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NOTES AND REFLECTIONS

THE EFFECTIVENESS OF PUBLIC INTERNATIONAL LAW

OMAR ABOU CHAKRA
omar.chakra@hotmail.com
Ph.D in Public International Law (Lebanon).
https://orcid.org/0009-0003-0394-1578

Introduction

The international community has witnessed several radical shifts and changes over the past two decades, whether in the international affairs and issues or in the crises and conflicts it faces.

The War on Terror after 2001 and the move towards a multipolar world have resulted in instability in international relations and a failure to resolve many conflicts. Furthermore, states, especially major powers, have evaded their international obligations with impunity.

Public international law plays a prominent role as the presumed regulator of international relations. Never can an international system remain static without adapting to these transformations. This necessitates increasing the effectiveness of international legal rules, particularly in terms of their binding nature and the ability to prevent their violation, to address the challenges and difficulties they face.

Hence, the importance of choosing this topic to highlight the challenges facing the effectiveness of public international law, in an attempt to address the following question: To what extent is public international law effective? That leads to the following questions:

1. What challenges does the binding force of public international law face?
2. What are the underlying causes of these challenges?

Methodology

To address this issue, we adopted a deductive (inferential) approach, which starts with the assertion of a general rule and proceeds from there to a guaranteed specific conclusion. Deductive reasoning moves from the general rule to the specific application by examining general legal rules, international agreements, and treaties. We also employed an analytical approach by presenting the actions and violations committed by states in contravention of international charters and resolutions, and by analyzing their actions and violations of public international law.



It is essential to note that the world is currently experiencing international crises, especially after international relations have become increasingly intertwined and complex. Sensitive and diverse international issues and conflicts have emerged, threatening the entire world with a new world war. The reason for this is not a lack of international legal rules, but rather the establishment of a new logic imposed by dominant states, based on power, influence, and control. This study aims to highlight the effectiveness of public international law and demonstrate the challenges it faces.

Study Hypotheses:

a. Double standards in the application of international law reduce its effectiveness and credibility at the international level.

b. The reliance of states, especially major powers, on the logic of force in their international relations by imposing their will on other states will lead to more international conflicts.

c. The more effective and fairly applied international law is, the greater the confidence of states in the international system and the greater its legitimacy.

This study is significant because, in light of the political, economic, environmental, and technological changes the world is witnessing, public international law remains the effective guarantor for preventing wars and aggression, regulating the use of force, protecting human rights, and, in general, regulating relations between subjects of this law, primarily states.

Despite the importance and complexity of the topic, the study adheres to specific scientific and methodological boundaries. It focuses solely on the legal aspect, without addressing political or economic dimensions except to the extent that they serve the legal analysis. The timeframe for the international practices to be analyzed is defined, so that the study focuses on the contemporary international situation, and the most famous cases or those that raise broad legal controversy.

Previous Studies:

Al-Jashami & Al-Azzi (2020). The Concept of Effectiveness in Public International Law - This study analyzes the concept of effectiveness in public international law, its fundamental limitations such as the absence of a supreme authority and the imbalance of international power, and the impact of these factors on the ability of international legal rules to be focused and influential.

Kiladze (2022), The Effectiveness of Public International Law: A Need for Paradigm Change - This study focuses on the significant challenges to the effectiveness of public international law despite its development. And it proposes restructuring methods for enhancing compliance and implementation.

The term "effectiveness" has been used since the mid-20th century, more often with ambiguity and varying meanings. Effectiveness refers to actual observance, distinct from the binding force of the law. (Taki, 2021) The process of creating rules in international law differs from that of domestic law. In democratic states, the people elect their

legislators through voting. After elections, legislators create legal rules without requiring the consent of their constituents. (Kantorowicz-Reznichenko, 2020)

While all individuals are subject to domestic law, international legal rules govern relations between various subjects of public international law. The international community lacks the presence of a fully empowered legislative body, unlike parliaments in domestic systems. Even UN General Assembly resolutions are not entirely binding.

Public international law faces the challenge of fragmentation, which reduces its effectiveness, due to the absence of neither a standardized system for setting norms nor a single institution for creating legal rules. (A/CN.4/L.702, 18/7/2006)

The effectiveness of public international law is affected by the decentralized nature of its mechanisms for creation and enforcement, due to the lack of a standardized enforcement mechanisms. Although there are diverse international courts and tribunals, but each one has its own legal system, which prevents the establishment of a unified system of courts; International court decisions are based on specific agreements, which grant it the right to operate within the narrow scope of these agreements.

Therefore, it is necessary to present the reasons behind the challenges to the effectiveness of public international law, which can be summarized as follows:

A. State Motives: States are concerned about their international reputation, acting in good faith, based on reciprocity, or believing in the fairness of a particular rule, but in some cases, they act according to their self-interest, which violates specific international obligation, thus damaging their reputation. In other cases, their interests may align with compliance with a particular legal rule. The obligation of weaker states to adhere to an international legal rule is sometimes due to fear of sanctions or concern that other states will not fulfill their obligations based on the principle of reciprocity.

State motives can remain obscure, making it impossible to know the reason or reasons behind their compliance with or violation of public international law. They vary from one rule to another and from one state to another. So, it is essential to consider each case individually.

B. Law and Politics: Sometimes, politics can be more useful than public international law as a means of communication between nations. Sometimes, the parties involved agree that a "fundamental change of circumstances" has occurred, and collectively agree to dissolve the agreement as they reach a consensus through compromise. In the world of politics, compromise is not something to be viewed negatively. Rather, it can achieve positive outcomes in maintaining stability in international relations (Onuma, 2003). Clearly, law and politics can never be separated. As state politics strive for competition, conflict, and supremacy to achieve survival, influence, and control. And public international law aims for harmony, conflict resolution, and the establishment of a framework for balancing interests (Shaw, 2014). Politics must be considered a primary factor in understanding why states choose to join or not join, or to comply with or not comply with, the rules of international law.

C. Cooperative and Coordinating Law: The structure of public international law is described as horizontal due to the absence of a supranational authority. Although states are considered subjects of this law, which governs their relationships, the hierarchical relationship is not clearly defined because states are described as the



legislators of public international law. (Vos, 2013) States establish their own standards and abide by them; therefore, it is a cooperative, coordinating body of law with other states. It is not a law subordinate to an authority capable of enforcing the rules, although some mechanisms exist for the proper application of international legal rules. This coordinating nature negatively impacts the effectiveness of public international law.

D. Lack of Enforcement Means: The international community generally lacks a means of enforcing international legal rules. However, the Security Council's role as an important body in enforcing international law is limited to issues that threaten international peace and security.

There is still considerable debate regarding whether the collective security system must be compatible with the principle of the prohibition of the use of force and Article 2, paragraph 4, of the UN Charter. (D'Aspremont, 2015) To date, a military staff has not been established, and the implementation of military operations under Chapter VII resolutions depends on contributions from states' armed forces.

E. In general, individuals are not directly affected by public international law. Any violation of their rights at the international level can be brought against the offending state through the diplomatic protection offered by their own state or the international organization to which they belong, which then becomes a party to the case, making the individual and their interests the subject of the proceedings. However, further developments in the international legal system have granted individuals certain rights at the international level concerning human rights and international criminal responsibility.

The challenges facing the binding force of public international law manifest themselves in several ways:

A. At the legislative level: The absence of a single international legislator that holds a monopoly on legislating and establishing international legal rules. Sources of international law include treaties, international custom, and other instruments, as stipulated in Article 38 of the Statute of the International Court of Justice. These rules are only established with the consent of the state parties and without objection or reservation. The states that establish these legal rules are themselves subjects of public international law, which are supposed to be addressed by these laws.

Therefore, the enactment of international legal rules is contingent upon the consent of states, and the absence of a legislative authority could transform the international community into anarchic.

B. At the enforcement level: Public international law lacks an executive authority, leading to double standards. States implement international rules and decisions in accordance with their interests and in pursuit of their objectives.

Compelling non-compliant states to implement international law requires international force, which only major powers possess, as they often deploy when it serves their interests. The absence of an executive authority has led to difficulties in implementing and enforcing public international law.

C. Judiciary: Recourse to international courts remains optional, not mandatory. Despite the supremacy of international law, international courts do not possess compulsory authority to force states to submit to their jurisdiction, which requires the state's acceptance or consent.

D. International Sanctions: States impose sanctions unilaterally, and the effectiveness of the sanctions regime is linked to the power of the states imposing them.

Although the UN Charter stipulates coercive measures that can be taken, these actions require Security Council resolutions under Chapter VII, which pertains to breaches of international peace and security. It is well known that such resolutions are subject to the veto power of the permanent members of the Security Council, and thus are only adopted if they align with their interests.

E. Personality of Punishment: Imposing sanctions on a state affects all its citizens, even though the rulers of that state, not the people, are responsible for violating the law. Smaller states are also more affected by it than larger ones. (Bouboush, 2020)

The absence of such institutions and authorities poses a challenge to the effectiveness of public international law. Its application becomes contingent on its moral merit and the desire of states to maintain their good reputation within the international community.

Thus, we see that the states that violate international law are the very ones that legislate it. Naturally, they exploit these laws to support their own policies, economic and security interests, and other objectives, and to evade their internationally imposed obligations. This demonstrates that some states are not subject to the provisions of these rules on an equal footing with others.

Furthermore, sanctions against states that violate the rules of public international law are imposed only by the major powers themselves. It is therefore natural that these states would not impose sanctions on themselves. (Al-Jashami & Al-Azzi, 2020)

In contrast, international legal rules emerged to regulate the international community and international relations. The binding force of these rules arises when subjects of public international law recognize the importance of this regulation. Therefore, this concept does not entail specific formal requirements for these rules.

It is important not to confuse between legislation and law, as custom has an unwritten source, and the rules of international law are fundamentally customary. The legal character of such laws, such as English law, cannot be denied.

The absence of a sanction does not invalidate a legal rule in its formation; rather, it guarantees its effectiveness. The judiciary serves as *a posteriori* function relative to the legislative process, predicated on the principle that the court’s mandate is strictly adjudicatory rather than generative.

The preceding analysis clarifies that the juridical validity of public international law is beyond reproach; its authority is characterized by an axiomatic binding that is presumed to command universal adherence across the international community

However, the practical reality of public international law often reveals such acute systemic fragility that it calls into question the very ontological existence of a global legal order. The lack of accountability for international violations by the international

community is glaringly apparent, such as the genocide that occurred in Gaza, Palestine, and the massacres in Qana, Sabra, and Shatila, Lebanon. To this day, no accountability has been imposed on Israel or its military personnel who committed these crimes.

Even the international resolutions issued after the July 2006 war, which mandated that Israel pay compensation to Lebanon for the oil spill resulting from its bombing of the Zahrani refinery, have not been implemented.

However, this situation is unacceptable, especially since most countries still adhere to the universally accepted and recognized rules of international law. Any violation of these rules is an exceptional case.

Finally, the recognition of international law by states, international governmental and non-governmental organizations, and even individuals is fundamental and cannot be invalidated by exceptional circumstances where some powerful states have violated international legal rules. Over time, and as a result of the strengthening of international law institutions, the practices of states under the auspices of the United Nations have become more effective. (Karmakar, 2021)

Conclusion

It is clear that the current system, under the auspices of the United Nations, has not proven to be a failure, as long as a global war does not occur that threatens all of humanity. However, current public international law, including its legal texts and enforcement mechanisms, cannot resolve all the problems arising from relations between the subjects of this law.

Therefore, the mere existence of law is insufficient to guarantee justice; it requires the power and mechanisms to protect it. When violations of legal rules decrease, they become more stable and enduring. Conversely, the more these violations increase, the less respect they receive from the parties involved.

Results

1. International law lacks a supreme authority to compel states to comply, making adherence to it optional and subject to the political calculations of states.
2. Obligating violating states to implement international law requires international power, which only major powers possess, and which they often provide when it is in their interest.
3. The enactment of international legal rules is contingent upon the consent of states.
4. Violations of international legal norms and the absence of accountability foreshadow wars and military conflicts, potentially leading to a world war.

Recommendations

1. The binding nature of public international law should not be contested by states and should be respected by the international community as a whole.

2. Providing positive incentives to states that adhere to international law, such as technical, financial, and technological support, will encourage effective compliance
3. Encouraging the participation of civil society and non-governmental organizations in monitoring the implementation of international law and pressuring governments to comply with it.

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