

INTERNATIONAL LAW ENFORCEMENT MEASURES

Unit 17



General considerations

International law is a decentralised system with no compulsory jurisdiction Court.

States have a wide range of options to take measures of autoprotection in case other States violate their rights or interests.

Prohibition of the use of force (Art. 2.4 UN Charter).

International law is generally implemented automatically.

There are different enforcement measures to ensure the compliance with international law.

Spontaneous application of international law

- *Akehurst*: Fear of sanctions has very little to do with [the obedience of international law by States]. There are other factors inherent in the very nature of international law and of international society which induce States to obey international law.
- In the vast majority of cases, States comply with international law in a natural way.
- *Miaja de la Muela*: the legally binding nature of the norm normally suffices to be complied with effectively.
 - It benefits the interest of States in the long-term.
- *Hammaraskjold, D.*: “The strengthening of International Law, is consequently in the long-term interest of states... since the life of state is measured in centuries and their activities are manifold, statesmen have every reason to take a long-range objective view.”

- *Deutsch:* the main reason for the application of international law is the high cost of its breach.
- *Channels:*
 - Diplomacy: embassies, consulates,...
 - International organizations,
 - International tribunals
 - States by implementing international law.

Traditional law

Self-help prevailed: only the aggrieved State was authorized to react to what it considered a breach of its rights by another State.

Before IWW international law allowed the use of force for the protection of State's own interests.

States had to express their *animus belligerendi* in some way.

If they preferred to resort to coercion, they had to make clear they wanted to apply the laws of peace.

No prior exhaustion of remedies was requested. States were authorised to judge by themselves.

The rules on war and neutrality became applicable.

Forcible intervention

- **Definition:** Compelling the State, by the threat or use of force, to do something in the interest of the intervening State.
 - *Military occupation of another territory*
 - *Naval demonstrations*
 - *Naval blockade (of a portion of the coast of another State).*
 - *Embargo (seizure of ships of another State or its nationals).*
- Justified on the grounds of self-defence and self-preservation (e.g US invasion of Spanish Florida to repel the Seminole indians).
- For the protection of their own nationals because the State had failed to take all the precautionary and other measures necessary for safeguarding the life and property of foreigners.
- Humanitarian intervention.

Reprisals

- **Definition**: acts or actions in response to an unlawful act by another State.
- They are unlawful acts that become lawful in that they constitute a reaction to a delinquency by another State.
- The State taking reprisals can be responsible for the violation of international law if the State against which the reprisals are taken, did not in fact breach international law.
- **Peaceful**: failure to apply a treaty or customary rule.
- **Military**: threat or use of military force against the State responsible for the wrongful act. Eg. Blockade, embargo, etc...
- *E.g. Naulilaa case.*

War

- The Hague Convention, 1899. Convention for the peaceful adjustment of international differences. Composed of:

II. Convention regarding the laws and customs of war on land.

III. Convention for the adaptation to maritime warfare of the principles of the Geneva Convention of 22 August 1864.

IV. Three Declarations:

1. To prohibit the launching of projectiles and explosives from balloons or by other similar new methods.

2. To prohibit the use of projectiles, the only object of which is the diffusion of asphyxiating or deleterious gases.

3. To prohibit the use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope, of which the envelope does not entirely cover the core or is pierced with incisions.

Reactions to the breach and enforcement

- Legal mechanisms to respond to breaches:
 - Legal grounds not to recognise or to void legal acts of other State.
 - Diplomatic protection of nationals victims of the breach of international law.
 - Claims of State responsibility of international wrongful acts.
 - Petition to an international body.
 - Dispute resolution mechanisms.

ENFORCEMENT IN MODERN INTERNATIONAL LAW

- Art. 2.4 UN Charter: force and the threat of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the Purposes of the UN are prohibited.
- Reprisals are the main means of enforcing international rules.
- **Armed reprisals** are unlawful in time of peace:
 - *Exception: when resorted to against unlawful small-scale use of force.*
- **Permitted reprisals:** countermeasures.

Countermeasures

■ General preconditions:

- *The injured State must call upon the responsible State to discontinue the wrongful action or make reparation.*
- *Negotiations either to settle the dispute or to agree upon another means of settlement. (obligation to settle the disputes peacefully).*
 - When the wrongdoer refuses to engage in negotiations or wilfully hampers the working of other means of adjustment available the injured State may resort to countermeasures.
 - If the States have already undertaken to submit their disputes to a compulsory settlement mechanism, countermeasures are not allowed.

■ Limitations:

- *They may not derogate from the obligations concerning the threat or use of force.*
- *Protection of human rights.*
- *Obligations imposed by peremptory norms of general international law.*
- *Countermeasures must not breach the rights of third States.*
- *Proportionality.*

- Art. 22 DASR

- ICJ Jurisprudence:

- *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*
- *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*

Retortion

- Any retaliatory act by which a State responds, by an unfriendly act not amounting to a violation of international law, to either:
 - *A breach of international law, or*
 - *An unfriendly act, by another State.*
- Examples: breaking off diplomatic relations, non-recognition of acts of a law-breaking State, withholding of economic assistance, discontinuance or reduction of trade and investment, etc.
- Conditions:
 - *The act must be proportionate to the gravity.*
 - *The act must be discontinued as soon as the unfair, unfriendly, or wrong behaviour ceases.*

Collective Measures

By international organizations or a group of States.

International Monitoring Mechanisms:

- **Goal:** detect international law violations and improve the compliance of international obligations.
- Mechanisms to verify the compliance international obligations.
- Reports submissions, verifications mechanisms and monitoring of the compliance of State obligations.
 - ILO, International Atomic Energy Agency (verification of nuclear facilities), EU (administrative procedures).
- Treaty bodies mechanisms: Human rights treaties, disarmament treaties, environmental treaties.
 - Periodic reports.

The Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms (New START Treaty), 2011.

- Procedures for the implementation and verification: Onsite inspections, Biannual Data Exchanges, Telemetric Information, Bilateral Consultative Commission,...

The Antarctic Treaty: Art. VII.- Right of State parties to designate observers to carry out any inspections.

Consequences: negative assessment, warnings or sanctions.

Public condemnation

Public condemnations: to deteriorate the international image of the State.

Non-recognition of unlawful situations.

– **UNSC Res. 276 (1970) [The situation in Namibia]:**

“Declares that the continued presence of the South African authorities in Namibia is **illegal** and that consequently **all acts taken** by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate **are illegal and invalid**;

Calls upon all States, particularly those which have economic and other interests in Namibia, **to refrain from any dealings with the Government of South Africa which are inconsistent with paragraph 2 of the present resolution;**”

– **ICJ, Namibia Advisory Opinion, 1971**

“Member States, in compliance with the duty of non-recognition imposed by paragraphs 2 and 5 of resolution 276 (1970), are under obligation to abstain from sending diplomatic or special missions to South Africa including in their jurisdiction the Territory of Namibia, to abstain from sending consular agents to Namibia, and to withdraw any such agents already there. They should also make it clear to the South African authorities that the maintenance of diplomatic or consular relations with South Africa does not imply any recognition of its authority with regard to Namibia.”

■ **Sanctions to State Members of IOs: expulsion or suspension of its membership.**

- *UN Human Rights Council: The General Assembly has the right to suspend the rights and privileges of any Council Member that it decides has persistently committed gross and systematic violations of human rights during its term of membership. This process of suspension requires a two-thirds majority vote by the General Assembly.*

- Russia (2022), Libya (2011)

- **EU – Art. 7 TUE:**

1. “On a reasoned **proposal by one third of the Member States**, by the European Parliament or by the **European Commission, the Council**, acting by a majority of four fifths of its members after obtaining the **consent of the European Parliament**, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2.

...

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to **suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council.** In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.”

Measures under Chapter VII UN Charter

Art. 39 UN Charter: “The Security Council shall determine the **existence of any threat to the peace, breach of the peace, or act of aggression** and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Goal: to maintain international peace and security.

Measures Short of Armed Force

Art. 41 UN Charter: “The Security Council may decide what **measures not involving the use of armed force** are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”

USES

To respond to serious violations of international law amounting to a threat or a breach of peace

To react to situations which imperil peace and security (not in violation with international law).

Effectiveness depend on the level of support of State Members and the quality of targeting.

TARGETS

States threatening or breaching peace.

Individuals: eg. Osama Bin Laden, Al Qaeda.

■ ECONOMIC AND OTHER 'SANCTIONS':

<https://www.un.org/securitycouncil/sanctions/information>

- *Since 1966, the Security Council has established 30 sanctions regimes, in Southern Rhodesia, South Africa, the former Yugoslavia (2), Haiti, Iraq (2), Angola, Rwanda, Sierra Leone, Somalia and Eritrea, Eritrea and Ethiopia, Liberia (3), DRC, Côte d'Ivoire, Sudan, Lebanon, DPRK, Iran, Libya (2), Guinea-Bissau, CAR, Yemen, South Sudan and Mali, as well as against ISIL (Da'esh) and Al-Qaida and the Taliban.*
- *Today, there are 14 ongoing sanctions regimes which focus on supporting political settlement of conflicts, nuclear non-proliferation, and counter-terrorism.*
- *Each regime is administered by a sanctions committee chaired by a non-permanent member of the Security Council.*
- *There are 10 monitoring groups, teams and panels that support the work of 11 of the 14 sanctions committees.*
- *Measures to ensure that fair and clear procedures are in place for the imposition and lifting of sanctions measures:*
 - [focal point for de-listing](#),
 - [Office of the Ombudsperson](#) to the ISIL (Da'esh) & Al-Qaida Sanctions Committee

Non-recognition of illegal situations :

- their aim is to isolate the delinquent State and to compel it to change the situation that been condemned.

Condemnation of serious violations of Article 2.4 UN Charter by the SC.

Public exposure, by the GA, of gross violations by States: chiefly for human rights violations or when they have disregarded basic principles of the Organization.

Establishment of international criminal tribunals (ICTY, ICTR).

Punitive actions: international crimes

International crimes of State: Term eventually abandoned by the ILC in the DASR.

- Breach of an international obligation so essential for the protection of fundamental interests of the international community that its breach is recognized as a crime by that community as a whole (original definition)
- Rejected by States.

Crimes under international law:

- Piracy, genocide, torture, human trafficking, aircraft hijacking,...
- Established by international conventions that impose States the obligation to punish those crimes.
- Crimes with international dimension affecting interests of the international community.

- Art. 227 Treaty of Versailles:

“The' Allied and Associated Powers publicly arraign William II of Hohenzollern, formerly German Emperor, for a supreme offence against international morality and the sanctity of treaties”.

- Nuremberg and Tokio International Tribunals: war crimes, crimes against peace and crimes against humanity.
- UNSC international tribunals: ICTY (1993), ICTR (1994).
- ILC Draft Code of Crimes against the Peace and Security of Mankind (1996).
- Mixed tribunals: Timor-Leste (2000), Sierra Leone (2002), Camboya (2003), Lybia (2007), Chad (2012), Syria (2016)
- ICC, Rome Statute 1998: complementary to national jurisdictions.
 - (Art. 13 RS) *Jurisdiction: Referral by a State Party, Prosecutor, SC.*
<https://www.icc-cpi.int/>

THANK YOU

This material is protected. The license allows users to copy and distribute the material in any medium or format in unadapted form only, for non-commercial purposes only, and only so long as attribution is given to the creator.

