IS INTERNATIONAL LAW IN CRISIS?

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Abstract

This article addresses the question of whether international law is in crisis, as indicated by some influential international media outlets. It examines existing criticisms of the functioning of international law and presents proposals for strengthening it. Finally, it presents conclusions on the validity of international law.

Keywords: Public International Law. International relations. Multilateralism. Peace and security. Human rights. Environment. International trade.

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ESTÁ O DIREITO INTERNACIONAL EM CRISE?

Resumo

O artigo trata da questão de encontrar-se ou não o Direito Internacional em crise, tal como indicado em alguns órgãos relevantes da imprensa internacional. Examina as críticas previamente existentes sobre o funcionamento do Direito Internacional e apresenta propostas para o fortalecimento deste. Ao final, apresenta conclusões sobre a validade do Direito Internacional.

Palavras-chave: Direito Internacional Público. Relações internacionais. Multilateralismo. Paz e segurança. Direitos Humanos. Meio ambiente. Comércio Internacional.

¿ESTÁ EL DERECHO INTERNACIONAL EN CRISIS?

Resumen

El artículo aborda la cuestión de si el Derecho Internacional se encuentra o no en crisis, tal y como indican algunos medios de comunicación internacionales relevantes. Examina las críticas preexistentes sobre el funcionamiento del Derecho Internacional y presenta propuestas para su fortalecimiento. Al final, presenta conclusiones sobre la validez del Derecho Internacional.

Palabras clave: Derecho internacional público. Relaciones internacionales. Multilateralismo. Paz y seguridad. Derechos humanos. Medio ambiente. Comercio internacional.

Is international law in crisis? This question forms the backdrop to two deliberately provocative articles published last June in two influential international media outlets.

In the first article, published on the 24th by *Foreign Affairs* and entitled "Might Unmakes Right,"[2] Oona A. Hathaway and Scott J. Shapiro, professors of International Law at Yale University, note that, since the adoption of the UN Charter, states understood that violations would likely result in condemnation, sanctions, and even intervention. They argue, however, that these deterrent fears have largely dissipated. The authors warn of the grave consequences of this situation, namely "a global arms race, renewed wars of conquest, shrinking trade, and the collapse of the cooperation needed to confront shared global threats."

In the second article, published two days later by *The Guardian* under the title "Are We Witnessing the Death of International Law?",[3] columnist Linda Kinstler (currently a researcher at *The Economist*) contends that a growing number of academics and legal practitioners have lost faith in the current system. Others, according to interviews she conducted, place the blame not on International Law itself, but on states, which have failed to support it. Among several perspectives cited, she quotes a South African judge of the International Court of Justice, who argues that what we are witnessing is not the failure of International Law, but of international politics. Kinstler also reports the view of a professor at the University of Manchester, according to whom International Law will not disappear, but its institutions are likely to continue losing credibility, and their decisions will carry diminishing weight.

Have these two articles overstated the current condition of International Law? Is this branch of law facing genuine risks of erosion or loss of relevance? Are its effectiveness and the confidence of states in the institutions that sustain it under threat? In assessing the significance of these unsettling questions, it is important to note that criticisms of the existing international legal system are not new. A number of factors now appear to be converging to give renewed force to such concerns, including anti-globalization movements, the decline of multilateralism, and the rise of nationalism rooted in populist movements across various regions of the world.

2 Hathaway and Shapiro 2025.

3 Kinstler 2025

Criticisms of International Law and Their Responses

Among the criticisms of International Law that have resurfaced amid this international context—particularly unfavorable to global negotiations—are those concerning the lack of enforceability; the stench of colonialism and the limited number of decisions issued by the International Court of Justice; the refusal of major powers to adhere to key international agreements; the inequities of the disarmament and nuclear non-proliferation regime; the selectivity of human rights bodies; shortcomings in the implementation of environmental agreements; and the paralysis of the international trade dispute settlement system.

The Lack of Coercive Power

Since the beginning of the twenty-first century, there has been a resurgence of the accusation—advanced primarily by forces opposed to multilateralism—that International Law lacks coercive power, given the absence of a global police force, a standing army, or a court endowed both with compulsory jurisdiction and with the authority to enforce compliance with its rules and decisions.

A broad explanation for the limits of coercion lies in the continued relevance of the Westphalian principle of sovereignty, upon which International Law is constructed. According to its logic, because all states are sovereign and equal, none can be compelled to submit to a higher authority without its consent. From this perspective, sovereignty continues to prevail almost absolutely as the foundation of international rules, notwithstanding the challenges it has faced in recent decades in areas such as human rights and environmental protection.

The requirement of consent for the fulfillment of treaty obligations and for the recognition of the jurisdiction of courts (such as the International Court of Justice – ICJ, the International Criminal Court – ICC, and the Permanent Court of Arbitration – PCA) means that compliance is largely voluntary and only rarely achieved through diplomatic pressure, economic sanctions, or, in extreme cases, military action. In other words, the limited coercive mechanisms available in International Law—namely, the authorization by the Security Council of multilateral sanctions or the use of force, as well as the World Trade Organization's authorization of trade retaliation—are often deemed ineffective.

Even if one accepts that coercion is weak, it is worth recalling, as the jurist Louis Henkin famously observed, that "almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time."[4] Indeed, given the growing number of international agreements, rules governing various specialized areas—such as air and maritime transport and telecommunications—are complied with on a daily basis without the need for international police forces. In these fields, compliance is a technical necessity, and non-compliance results in immediate harm, rendering the rules virtually self-executing.

Moreover, many rules are incorporated into the domestic legislation of states parties to international agreements and thus come to rely on national institutions for their enforcement. Once internalized, international obligations may be applied by domestic courts and enforced by local law-enforcement authorities, constituting a form of indirect coercion. This phenomenon is driven by factors unrelated to the use of force. In many instances, states understand that long-term compliance with rules serves their own interests, since unpredictability and anarchy would be detrimental to all. States are also concerned with their reputation as reliable, law-abiding actors, which constitutes a valuable asset, given that violations of International Law may lead to diplomatic isolation and a loss of influence. In other words, the capacity of International Law to shape state behavior and provide a framework for cooperation suggests that its relevance cannot be measured solely by force, but also by its utility and acceptance.

The Colonial Legacy of the International Court of Justice

Another alleged flaw in International Law is articulated in the book Imperialism, Sovereignty and the Making of International Law, published in 2004 by the jurist Anthony Anghie. In this work, Anghie accuses the International Court of Justice (ICJ) of rendering decisions tainted by colonialism. He argues convincingly that International Law did not develop in a vacuum, but rather functioned as a fundamental tool of colonialism. The author challenges the traditional narrative according to which International Law emerged to regulate relations among "civilized" European states and only gradually expanded to the rest of the world.[5]

4 Henkin 1979, 47; Henkin 1989, 69.

5 Anghie 2004.

This criticism is certainly applicable to part of the jurisprudence of its predecessor, the Permanent Court of International Justice (PCIJ). Operating from 1922 to 1946, it was a direct product of the colonial and Eurocentric system of the League of Nations. Its composition was almost entirely European, and its decisions often reflected the power hierarchies of the time. A notable example is the *Mavrommatis Concessions in Jerusalem* case (1925),[6] in which the Court treated the British Empire as the only relevant actor, disregarding the rights of the Palestinians.

The situation changed when the ICJ replaced the PCIJ, as Anghie himself later acknowledged in an interview with the United Nations.[7] The Court no longer operates in the same manner, given the geographical diversification of its members. It developed in a context of decolonization and expanded its representation to include all continents, reflecting an effort to legitimize the new tribunal and break with its Eurocentric past.

Nevertheless, despite the ICJ's greater diversity and certain advances, the critique of a "structural" bias and a lingering "stench of colonialism" remains persuasive for many observers. They argue that diversity among judges alone has not resolved the problem, since the structure of International Law and the principles applied by the ICJ (such as sovereignty and non-intervention) were themselves developed in a colonial context. Some recent ICJ cases have raised suspicions of such bias. The Court's advisory opinion on The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (2003),[8] for instance, has been criticized as belated and insufficient to deter Israel's actions. Other cases involving the responsibility of Western powers for conduct in developing countries have been dismissed on procedural grounds (lack of jurisdiction or state consent), which may be interpreted as a protective mechanism for powerful states.

Finally, it may be argued that the ICJ can only adjudicate cases with the consent of the states concerned, which allows major powers (which are often the most relevant actors in disputes) to simply refuse to appear before the Court, thereby undermining its capacity to hold them accountable. From this perspective, the limitation may be seen as a means of preserving impunity for the powerful, echoing the colonial era. The critique thus targets the very concepts and mechanisms of International Law which, rooted in an imperial past, may inadvertently perpetuate power asymmetries in the global arena.

6 CPIJ 1924.

7 UN University 2013.

8 ICJ 2004.

In the *Chagos Archipelago* advisory opinion (2019),[9] however, the ICJ marked a clear departure from the colonial legacy of the past. The decision is widely regarded as a notable example of the Court's more assertive stance against practices reminiscent of the colonial era. The case originated from a request by the UN General Assembly for an advisory opinion on the legality of the separation of the Chagos Archipelago from Mauritius by the United Kingdom in 1965, in order to allow the United States to establish a military base on Diego Garcia, one of the islands of the archipelago. In its opinion, adopted by 13 votes to 1, the ICJ held that the decolonization of Mauritius had not been lawfully completed and that the separation of the archipelago violated International Law by infringing the principle of self-determination. The Court reaffirmed that self-determination constitutes a fundamental right and that its application cannot be undermined by the detachment of part of a territory without regard to the will of its population.

The Limited Impact of the Decisions of the International Court of Justice

From its establishment in 1946 until 2024, the ICJ resolved only 225 disputes (196 judgments and 29 advisory opinions).[10] This relatively modest number, when compared to national courts, appears to weaken the notion of the Court's universal impact. It also reveals the peculiar, non-compulsory nature of its jurisdiction, since states must consent in order to participate. It follows that states generally resort to the ICJ only as a last resort, that is, when diplomacy fails and, given the gravity of the dispute, judicial settlement becomes the only viable option.

On the other hand, the fact that states submit disputes to the Court—even in matters involving high international tension, such as borders and the use of force—demonstrates not diminished importance, but rather respect for its role. It also suggests that many disputes that could be brought before the ICJ are resolved diplomatically in order to avoid potential litigation. Furthermore, even with a limited number of cases, ICJ jurisprudence exerts a universal impact, as its rulings on issues such as the use of force, self-determination, state responsibility, and sovereignty become global reference points for International Law.

9 ICJ 2019.

10 Crawford 2019, 706.

One explanation for the perceived loss of prominence of the ICJ lies in the emergence of new courts, such as the International Tribunal for the Law of the Sea (ITLOS), established in 1982, which absorbed part of the ICJ's former docket of maritime boundary disputes. Many cases that once would have gone to The Hague are now submitted to ITLOS in Hamburg, as the latter is a more specialized forum with more expeditious procedures. Nevertheless, the rise of this new tribunal has allowed the ICJ to concentrate on other areas and to consolidate its position as the principal court for general disputes in International Law. It continues to adjudicate, for example, cases concerning land boundaries, state responsibility for war crimes, and questions of immunity. Moreover, in certain instances, parties may still choose to submit disputes concerning the law of the sea to the ICJ.

The view that the ICJ has lost prominence is therefore a complex one. The Court remains the principal judicial organ of the United Nations and continues to carry significant weight in matters of International Law. Media and public attention to ICJ hearings and decisions has in fact grown in recent years, particularly in high-profile cases involving allegations of genocide or armed conflict, such as South Africa v. Israel and Ukraine v. Russia. This heightened visibility suggests that the Court is still regarded as an institution of political and moral relevance. Moreover, the ICJ has increasingly been utilized by small and medium-sized states as a legal-diplomatic instrument to defend themselves against more powerful states, underscoring its importance as a platform for justice and accountability, as well as a mechanism for balancing power in the international arena.

In sum, although the number of ICJ cases is limited and competition from newer tribunals is a genuine reality, the Court has not lost its impact or prominence. On the contrary, its jurisprudence continues to shape International Law in a universal manner, and its relevance is being reaffirmed by states that seek adjudication as an alternative to force and power politics.

The Non-Adherence of Major Powers to Key International Agreements

A more recent and negative assessment of International Law posits that it has lost relevance due to the refusal of major world powers to accede to some of the most important international treaties. The United States, China, and Russia, for example, are not parties to the Rome Statute (1998), which established the International Criminal Court (ICC), nor to the Treaty on the Prohibition of Nuclear Weapons (TPNW) (2017). Undoubtedly, the

failure of major powers to join key agreements such as these directly fuels the perception that International Law has waned in relevance.

This assessment rests on three principal arguments. According to the first, although International Law is founded on the principle of the sovereign equality of states, the refusal of powers such as the United States, China, and Russia to submit to certain norms (such as those of the ICC), while expecting other states to do so, creates a clear double standard. This, in turn, generates the perception that international rules apply only to the weak and not to the powerful. The second argument holds that, in the absence of the major powers, legal regimes suffer from severely limited coercive capacity. The ICC, for instance, cannot prosecute nationals of states that have not ratified the Rome Statute unless a situation is referred by the UN Security Council, where the veto power of permanent members predominates. Similarly, the TPNW cannot prevent the development of nuclear weapons or compel nuclear-armed states to disarm, as these states have not joined the treaty. In other words, while such treaties formally exist, they are often portrayed as practically ineffective. The third argument concerns the diminution of normative relevance: the absence of major geopolitical actors from the negotiating table weakens the impact of legal norms themselves. The non-participation of a major power in the Paris Climate Agreement, for example, not only undermines the agreement politically but also casts doubt on the feasibility of achieving global targets. When the largest environmental polluters or the holders of the most substantial military capabilities refuse to participate, the norm risks being perceived as aspirational rather than binding on the most powerful actors.

Despite these concerns, the non-adherence of major powers does not necessarily render International Law irrelevant. In practice, its influence tends to operate in more subtle ways. First, the mere existence of a treaty prohibiting nuclear weapons, for instance, establishes an international moral benchmark. Even if nuclear-armed states do not sign it, they are subjected to diplomatic and public pressure to pursue disarmament objectives. Second, with regard to the jurisprudence of the ICC, the Court's inability to prosecute nationals of major powers does not prevent the Rome Statute from influencing the development of international criminal law and from serving as a basis for encouraging domestic courts to investigate and prosecute international crimes. Third, treaties such as the TPNW generate binding obligations for the states that do ratify them, which may strengthen global non-proliferation norms, even if nuclear powers are not legally bound by those instruments.

It may thus be concluded that the non-adherence of major powers to key international treaties constitutes a serious challenge to the universality

of International Law and contributes negatively to its public image. At the same time, the continued participation of other states in these agreements, as well as the institutions they have created, continues to shape global debates, generate diplomatic pressure, and provide a normative foundation for the actions of other countries.

The Fragility of the International Peace and Security System

It is often argued that the international legal system has failed to resolve armed conflicts in the manner one might hope. This assertion is difficult to refute, as it is easier to enumerate the countless conflicts that have occurred than to identify and quantify those that did not materialize due to the use of one of the seven methods for the peaceful settlement of disputes listed in Article 33(1) of the UN Charter, namely: "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means."

Moreover, how can one prove that a particular conflict failed to occur as a result of the application of the rules enshrined in the UN Charter, when in reality the specific provisions granting the Security Council authority to maintain peace (Articles 39 to 42) have been fully applied on only two occasions: during the Korean War in the 1950s and in response to Iraq's invasion of Kuwait in 1991, shortly after the end of the Cold War?

The answer to this question does not lie in advocating for a more frequent or comprehensive application of Articles 39 to 42, but rather in changing the metric by which the UN's success is measured. This success should not be assessed by the frequency with which the organization authorizes the use of force, but by how often it manages to prevent it. One cannot conclude that the UN system for maintaining peace and security has failed simply because armed conflicts outnumber peace agreements. To follow such reasoning would require the elimination of all conflicts, thereby establishing an unrealistic benchmark of total conflict absence, grounded in a simplistic logic whereby the system is deemed ineffective whenever its impact is not visible.

Peacebuilding is a process, not merely the result of a single event. In this sense, the UN operates in the realm of potential conflict—through mediation, prevention, and diplomacy—actions that, by their very nature, do not attract public attention. It thus becomes necessary to shift the focus from "visible failure" to "invisible success," which lies at the core of the peaceful settlement

mechanisms outlined in Article 33 of the UN Charter, as peace is often the result of quiet, patient diplomacy.

As the main forum for peace and security diplomacy, the UN system prevents wars on a daily basis, but its actions are not made public. The mere existence of the UN and the possibility for all countries to meet and engage in dialogue in the same forum is an essential step toward peace. It provides a platform for leaders and diplomats to meet, negotiate, and resolve disputes before they escalate into armed conflict. The UN and other international organizations frequently operate behind the scenes, employing peaceful means to resolve disputes over borders, natural resources, or trade-related issues.

In order to demonstrate that a conflict was averted due to the application of the UN Charter's rules, attention must be directed to three main points. First, the UN's success derives far less from the use of Chapter VII than from Chapter VI, which deals with the peaceful settlement of disputes. Most peace negotiations never reach the Security Council; instead, they are mediated by the UN Secretary-General, special envoys, or UN agencies. Second, the mere existence of a collective security system, however imperfect, has a deterrent effect. States are aware that violations of the UN Charter may result in condemnation, sanctions, or, in extreme cases, military action authorized by the Security Council. The prospect of an international response acts as a restraint, leading many states to pursue peaceful solutions to their disputes. Third, although it is difficult to prove the absence of a conflict, it is possible to observe the UN's role in dispute resolution, since it constitutes the primary forum for what may be termed "legal diplomacy," in which states invoke International Law to support their positions.

In conclusion, the success of the UN is not measured by its ability to resolve conflicts that have already erupted, but by its capacity to prevent conflicts from occurring in the first place. As a forum for dialogue and negotiation, the UN plays a crucial role in preventing wars, which explains the enduring relevance of the organization: its mere existence as a venue in which all member states can meet and engage in dialogue constitutes, in itself, a stabilizing factor. Furthermore, the deployment of UN peacekeeping forces has been instrumental in monitoring ceasefires, protecting civilians, and facilitating transitions to peace in numerous countries.

That said, a persistent and valid criticism remains: the inertia of the Security Council is largely attributable to the veto power granted to its permanent members, which, when exercised, has a paralyzing effect. Indeed, the existence of the veto creates the perception that International Law is a "law of the powerful," conveying the message that legal rules apply only to

states that do not possess veto power or are not allied with those who do. This paralysis contributes to the crisis of multilateralism, as many states grow frustrated with the UN's inability to act. Finally, although reforming the Security Council and restricting the use of the veto are widely regarded as both necessary and urgent, it currently appears unlikely that the permanent members will agree to relinquish their veto power, rendering meaningful reform exceedingly difficult.

Failure to Comply with the Obligation of Nuclear Disarmament

Within the realm of peace and security, long-standing questions continue to be raised regarding International Law governing weapons of mass destruction. With respect to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), criticisms persist, in particular for the lack of efforts to comply with Article VI, under which each Party "undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control."

The ICJ made only a limited contribution to the implementation of this provision when it issued an advisory opinion known as *the Legality of the Threat or Use of Nuclear Weapons* (1996).[11] Although the Court emphasized the obligation of states to negotiate in good faith toward the elimination of nuclear weapons, it nevertheless took the position that the use of nuclear weapons could not be regarded as specifically prohibited under existing international law, nor could it identify any explicit ban on their use in treaties addressing particular categories of weapons of mass destruction.

Nor did the Court significantly advance the cause of disarmament when it declined to rule on the merits of the *Marshall Islands* case (2014),[12] in which nine states were accused of failing to comply with their obligations concerning the cessation of the nuclear arms race and nuclear disarmament. In a closely divided decision (eight votes to eight, with the President of the Court casting the decisive vote), the ICJ concluded that no legal dispute existed between the Marshall Islands and the respondent states at the time the applications were filed. The Court held that the Marshall Islands had not conclusively demonstrated that the nine states had refused to engage in negotiations on disarmament. The resulting decision not to address the merits disappointed

11 ICJ 1996.

12 ICJ 2016.

disarmament activists and many scholars of International Law, who viewed it as a missed opportunity to reaffirm the principle of nuclear disarmament and to exert pressure on nuclear-armed states.

The lack of progress on disarmament is the primary reason why many non-nuclear-weapon states regard the NPT as an inequitable treaty, insofar as it legitimizes the possession of nuclear weapons by a small group of states while prohibiting their possession by the vast majority. This sense of frustration was one of the main drivers behind the negotiation of the Treaty on the Prohibition of Nuclear Weapons (TPNW) in 2017.

The Selectivity of Human Rights Bodies

Criticism of International Law in the field of human rights has focused less on the substantive content of the numerous conventions and covenants than on the political conduct of the Human Rights Council, where member states tend to publicly criticize their political adversaries more readily than their allies. The selectivity of human rights bodies, together with the International Criminal Court's (ICC) near-exclusive focus on crimes committed on the African continent, constitutes a central and well-founded critique, as these practices undermine the legitimacy and effectiveness of the global human rights system and of international criminal justice.

The criticism that states deploy human rights as a political weapon against their adversaries, while ignoring or downplaying violations committed by their allies, is widely documented. This harmful practice has at least three adverse consequences. The first is the erosion of the moral authority of the international human rights protection system, which is grounded in universal principles. If one country is publicly condemned for torture while its ally, which engages in the same practice, is quietly ignored, the norm prohibiting torture loses normative force. The second consequence is the instrumentalization of law: selectivity transforms human rights conventions and covenants from legal instruments designed to protect individuals into political tools for the projection of power. Law becomes a pretext for coercive diplomacy rather than a foundation for universal justice. The third consequence concerns resistance to cooperation by states that perceive themselves as targets of a selective approach. Such states tend to become more skeptical of human rights bodies and less willing to cooperate with them. They may refuse to allow visits by special rapporteurs, reject recommendations, or even withdraw from conventions altogether, thereby weakening the system as a whole.

With regard to the criticism that the ICC has maintained a disproportionate focus on crimes committed in Africa, the issue represents one of the most serious challenges faced by the Court. Indeed, until relatively recently, all formal investigations conducted by the ICC and all of its convictions concerned crimes committed on the African continent. This pattern has led to accusations that the ICC is a "Eurocentric" or even "racist" institution. The implications for International Law are severe on at least three levels. First, the focus on African cases, while crimes committed in other regions remained uninvestigated, undermines the Court's legitimacy. Second, this record suggests that the ICC's jurisdiction is applied more rigorously to African states than elsewhere, thereby weakening the principle of universality. Third, the concentration on African cases has triggered a political backlash within the continent, manifested in attempts by some African states to withdraw from the Rome Statute and in the construction of a narrative portraying the ICC as a neo-colonial instrument.

It thus becomes apparent that both factors—the selectivity of human rights bodies and the ICC's African focus—contribute to the deterioration of International Law. They erode its normative foundations, rooted in equality and universality, and transform law from a system of justice into a tool of power. The result is a loss of legitimacy, the instrumentalization of the law, and growing resistance from states that perceive the rules as being applied unevenly.

The Difficulty of Implementing Environmental Protection Rules

With regard to environmental protection, criticisms likewise tend to focus less on deficiencies in the conventions and protocols themselves than on the implementation of these international instruments, particularly in relation to climate change. In this context, the few cases adjudicated by the ICJ concerning the application of environmental agreements have primarily emphasized responsibility as a means of ensuring environmental protection after environmental harm has occurred, rather than placing sufficient emphasis on prevention.

Thus, for example, in the *Gabčíkovo–Nagymaros* case between Hungary and Slovakia (1997),[13] the ICJ focused on the consequences of treaty violation but did not establish a general and binding principle of environmental prevention applicable to future cases. Similarly, in the *Pulp Mills on the River*

13 ICJ 1997.

Uruguay case (2010),[14] case (2010), the Court held that Uruguay had breached a procedural obligation to notify Argentina of the construction of a pulp mill and required the parties to cooperate in resolving the dispute. However, it did not articulate a principle of state responsibility for transboundary environmental harm that could serve as a warning or incentive for other states to adopt preventive measures.

The absence of precedents that decisively reinforce the obligation to prevent environmental harm constitutes a serious limitation of the ICJ. The Court has been cautious in developing norms of customary international law, preferring instead to confine itself to clearly established obligations contained in existing treaties. This conservative approach frustrates advocates of environmental protection, who seek in law a more proactive tool for preventing ecological disasters. The criticism is valid and reveals the limitations of international environmental law. The lack of effective implementation mechanisms and the reactive nature of ICJ jurisprudence demonstrate that, although environmental law exists on paper, its capacity to ensure effective and proactive environmental protection remains subject to debate.

The Paralysis of the Trade Dispute Settlement System

Another well-founded criticism of International Law concerns the paralysis of the WTO dispute settlement system following the blockage of appointments of new judges to its Appellate Body. As a result, the system has ceased to generate the body of precedent that had gradually and increasingly provided predictability to international trade. In this same context, one may also point to the inability of International Law to prevent violations of the principle of non-discrimination, the cornerstone of the General Agreement on Tariffs and Trade (GATT), in light of the widespread growth of bilateral tariff negotiations.

The paralysis of the Appellate Body and the rise of bilateralism are, in fact, the most significant challenges currently facing the organization. The WTO's Dispute Settlement Mechanism allows for a sophisticated form of coercion in the field of trade. When a country violates the rules (for example, by imposing tariffs above its agreed commitments), the affected country may bring the matter before the WTO's Dispute Settlement Body. If an adverse ruling is issued and the offending country fails to comply, the Body may authorize the injured party to retaliate, that is, to impose countermeasures.

14 ICJ 2010.

This constitutes a form of coercion because the retaliation is institutionally authorized and legitimized, rather than being considered an unlawful act of trade warfare. This mechanism ensures that punishment remains proportional and prevents countries from entering into spirals of uncontrolled retaliation.

However, the WTO dispute settlement system—widely regarded as the organization's "crown jewel"—has been effectively paralyzed since December 2019. The crisis began when the United States blocked the appointment process for new Appellate Body members, citing concerns over "judicial activism," excessive delays, and interpretations that, in its view, exceeded the Body's mandate. With the number of judges falling below the minimum required, the Appellate Body can no longer issue decisions. This means that when a country loses a case at the panel stage, it may simply appeal "into the void," preventing the panel report from being adopted. In practice, this allows losing parties to evade their obligations, rendering decisions non-binding. One of the Appellate Body's most important functions was to develop a coherent body of jurisprudence (precedent) guiding states on how to interpret and apply WTO rules. In the absence of such guidance, predictability in international trade has been drastically reduced. Both governments and private actors face greater uncertainty as to what is permitted, increasing the likelihood of disputes and encouraging greater reliance on unilateral measures, such as retaliatory tariffs.

The current criticisms are therefore valid. The WTO dispute settlement system is facing a profound crisis, resulting in a loss of predictability. This crisis, combined with the rise of bilateral negotiations, directly challenges the fundamental principle of non-discrimination and contributes to the erosion of the rules-based multilateral trading system.

Proposals to Strengthen International Law

Among the proposals advanced by Hathaway and Shapiro to mitigate or reverse what they perceive as a newly fragile condition of International Law, one stands out: the formation of a broad coalition of small and medium-sized states to defend the prohibition of the use of force [without multilateral authorization].[15] The authors propose that these states make use of the so-called "veto initiative," a procedure whereby any resolution vetoed in the Security Council is referred to the General Assembly for debate. Resolutions adopted by the General Assembly through this mechanism would provide

15 Hathaway and Shapiro 2025.

legal support for the coordination of future state actions. They would also facilitate the creation of an international register of damages, paving the way for future reparations. Another proposal advanced by the authors involves the formation of regional or thematic coalitions to pursue shared objectives.

Beyond these ideas for addressing the emerging crisis of International Law, what other measures could be taken? Is there a favorable international political climate for proposing and implementing reforms of international institutions? How can consensus be achieved for the adoption of more effective mechanisms to sanction serious violations of International Law? Is civil society mobilized to support such initiatives?

The answers to these questions appear to be negative at this time. Some societies are more concerned with the growing risk of armed conflict, while others see economic development and poverty eradication as more relevant. Finding solutions to reinvigorate international law is therefore a complex process, as it requires a fundamental shift in political will and a renewed commitment to multilateralism. Yet the current political climate exhibits more fragmentation and competition than consensus and reform. Although there is widespread recognition that international institutions are outdated and in need of reform, divergent interests of major powers and blocs of states have thus far prevented progress—or even the initiation of negotiations—in this direction.

Nevertheless, a number of approaches continue to be discussed, including reaffirming commitment to multilateralism; strengthening international institutions; reforming the WTO Appellate Body and the UN Security Council veto power; providing adequate funding and political support to bodies such as the WHO and the ICC; promoting among the public and political leaders the benefits of international cooperation and the rule of law; building coalitions of like-minded states; adapting International Law to new realities; emphasizing the long-term economic, security, and reputational costs of undermining International Law and its institutions; and developing more precise and targeted sanctions regimes that minimize harm to civilian populations while maximizing pressure on offending governments. All of these proposals, however, as already noted, require a level of collective political will that appears to be lacking at present.

General Conclusions in Defense of International Law

To end this article on a somewhat optimistic note, it is worth recalling that International Law, although strained, continues to evolve, and its institutions continue to operate despite accusations of erosion, inefficacy, or inefficiency, demonstrating a broad consensus that its collapse would bring unimaginable consequences for humanity.

The system possesses mechanisms of resilience. It retains normative force: even in the absence of immediate punishment, the violation of a norm still generates reputational and diplomatic costs. Most states value the image of being "law-abiding." Civil society, NGOs, and domestic courts can invoke International Law to pressure governments through public opinion and litigation. The current crisis has even pushed medium- and small-sized states to unite in defense of the rules-based order, as occurred in the case of the ICC, when African and Latin American states defended the Court.

International Law is not a static system. It adapts and evolves in response to new challenges, demonstrating its ability to remain relevant. The international community has created norms and treaties in areas that hardly existed a few decades ago. Space law, cyber law, and environmental law (with new conventions and protocols) are examples of fields in which International Law is constantly developing. International courts, such as the International Court of Justice (ICJ), continue to issue advisory opinions and decisions that shape and refine International Law, as seen, for example, in the ICJ's 2019 *Chagos Archipelago* decision,[16] which strengthened the principle of self-determination. International Law remains the foundation for cooperation in areas that transcend borders, such as combating terrorism, preventing the proliferation of weapons, and coordinating responses to pandemics.

Despite criticism, most international institutions continue to function and fulfill their mandates. Although its dispute settlement system is paralyzed, the WTO remains the principal forum for trade negotiations and the guardian of the multilateral trading system. The ICC continues to investigate and issue arrest warrants for state leaders accused of war crimes and crimes against humanity, even if its jurisdiction is limited. The World Health Organization (WHO), the International Atomic Energy Agency (IAEA), and other UN agencies continue to coordinate international cooperation in areas such as health, nuclear safety, and the environment. In short, the existence of crises, inertia, and inefficiency in some cases does not mean that International Law

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is collapsing. On the contrary, the system continues to develop, adapt, and serve as the foundation for the vast majority of interactions among states. Criticism is a sign that International Law is alive—and that people believe it can improve.

Ultimately, International Law provides a framework for relations among states, establishing rules and procedures for cooperation and dispute resolution; it offers a reference point for interstate conduct, defining legal and illegal behavior at the international level and creating a sense of order and predictability; it furnishes a forum for dialogue and negotiation, facilitating the peaceful settlement of disputes; treaties and conventions serve as bases for agreements and commitments among states and lend legitimacy to state action; norms grounded in International Law make state behavior easier to justify and to accept; and it provides the legal architecture for cooperation in addressing cross-border challenges.

In the specific areas addressed in this article, International Law provides:

- in matters of peace and security, mechanisms for the peaceful resolution of disputes between states, such as negotiation, mediation, and arbitration;
- in the field of human rights, minimum standards for the protection of individual rights, regardless of a country's political system, and, from a humanitarian point of view, an essential tool for preventing armed conflict and protecting victims;
- in terms of environmental protection, the structure and means for the global community to confront challenges collectively enabling issues that transcend political borders to be addressed through a systemic approach that promotes cooperation, sets standards, and encourages responsibility, even amid the complexities of state sovereignty and international politics; and
- with regard to international trade, foreign investment, and capital flows, an international legal framework that ensures legal certainty and enables dispute resolution.

The concerns raised in the Foreign Affairs and The Guardian articles are legitimate and add new elements to a preexisting sense of anxiety within the community of nations. Although International Law has faced crises throughout its history, the current moment—marked by rising unilateralism and the questioning of fundamental norms by powerful actors—constitutes a serious threat. Solutions lie in a renewed political commitment to multilateralism, in the strengthening and adaptation of institutions, and in sustained efforts to demonstrate the enduring value of a rules-based international order.

There is no doubt that International Law is undergoing a severe test. It cannot prevent all conflicts, but it remains the only framework for global cooperation. The challenge facing the international community is to reform its institutions so that they can respond to the threats of the twenty-first century. Even in a context of increasing skepticism toward multilateralism, International Law continues to play a fundamental role in building a safer and more prosperous future for humanity.

In this context, accusations of erosion, inefficacy, or inefficiency do not change the fact that the vast majority of interactions among states are governed by international legal norms. This perception of "crisis" is, to a large extent, the product of a selective focus on failures while ignoring routine successes. After all, International Law is not a rigid system; it evolves with state practice. The real danger is that norm violations will become the new normal—that International Law becomes a kind of "law of convenience," obeyed only when states find it profitable to do so. Such a situation would lead to the loss of predictability and trust, both of which are essential for peace and trade. Global interdependence, however, is so deep that states still require rules to govern trade, aviation, maritime transport, communications, and environmental protection. Even in times of crisis, thousands of treaties and agreements continue to be implemented daily, quietly, because they are mutually beneficial. The system may be under strain, but it has demonstrated resilience throughout history.

References

Anghie, Antony. 2004. *Imperialism, Sovereignty and the Making of International Law*. Cambridge University Press. https://www.cambridge.org/9780521828925. Accessed October 24, 2025.

International Court of Justice (ICJ). 2004. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion). https://www.icj-cij.org/case/131. Accessed October 24, 2025.

International Court of Justice (ICJ). 2019a. *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion). https://www.icj-cij.org/case/169. Accessed October 24, 2025.

International Court of Justice (ICJ). 2019b. *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965—Summary of the Advisory Opinion*. https://www.icj-cij.org/node/105779. Accessed October 24, 2025.

International Court of Justice (ICJ). 2010. *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*. Judgment. https://www.icj-cij.org/case/135. Accessed October 24, 2025.

International Court of Justice (ICJ). 1996. *Legality of the Threat or Use of Nuclear Weapons*. Advisory Opinion. https://www.icj-cij.org/case/95. Accessed October 24, 2025.

International Court of Justice (ICJ). 2016. *Obligations Relating to Negotiations on the Cessation of the Nuclear Arms Race and Nuclear Disarmament (Marshall Islands v. United Kingdom)*. Preliminary Objections. https://www.icj-cij.org/case/160. Accessed October 24, 2025.

International Court of Justice (ICJ). 1997. *Gabčíkovo–Nagymaros Project (Hungary/Slovakia)*. Judgment. https://www.icj-cij.org/case/92. Accessed October 24, 2025.

Permanent Court of International Justice (PCIJ). 1924. *The Mavrommatis Palestine Concessions*. Judgment No. 2, August 20. https://www.worldcourts.com/pcij/eng/decisions/1924.08.30_mavrommatis.htm. Accessed October 24, 2025.

Crawford, James. 2019. *Brownlie's Principles of Public International Law*. 9th ed. Oxford University Press.

Hathaway, Oona A., and Scott J. Shapiro. 2025. "Might Unmakes Right: The Catastrophic Collapse of Norms Against the Use of Force." *Foreign Affairs*, July/August.

Henkin, Louis. 1979. *How Nations Behave*. 2nd ed. Columbia University Press.

Henkin, Louis. 1989. "International Law: Politics, Values, and Functions: General Course on Public International Law." *Recueil des cours* 216: 1–416.

Kinstler, Linda. 2025. "Are We Witnessing the Death of International Law?" *The Guardian*, June 26.

UN University. 2013. "Anthony Anghie—International Law and Justice." *YouTube*, September 19. Video, 1:13:29, https://www.youtube.com/watch?v=928tI5Iu3v8. Accessed October 24, 2025.