council.

4. INTERNATIONAL LAW AND THE JURISPRUDENTIAL DEBATE

The enforcement crisis has revived an old jurisprudential debate concerning the nature of international law itself. The nineteenth-century legal philosopher John Austin argued that law consists of commands issued by a sovereign and backed by sanctions.¹⁰ Because international law lacks a global sovereign capable of imposing sanctions uniformly, Austin maintained that international law is not law in the strict sense but merely a form of positive morality. From this perspective, international law fails to satisfy essential characteristics associated with a complete legal system.

5. CASE STUDIES DEMONSTRATING THE CRISIS OF ENFORCEMENT

5.1. The Kashmir Dispute

The Kashmir dispute remains one of the oldest unresolved international disputes on the agenda of the United Nations. Following the armed conflict between India and Pakistan in 1947-48, the matter was referred to the United Nations Security Council. A series of Security Council resolutions were subsequently adopted, including Resolutions 38 (1948), 39 (1948), 47 (1948), 51 (1948), 80 (1950), 91 (1951), and 122 (1957).¹¹

Among these, Resolution 47 of 1948 is particularly significant as it contemplated a plebiscite to determine the wishes of the people of Jammu and Kashmir. The United Nations Commission for India and Pakistan (UNCIP) was also established to facilitate a peaceful settlement.¹² Despite the passage of more than seven decades, the dispute remains unresolved. Neither the proposed plebiscite nor the complete implementation of the resolutions has materialized.

The Kashmir dispute illustrates a fundamental weakness of international law. Although resolutions were adopted by the United Nations, the absence of an effective mechanism to compel compliance prevented their realization. This raises an important question that if resolutions adopted by the highest international institution can remain unenforced for decades, what practical value do such legal instruments possess?

5.2. The Palestine and Gaza Conflict

The Palestine-Israel conflict represents another compelling example of the limitations of international law. Since the establishment of Israel in 1948, the United Nations has adopted numerous resolutions concerning occupied territories, settlements, military operations,

¹⁰ John Austin, *The Province of Jurisprudence Determined* (Sarah Taylor ed, first published 1832, Cambridge University Press).

¹¹ Resolutions, United Nations Security Council

¹² UN Security Council Resolution 39 on January 20, 1948

United Nations Military Observer Group in India and Pakistan (UNMOGIP), United Nations.

humanitarian obligations, and the rights of the Palestinian people.¹³ In 2004, the International Court of Justice delivered its Advisory Opinion concerning the construction of the separation wall in occupied Palestinian territory. The Court concluded that the construction violated international law and called for remedial measures.¹⁴

More recently, proceedings initiated by South Africa against Israel under the Genocide Convention brought renewed attention to the role of international courts. The ICJ issued provisional measures directing Israel to take steps to prevent acts prohibited under the Genocide Convention and to ensure humanitarian assistance.¹⁵

Notwithstanding these developments, implementation remains heavily dependent upon political considerations. The continuation of military operations despite judicial interventions demonstrates the practical limitations of international adjudication when enforcement mechanisms are weak or politically constrained.

5.3. Genocide, War Crimes, and Crimes Against Humanity

International law has witnessed significant developments in addressing genocide, war crimes, and crimes against humanity. The establishment of international tribunals for Rwanda and the former Yugoslavia, followed by the creation of the International Criminal Court, represented important milestones in international criminal justice.¹⁶

In Rwanda, international mechanisms prosecuted several individuals responsible for genocide. Similarly, the International Criminal Tribunal for the Former Yugoslavia delivered landmark judgments concerning atrocities committed during the Balkan conflicts. Despite these achievements, international criminal justice remains selective.¹⁷ Numerous allegations of genocide, ethnic cleansing, and crimes against humanity continue to arise across different regions of the world without equivalent levels of accountability.

6. THE INTERNATIONAL CRIMINAL COURT AND ENFORCEMENT CHALLENGES

While the ICC represents an unprecedented advancement in international criminal law, its effectiveness remains constrained by several factors.

First, the Court lacks an independent enforcement apparatus. It cannot execute arrest warrants without state cooperation. If a state refuses to arrest a suspect, the Court has limited options available.

¹³ The Question of Palestine and the General Assembly (United Nations)

¹⁴ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Rep 136.

¹⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v Israel) (Order of 26 January 2024) ICJ.

¹⁶ Paul Tavernier, 'The Experience of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda' (1997) 321 *International Review of the Red Cross*.

¹⁷ *Ibid*

Second, several major powers have either declined to join the Rome Statute or have maintained limited engagement with the Court. This significantly restricts the Court's jurisdictional reach.

Third, political opposition frequently undermines the Court's authority. Criticism directed toward the ICC by powerful states has demonstrated the difficulties encountered by international institutions when attempting to exercise authority over influential actors.

As a result, the ICC often appears effective against weaker states while struggling to exercise jurisdiction over powerful actors possessing substantial political influence.

7. IS INTERNATIONAL LAW REALLY LAW? A JURISPRUDENTIAL ANALYSIS

The persistent failures of enforcement have led many scholars to question whether international law qualifies as law in the true sense. Applying John Austin's definition, international law appears deficient because there is no global sovereign possessing supreme authority over states.

Several arguments support this position:

First, international law lacks a centralized legislature.

Second, there is no global executive authority capable of uniformly enforcing legal obligations.

Third, the jurisdiction of international courts frequently depends upon state consent.

Fourth, enforcement mechanisms are often influenced by political considerations.

Fifth, the veto powers of permanent members undermine the principle of equality before law.

These factors suggest that international law lacks certain characteristics commonly associated with municipal legal systems.

However, modern scholars reject Austin's narrow definition. They argue that international law possesses recognized sources, institutions, procedures, and normative authority. Article 38 of the ICJ Statute identifies treaties, customs, general principles, judicial decisions, and scholarly writings as legitimate sources of law.

Moreover, states comply with international obligations in thousands of instances every day through diplomatic relations, international trade, aviation, maritime navigation, and treaty implementation. Thus, while international law may not resemble domestic law, it nevertheless possesses significant legal characteristics. The more convincing criticism is therefore not that international law is entirely devoid of legal status, but that it suffers from a profound enforcement deficit.

8. ISLAMIC PERSPECTIVE ON INTERNATIONAL LAW AND ENFORCEMENT

The concept of international law is not entirely foreign to Islamic civilization. Long before the emergence of contemporary international institutions, Muslim jurists developed sophisticated principles governing relations between political communities.¹⁸

¹⁸ اسلام کا قانون بین الممالک، ڈاکٹر محمود احمد غازی

Among the earliest and most influential contributions are the works of Imam Muhammad ibn al-Hasan al-Shaybani, particularly *Al-Siyar al-Saghir* and *Al-Siyar al-Kabir*. These works systematically addressed issues concerning treaties, warfare, peace agreements, diplomatic relations, protection of non-combatants, and obligations between political entities.¹⁹

The contents of aforementioned books particularly, and the Islamic scholarly viewpoint generally maintains that though the international law is a vital part of the legal system, yet there is no space for inequality which the veto power and the power politics clearly demonstrates in contemporary international legal order. The Islamic tradition also attaches considerable importance to enforcement. Classical Muslim jurists maintained that law without effective implementation loses much of its practical value. The state was regarded as an instrument for ensuring justice and enforcing legal obligations. As noted in the Islamic legal literature, political authority was justified primarily as a means of implementing law and securing public welfare.²⁰

9. RECOMMENDATIONS FOR REFORM

The foregoing analysis demonstrates that the principal crisis facing international law is not the absence of legal norms but the weakness of enforcement mechanisms. Several reforms deserve consideration. The veto power remains one of the greatest obstacles to equal application of international law. Mechanisms should be developed to restrict or suspend the veto in situations involving genocide, crimes against humanity, and serious violations of international humanitarian law. The jurisdiction of international courts should be expanded through greater acceptance of compulsory jurisdiction and stronger compliance mechanisms.

Judicial decisions should be accompanied by clearly defined consequences for non-compliance. International legal institutions must be insulated from political influence to ensure consistent application of legal principles. International law cannot maintain legitimacy if certain states remain effectively immune from accountability.

10. FINAL REMARKS

The doctrines of sovereignty and consent, the absence of centralized enforcement mechanisms, and the veto powers enjoyed by permanent members of the Security Council significantly undermine compliance with international obligations. The experiences of Kashmir, Palestine, genocide prosecutions, and international criminal justice reveal a recurring pattern in which legal norms exist but enforcement remains uncertain. The future credibility of international law depends upon meaningful reform. Unless the international community addresses the problems of selective enforcement, unequal power structures, and inadequate compliance mechanisms, the gap between legal norms and practical realities will continue to widen. A legal system that aspires to universal justice must ensure not only the creation of rules but also their impartial and effective enforcement.

¹⁹ Ibid

²⁰ Farrukh B Hakeem, 'International Human Rights and Islamic Law' (2004) 21(4) *American Journal of Islam and Society* 102.

Only then can international law fully realize its promise as a genuine system of law governing the international community.