International Legal Frame

Definition

The international legal frame sets a number of rules globally regarded as binding the relations between states. In the humanitarian context it sets the rules of humanitarian intervention and protection of populations in an armed conflict situation. Recent evolutions in the international legal framework are making the operating environment increasingly challenging for the humanitarian sector. This situation is reinforced by the divergent behavior of states regarding international norms.

Key insights

Increasing divergence in the behavior of states will undermine the customary nature of many international norms.

The growing disrespect of the Geneva Conventions by states and non-state actors, which erode the protection offered to civilians and protected groups in conflict, is ongoing. Though still maintained as an ideal within the international legal system, actors will continue to challenge or disregard the Conventions as binding.

Existing international legal structures that pertain to humanitarian vulnerabilities (the laws of war, the protection of civilians, the rights of displaced communities) will not evolve quickly enough to have continued relevance and applicability.

Private and informal international actors will develop new forms of rulemaking

States no longer monopolize the creation of rules and regulations. The increase of transnational governance will generate networks making rules and standards for their sectors, transforming their status to rule makers.

Changes by 2030

➢ ***Growing involvement of non-states actors in law and rule making process***

Since the beginning of the twenty-first century, **rulemaking from private networks has been increasing[1], while the development of public international law is stagnating[2].** "International governance often resides in private networks[3]" composed of corporations, NGO's and institutions. The Forest stewardship council, an organization that sets standards to promote better forest management, is an example of the creation and enforcement of a norm by private network to "promote environmentally sound, socially beneficial and economically prosperous management of the world's forests"[4] In parallel, this increasing private governance and regulation is becoming more transnational due to the globalization of needs. A wide diversity of rules, standards, and guidelines has emerged as the practices vary significantly by industrial sector, topic, state, and region. The increased cooperation between some rule makers without the requirement of universal adherence has resulted in competition between standards at different levels. The diversification of actors who engage in rules and standards making is a trend that is likely to continue.

As rulemaking from private networks has proliferated, public international law with the ambition of universal agreement and ratification has been neglected in favor of more informal international law-making. Law-making between states is less prolific at traditional fora such as the UN but does continue to occur at regional levels or within groups such as the G-20 [5]. Non-binding guiding principles for global investment policymaking were for instance decided at the G20 Summit in July 2016, in Shanghai, to promote coherence in investment as well as inclusive economic growth.[6] The de-internationalisation of rulemaking is likely to continue as the world becomes increasingly multi-polar and regionalization increases the importance of supra-national bodies outside of the UN structure.

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[1] Barendrecht, Raic, Janse and Muller (Hiil 2012) *Trend report rulejungling, when lawmaking goes private, international and informal*, The Hague Institute for the Internationalization of Law, The Hague, 2012, pg13

[2] Barendrecht, Raic, Janse and Muller (Hiil, 2012) *Trend report rulejungling, when lawmaking goes private, international and informal*, The Hague Institute for the Internationalization of Law, The Hague, 2012, pg19

[3] Barendrecht, Raic, Janse and Muller (Hiil, 2012) *Trend report rulejungling, when lawmaking goes private, international and informal,* (Hill, 2012), The Hague Institute for the Internationalization of Law, The Hague, 2012, pg13

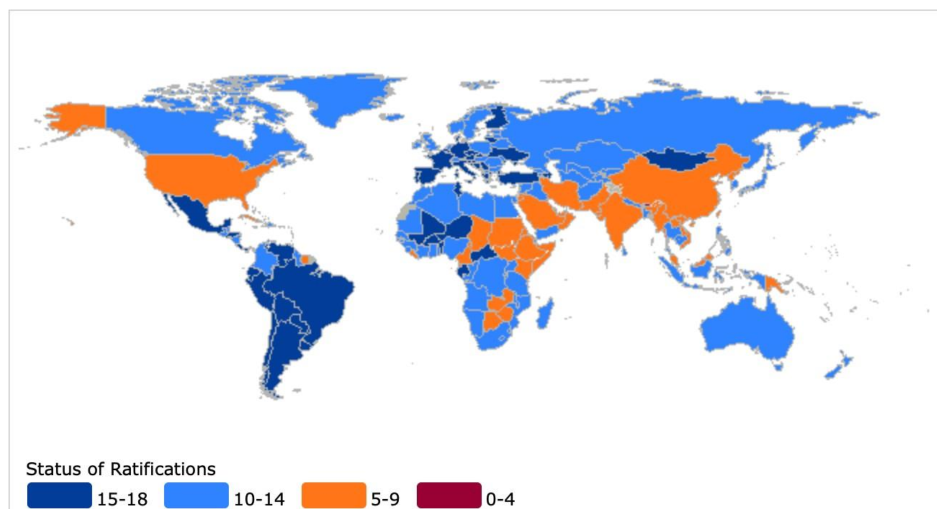
[4] Forest Stewardship Council, Mission and Vision – Protecting Forests for Future Generations

[5] Barendrecht, Raic, Janse and Muller (Hiil, 2012) *Trend report rulejungling, when lawmaking goes private, international and informal*, The Hague Institute for the Internationalization of Law, The Hague, pg19

[6] OECD (2016), Annex III: G20 Guiding Principles for Global Investment Policymaking, Final Report, July 2016

- ***State behavior regarding international norms is becoming more divergent.***

Currently, international law enforcement has many limits as the main body for enforcement is the UN Security Council and its resources are limited to contributions by member states. States with veto power such as the United States, China and Russia can choose whether or not to comply with international law according to their national interest, creating a double standard and a politicization of transgressions. As a result, even if many tenets of international law are widely followed, in absence of a higher global authority, each state remains the ultimate decision-maker of whether or not to abide by international law in their own territory. This situation is particularly evident in relations to the dispute management system and states' relationship with the International court of justice. The recent case (2013-2016) of Philippines versus China or the South China Sea Arbitration[7] are examples among others illustrating the non-compliance of great powers with decisions deemed to encroach on their national interests. The United States' war on terror and the Russian annexation of Crimea (2014) can also be seen as recent examples of non-compliance with international law. These states particularly emphasize the importance of state sovereignty and the non-intervention principle as surpassing others principles and laws[8].



Status of ratification by each states of 18 international Human rights treaties. From 0-4 (red) ratification to 15-18 (dark blue). Source: UNHRC Status of Ratification

[7] Phillips Tom, Holmes Oliver and Bowcott Owen (2016) *"Beijing rejects tribunal's ruling in South China Sea case"*, The Guardian, 12 July 2016,

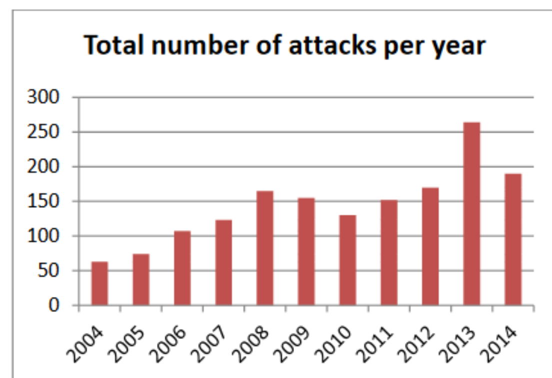
[8] Miyoshi Masahiro (2014*), Sovereignty and International Law,* Aichi University, Japan, 16 November 2014

More recently, the Russian withdrawal from the International Court of Justice (2016), preceded by other states[9] illustrates the rising prominence of national interest as the primary lens through which states view international regulation[10].

"Some African countries have been especially critical of the ICC for pursuing heads of state. Sudanese president Omar al-Bashir was wanted by the court for allegedly orchestrating atrocities in Darfur. The ICC also caused an uproar among some African nations by indicting Kenyan president Uhuru Kenyatta on charges of crimes against humanity for 2007 post-election violence in which more than 1,000 died."[11] In 2018, the Philippines followed the same path by after the court conducted a preliminary inquiry into accusations that President Duterte committed mass murder and crimes against humanity in the course of the drug crackdown.[12] The domination of these institutions by their primarily Western funders will continue to erode their legitimacy, particularly among developing states.

➢ ***Increasing violation of International Humanitarian Law***

International humanitarian law and particularly the Geneva Conventions have been challenged by contemporary modern warfare[13]. The Geneva Conventions, originally adapted to international conflicts, are increasingly lacking relevancy in the face of modern intra-state warfare. Civilians are more often held hostage by warring parties while an increased number of state and non-states actors are unwilling to act in accordance with the Conventions[14]. As illustrated by Syrian conflict, the blurring of civilians and combatants and the involvement of non-state actors who disregard international law in conflict, raise existential questions on the effectiveness of international humanitarian law.[15]



Total number of attacks against aid operations 2004-2014. Source: European Commission, International Humanitarian Law, Humanitarian aid and civil protection ECHO Factsheet 2015

One example of the challenge to the effectiveness of humanitarian law is the increase in the risks for the humanitarian sector's actors

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[9] South Africa, Burundi, Gambia, and the Philippines.

[10] Nechepurenko Ivan and Cumming-Bruce Nick (2016) (2016) *"Russia Cuts Ties With International Criminal Court, Calling It 'One-Sided'"*, The New York Times, 16 November 2016

[11] Associated Press in Addis Ababa (2017), "African leaders plan mass withdrawal from international criminal court", The Guardian, January 31, 2017

[12] Jason, G (2018) Philippines Officially Leaves the International Criminal Court. *The New York Times.* Retrieved on November 5, 2019

[13] International Committee of the Red Cross (2009) The Geneva Convention Today

over the last decade. This trend suggests that humanitarian workers are increasingly viewed as targets in spite of their protection in international treaties. The recent decrease of number of attacks (2014 and 2015) is attributed to the "growing no-go areas limiting humanitarian aid delivery"[16] rather than greater adherence to laws protecting civilians and non-combatants.

The growing inertia in the international community to review international humanitarian law and human rights treaties make it difficult to adapt them to the new context, ensuring their continued relevance.

Uncertainties

The status of refugees

A situation of increasing concern is the population displaced from the effects of climate change who are not under the protection of international treaties[17]. The reasons for displacement place differing legal obligations on states' to protect affected populations. Climate refugees are the most at risk as they are not recognised by all countries and the way in which to manage the impending surge of climate refugees is a topic of debate. "The problems with the term 'climate refugee,' […] have thus been at the heart of an international legal debate consisting of two main sides. While some advocate either amending the 1951 Refugee Convention or creating a new convention for this 'new' category of migrants, others recommend aggregating existing legal mechanisms and producing something similar to the 1998 Guiding Principles on Internal Displacement, but for environmental migrants."[18] Refugees are protected by the 1951 refugee convention and 1967 protocol, but these conventions have not been ratified by all states[19] and do not cover all vulnerable large scale involuntary migrations. How the international legal framework adapts new dynamics of migration is a critical uncertainty as the displaced population is likely to grow.

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[14] Kelley, Morgan (2013) *Challenges to Compliance with International Humanitarian Law in the Context of Contemporary Warfare* Independent Study Project (ISP) Collection. Paper 1618, 2013, pg18

[15] Kelley, Morgan (2013) *Challenges to Compliance with International Humanitarian Law in the Context of Contemporary Warfare* Independent Study Project (ISP) Collection. Paper 1618, 2013, pg 33

[16] European Commission (2015) *International Humanitarian Law*, Humanitarian aid and civil protection ECHO Factsheet

[17] Robyn Eckersley, The common but differentiated responsibilities of states to assist and receive 'climate refugees', European Journal of Political Theory, Vol 14, Issue 4, 2015, pg 3

[18] International Bar Association (2009) 'Climate refugees'? Addressing the international legal gaps

[19] UNHCR, The United Nation Refugee Agency (2013) State Parties to the 1951 Convention relating to the Status of Refugees and/or its 1967 Protocol