

<https://de.wikipedia.org/wiki/Völkerrecht>

1. What is most important

The most important positive legal sources of international law are the Charter of the United Nations and the general prohibition of the use of force enshrined therein, which, as customary international law, is binding even beyond membership in the United Nations (UN) and prohibits any state from waging a war of aggression.

2. Subjects of international law

Subjects of international law are primarily states. However, other subjects of international law also exist today, such as international organizations, which can be established by states or other international organizations, provided their founding treaties so stipulate.

Non-governmental organizations (NGOs) generally do not possess international legal personality. However, they are increasingly being assigned certain rights and obligations under international law, as are multinational corporations and individuals.

For historical reasons, the International Committee of the Red Cross, the Holy See, and the Sovereign Military Order of Malta are independent subjects of international law.

Meanwhile, the individual human being is also increasingly recognized as a partial subject of international law. Reasons for this include rights (especially human rights and obligations, such as the prohibition of piracy, genocide, or slavery).

Individuals can also bring legal action against violations of these rights or be held personally liable (e.g., before the International Court).

3. International law and international criminal law

International criminal law governs the criminal liability of individuals for the most serious human rights violations, which arises directly from international law. In the case of international crimes (genocide, crimes against humanity, war crimes, and the crime of aggression), individuals, **but not states**, can be held accountable under international criminal law.[14]

Furthermore, it does not require transposition into national law. Even conflicting national law, such as amnesty laws, does not, in principle, preclude criminal liability under international criminal law.[15]

4. State responsibility

The discussion surrounding the “international community” gained renewed relevance through the use of this term in the UN Commission on International Law’s 2001 articles on state responsibility (Article 33(1) et al.).

The existence of an “international community” is usually based on certain shared values derived from the legal order (human rights, environmental protection). From a legal perspective, the existence of such shared values has consequences, including for the establishment of hierarchies of norms (e.g., jus cogens) and for the creation of obligations for states against their will.

Skepticism

Alongside these two discussions, primarily conducted in continental Europe, one must not overlook the widespread and significant skepticism among state representatives and international lawyers. Many of them see states as the central subjects of international law. They point not only to the institutional weakness of the "international community" (who can enforce what, and where?), but also to the risk of arbitrariness inherent in introducing value judgments into international law.

5. Fragmentation of International Law

Another debate concerns whether international law is becoming increasingly fragmented. This debate stems from two observations: First, conflicts of norms between different international legal regimes are occurring more and more frequently (e.g., between international trade law and international environmental law, or between investment protection law and human rights). Second, the ever-increasing number of international courts and arbitral tribunals is leading to overlaps in jurisdiction, resulting in conflicts of competence (e.g., between the International Tribunal for the Law of the Sea and the European Court of Justice in the MOX Plant Case) or differing decisions on the same issue (e.g., between the International Court of Justice and the International Criminal Tribunal for the former Yugoslavia regarding the attribution of the actions of non-state actors – the Nicaragua case vs. the Tadić decision).

6. Humanitarian Interventions

Areas that are currently hotly debated and crucial for the future development of international law include: jus cogens, humanitarian intervention as an exception to the prohibition of the use of force, and preventive self-defense.

Which norms constitute jus cogens is a matter of debate; however, the core of the prohibition of the use of force and fundamental human rights are invariably indispensable components of international law with absolute effect (*erga omnes*). Other examples cited by the International Law Commission (ILC) as conceivable include acts such as the slave trade, piracy, and genocide, as well as violations of the equality of states and the right of peoples to self-determination.

The legitimacy of humanitarian interventions

In humanitarian interventions to rescue other people, a distinction must be made between those authorized by the UN Security Council and those not authorized by it.

The UN Charter gives the Security Council the power to impose, ultimately, military sanctions against the conduct of a state deemed a "threat to international peace and security." By customary law, this does not require troops directly subordinate to the Security Council; rather, **states are authorized to use force.**

The criteria

It is a matter of debate at what point domestic events threaten world peace; however, the Security Council regularly considers it threatened when genocide or so-called "ethnic cleansing" triggers refugee movements that spill over into neighboring states. Even if the domestically perpetrated genocide does not affect neighboring states (e.g., no refugee flows), a threat to world peace may still exist. This is because, according to the prevailing view, the prohibition of genocide is *erga omnes*, meaning it establishes an obligation towards all states of

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the international community. Furthermore, the prohibition of genocide is considered *jus cogens* and is therefore a binding norm of international law. Genocide thus always affects the entire international community.

The same likely applies to serious and systematic violations of fundamental human rights.

The divided Security Council

If the Security Council is unable to act, are states permitted to use force unilaterally or multilaterally as a last resort?

One view categorically denies this, citing the prohibition of the use of force and the risk of abuse.

The opposing view justifies humanitarian intervention by one or more states without authorization from the Security Council in the event of an ongoing genocide. This justification is based, firstly, on the natural law argument that no legal system should be allowed to condemn someone to stand by and watch genocide; secondly, on a teleological limitation of the prohibition of the use of force in the UN Charter; or simply on the basis of new customary law that supersedes the Charter and the right of peoples to self-determination, which partially grants them the status of subjects of international law, thus enabling them to request assistance from others..

Problems of enforcing international law

Who should and who can enforce what, and where? Will that achieve the goal?