International Journal of Law
www.lawjournals.org
ISSN: 2455-2194
Received: 18-08-2022, Accepted: 05-09-2022, Published: 23-09-2022
Volume 8, Issue 5, 2022, Page No. 64-72

Implementation issues of ICJ's verdicts by international organisations

Vaibhav Agrawal
Parul University, Vadodra, Gujarat, India

Abstract
It is becoming increasingly widely acknowledged among academics that the application of international treaties and customary international law by the International Court of Justice (ICJ) poses implementational difficulties for International organizations. This research aims to explain why such is the case and suggest potential solutions—examining the many judicial perspectives and comparing international law to its approach in internal case law. In this paper, the researcher has adopted the theoretical approach of studying the cases, sources of lows, their implementation, and reaction over it by other organizations. This research finds that multilateral organization has practical difficulties distinguishing the issues from the political aspect to the legal part of it.

Keywords: international court of justice, international laws, international organization, sources of laws

Introduction

The rule of law requires adherence to the hierarchy of laws, which determines the order in which different types of legislation are enforced. A constitution, statutes, regulations, and procedures make up the basic tiers of the hierarchy. Treaties, international commitments, presidential decrees, common law, case law, codes of conduct, and policies are all discussed in this study. Depending on the government structure, each of these factors will have a unique relationship with the hierarchy of laws.

The Hierarchy of Laws

The Constitution is the highest law since it defines the nature of the country, its sovereignty, and the liberties and duties of its citizens. Institutes are the basic framework for the country's government. The Constitution is the basis for all other laws. A country's constitutional documents should align with the norms it has accepted on the global stage.

Depending on the country involved, international treaties may or may not affect domestic law words used in treaties and how a country's Constitution handles them. Even when treaties are in place, their provisions are only followed to a certain extent. It protects and guarantees individual liberties through domestic enforcement or under the Constitution. Unless a mechanism for resolving disagreements is established in the treaty, there is no legal mechanism for enforcing compliance.

The legislative branch of government creates statutes to regulate various facets of society, like issues that need governing in a modern democratic state, such as elections. Constitutional and international law must be followed at all times. Constitutional in nature, open to amendment and enforced by the country's enforcement agencies.

Common law, which is law produced by the courts rather than the government, is not a subset of higher law. It is made up of court rulings that interpret the meaning of statutes to ensure the body of precedents established by common law or case law for reasons of natural justice, to address legal lacunae, or to address unanticipated circumstances not addressed by Statute. Judgments issued by courts are binding and must be carried out by the government's enforcement agencies. Judgments might award monetary damages, criminal penalties, administrative sanctions, or other forms of redress.

Regulations: To carry out their duties, ministers, heads of departments, or an independent body or commission may draught and adopt regulations that are legally binding and enforceable in the same way as statutes. Explain the application of legal ideas in greater depth.

Procedures are written by an administrative body to ensure that rules and regulations are followed consistently and legally. The rules are implemented uniformly and fairly to everyone involved. The most common method of enforcing adherence to a procedure is to make it a prerequisite for receiving some kind of benefit.

Objective

This paper is intended to study the various facets of international laws in conjunction with international and multilateral organizations like UNO EU. This paper is delved into the multiple proceedings and legal jurisprudence of the International Court of Justice (ICJ). The objective of this research work can be listed as follows:

- To study the influence of ICJ on the global organization in the implementation of International laws
- This paper will also gauge the extent to which International organization considers ICJ's verdicts in their policy and decision-making processes.
- His paper will also help to understand the sources of International laws and ICJ's consideration.

Methodology

This paper is solely based on the empirical study of which various cases that came before ICJ during the last five decades have been quoted. In every aspect of this research, the interpretation has been drawn from case to case basis. It has also studied the utility of these verdicts for the U.N. Security Council, an E.U. The method adopted here is entirely theoretical.

Evolution of the ICJ

Article 33 of the United Nations Charter outlines the peaceful resolution of disputes between member states, including diplomatic channels, negotiation, investigation, mediation, reconciliation, arbitrator, judicial settlement, and referral to regional organizations or arrangements. Some methods enlist outside assistance.

International Arbitration

Arbitration submits the disagreement to an unbiased third party for a binding settlement. Justice settlements are similar. Mediation and arbitration preceded court settlements. Ancient India and Islam practiced the former, while ancient Greece, China, Arabian tribes, customary marine law in Europe in the Middle Ages, and Papal Doctrine practiced the latter.

After the United States and Great Britain signed the Jay Treaty in 1794, international arbitration as we know it today was born. The "Alabama Claims Arbitration" in 1872 began a second and more conclusive phase. The 1899 Hague Peace Conference, convened by Czar Nicholas II, began the third era of international arbitration. Smaller European, Asian, and Mexican states attended this conference. This Convention created a permanent court of arbitration. It also institutionalized" arbitration law and practice, making it more definitive and widely accepted. The Permanent Court of Arbitration started in 1902.

Permanent Court of International Justice (PCIJ)

Under Article 14 of the League of Nations, the Permanent Court of International Justice (PCIJ) came into existence in 1922. With the following mandate:

- Unlike arbitral tribunals, the PCIJ was permanently formed and bound by its Statute and Rules of Procedure;
- It had a permanent Registry that communicated with countries and international entities;
- The PCIJ was accessible to all states for the judicial settlement of their international conflicts,
- PCIJ might issue advisory views on any dispute or question presented by the League of Nations Council or Assembly.

Though the League of Nations founded it, the Permanent Court of International Justice is an independent organization. Members of the Court are chosen regularly by the League Council and the Assembly, who may consult with the Court occasionally. No aspect of the Statute was ever incorporated into the Covenant or the League. It was not the case that the Court's Statute automatically bound any nation member of the League of Nations.

The Permanent Court of International Justice (PCIJ) was established after World War I to resolve several pressing international legal issues, many of which had directly resulted from that conflict. It had jurisdiction over some conflicts because of its hundreds of treaties, conventions, and declarations. The legal process demonstrated the Court's value to the global community.

The International Court of Justice (ICJ)

World War II severely hampered the PCIJ's ability to function in 1939, and the Court issued its last decree on February 26, 1940, thus ending judicial proceedings and elections. The United States, United Kingdom, China, and the Soviet Union all signed a joint declaration on October 30, 1943, recognizing the need "to establish at the earliest practicable date a general international organization based on the sovereign equality of all peace-loving States and open to membership by all such States, large and small."

In 1943, the U.K. convened a group of experts in London to form the Inter-Allied Committee (London Committee). The Committee modeled its proposed law after the PCIJ Statute. The final decisions on the form of the law were decided by the 50-state San Francisco Conference. As an alternative to mandatory jurisdiction, the conference voted to establish a new court that would serve as an essential U.N. organ and have its Statute appended to the UN Charter.

Since the International Court of Justice was intended to serve as the primary adjudicating body of the United Nations. The PCIJ's Statute was found to be successful. Hence its continuation was deemed necessary during the San Francisco Conference. However, small states favored a new body to avoid European dominance over PCIJ. The International Court of Justice (ICJ) accepted as much PCIJ jurisdiction as possible. The PCIJ was dissolved in April 1946, and El Salvadorian Judge José Gustavo Guerrero was elected as the ICJ's first President.

Sources of International law

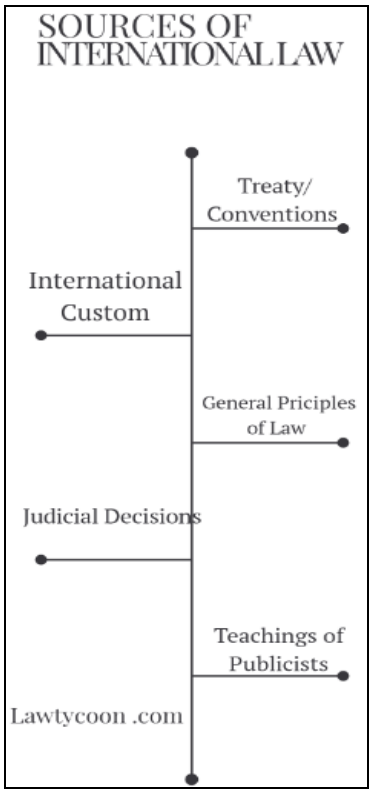

Fig 1

According to Article 38(1) of the ICJ Statute, treaties and conventions, customs, general principles of law, and judicial decisions and teachings are the four sources of international law.

Treaties

According to Sir Gerald Fitzmaurice, treatments are not a basis for law but rather a binding commitment [1]. According to Sir Gerald Fitzmaurice, treatments are not a basis for law but rather a binding commitment.

There is no doubt that the Court has significantly impacted the law of treaties in a few key areas. See, for instance, the Advisory Opinions on Reparation for Injuries, eight the International Status of South West Africa, nine the Effect of U.N. Awards, or its development and sometimes vigorous application of a consequentialist approach to the interpretation of the representative mechanisms of international organizations. Expenses of the United Nations and Namibia Administrative Tribunal TM [2]. Although the Court's rulings have significantly impacted some fields, this does not mean that they have always been positive.

While the ICJ has made significant contributions to certain areas of substantive law, like marine delimitation and the theory of custom, it is fair to conclude that in the past quarter century, it has not played quite as significant a role in the formation of the law of treaties. However, this should come as no surprise, as the Vienna Convention of 1969 has essentially monopolized the field since its finalization and entry into force. Even in circumstances where the Convention is deemed unsuitable as a treaty, ratione resulting in shorter, material, or personae, the Court has repeatedly found that the clauses of the Convention represent customary law. A well-written code will necessarily restrict the room for law formation through the courts. However, the Court has significantly contributed to understanding how treaties relate to prevailing social norms. However, this is more easily addressed in the section below concerning customary law.

Customs

Custom is not always easy to discover, and the significance attributed to states' activities and normative implications to be made from them might be disputed [3].

A court may help clarify customary rules. The ICJ's ability to do so is constrained by its consent-based jurisdiction, so the question is if and when it will be asked to announce the law. When given a chance, it has helped build customary rules in various disciplines, including maritime delimitation. In the North Sea and Nicaragua cases [4] In (Merits) [5] and (Merits) [6], the Court indicated clearly that both criteria must be met. However, it did not look like it was followed in the Nicaragua case, where it interpreted some General Assembly actions as evidence of both features.

The Court concludes that the mere existence of customary rules is sufficient to require state behavior consistent with those rules and that instances in which state behavior ran counter to a specific law should have been viewed as violations of that rule rather than as evidence of the acceptance of a new rule. Whether or not the state's action is defendable based on exceptions or justifications within the rule itself, the state's attitude confirms rather than weakens the rule if it acts in a way prima facie incongruent with a recognized norm but justifies its conduct by arguing for such exceptions or justifications within the rule itself [7].

The Court has contributed to forming regional or local customary law and other types of a particular law, although its random caseload prevents it from doing so systematically. In the Refuge case from 1950, the Court acknowledged the possibility of regional customs but found that a precedent for diplomatic asylum in the United States had not been established [8].

Principle of Low

In a positivist society, natural law has no place in the legal system. Thus the leading candidates are the general principle of municipal law, international law, and the legal systems in general, with specific reference to rules of judicial and arbitral procedure.

Some examples of such concepts include the idea that the demarcation of the continental shelf is done by agreement and the prohibitions on the use of force and interference that underpin international law [9]. These principles can be derived from treaties or long-standing customs. The concepts of *estoppel*, *res judicata* and the *parties' equality of the parties* [10] are all borrowed from municipal law, though the Court rarely identifies them as such. It is also speculated that the idea of "equitable principles," which is part of the law of delimitation of the “continental shelf and exclusive economic zone," is also derived from common principles.

Judicial Decisions

Article 38(1) (d) of the Statute directs the ICJ to apply judicial decisions as subsidiary means for determining law norms. However, article 59 states that the ICJ has no notion of binding precedent. Even if precedents are not controlling, they are influential, and the Court often cites its own and the Permanent Court's rulings in its judgments and opinions.

These decisions undoubtedly affect the Court's decisions. Legal professionals routinely refer to them in court filings, and they would not do so if they did not add value. Justice’s individual opinions sometimes dwell on these precedents in a way that implies they were examined in the Court's internal discussions before the decision or advisory opinion [11].

The majority decisions of the Court have only seldom cited a specific decision of another international court or tribunal as an authority in this respect. At the same time, they will occasionally allude compendiously to the case law of other international and even national courts [12].

Teachings of Publicists

Article 31(l)(d) of the Statute enumerates the 'teachings of the most highly qualified publicists of the various nations as another 'subsidiary means for formulating principles of law.

Writers are often cited as examples of the law by commentators. Their primary purpose is not limited to this, however. Authors like Gidel supply valuable proof of state practice by painstakingly compiling it.

However, in a court case, the Court will naturally place more weight on the cited sources than on the testimony of someone who is one step removed from the authors. The author's rationale is another valuable contribution. Again, even if that line convinces the Court of thinking, it need not acknowledge its origin to enact it.

It is not hard to surmise why the Court is reluctant to reference specific individuals more directly. The leading cause is that writers have varied expertise, dedication, professional honesty, liberty, and eminence, but differentiating between them may be unfair. The Court comprises highly respected lawyers who may be hesitant to accord the status of "authority" to anyone else. There may be a concern (justified or not) that different perspectives are not adequately represented in the literature because the amount of material from the industrialized world is so much more than that generated elsewhere. Lastly, the Court's

majority opinions are often characterized by a somewhat "broad-brush" approach to reasoning, making a lengthy consideration of a large number of authors seem out of place.

Unilateral Acts

Some civil law writers cite selective actions as a source of international law not specified in article 38. (1). Many of these events are only significant in a larger transaction, such as protesting the establishment of customary law or territorial claims or accepting the Court's "compulsory jurisdiction" in the context of the Statute's treaty commitments. They are not trees. Most of these actions are derived from rights and obligations, not the law' [13].

The proclamation is an example of a unilateral action that may need an extra warning. Dedicating a canal to international trade is an example of the kind of proclamation that creates duties for a state concerning different states or even *erga omnes*. The Court's binding force of declarations ruling in Nuclear Tests case [14] has had far-reaching implications. It has become the backbone of the doctrine surrounding acts of unilateral action.

Municipal Low

It is a mistake to assume that a concept in international law has an equivalent in municipal law. There is also a danger in assuming that, since international laws are independent disciplines, any dissimilarity in concept is more comprehensive than may be the case. Even if some differences exist, it may not be enough to preclude using municipal experience to appreciate an international law idea [15]. In some circumstances, even after municipal law is publicly abandoned, its effect is still felt *sub silentio*.

Not surprising. Judge McNair was not the only one to note that international law borrows rules and structures from private law. It is foolish to overestimate the inheritance's magnitude or vigor beyond international law's formative time; however, it is also wrong to condemn it. Lauterpacht's protested against "the time-honored repudiation and disparagement of the comparison to municipal - and, in particular, to private - law." [16] There is debate over whether rejection and criticism are valid measures of independence under international law. There are many contexts in which municipal law principles play no functional role. Hence it is important to caution against bringing them to the international legal level too soon. It is one thing to learn about international law and its concepts, but it is quite another to try to understand those concepts in isolation from the municipal intellectual context that helped shape them. In more circumstances than appears, municipal law reasoning can and does help solve international legal challenges.

ICJ on Soft Laws

A large portion of the ICJ's jurisprudence tends to go outside the boundaries of the formal' sources' of international law, as stated in Article 38 (1) of the Statute, even though the Court has never addressed the topic of soft law *ex professo*.

"soft law" refers to voluntary codes of conduct, guiding principles, and proclamations that do not carry the force of law. The international community is rife with instruments of soft law. Among the examples of "soft law" are resolutions passed by the United Nations General Assembly. In general, "hard law" denotes legally binding duties that can be enforced in a court of law.

The expanding scope of *erga omnes* responsibilities is the main reason for the rise of soft implementation methods. These obligations, acknowledged by the ICJ in its 1970 dictum [18], have allowed the international community to hold cumulative interests such as rights-related laws. Ironically, this *erga omnes* effect of the obligation dilutes the normative severity of secondary norms on responsibility and reparation.

ICJ vs. Multilateral Organisation

In addition to improving the odds of successfully resolving a disagreement or avoiding a crisis, international law would benefit significantly if the United Nations' major judicial organ was used more frequently to address the legal aspects of cases involving the U.N.

Nothing about the Court's status as the United Nations' "primary judicial organ" actually expresses the goals that it was created to fulfill.

Articles 36(3), 93, and 94 of the UN Charter1 allude to the goal of making it the primary forum for resolving legal disputes between member states. A different goal would be to provide legal advice to U.N. organs on how to carry out their duties, focusing on the demand for these organs. A very different purpose for the Court to operate as a judicial review institution, with the focus on the need for member states to ensure that U.N. organs limited it to the powers granted to them by the founding treaty.

The Charter's Article 96 and the Court's Statute, in Chapter IV, take the second approach, the advisory function and supervisory role.

With the current make-up of the U.N. Security Council, this is to be expected. The Soviet Union (now Russia) and China, two of the permanent members, have never once used the Court to settle a dispute between them. Since the Nuclear Tests6 case, France has largely refused to participate in court proceedings. Furthermore, at least since the Nicaragua [19] case, the United States has demonstrated mixed feelings about it. For this reason, it should come as little surprise that the Security Council has rarely sought the Court's advice or recommended that states refer their disputes to the Court within article 36(3) of its Charter. One of the more disappointing aspects of the U.N.'s track record is the Council's penchant for 'political' solutions without the help of the Court on legal concerns.

The argument that the Court is inappropriate because of the 'political' nature of the issues at hand cannot account for the Security Council's indifference toward the Court. The Court's job is to answer any legal question. Thus no one would ever advocate asking it a "political" inquiry. However, the Security Council has not shown any inclination to seek the Court's assistance even on those legal matters where the Council deals with complicated political concerns and where different legal questions are at issue[20].

The Court has never hesitated to issue an Advisory Opinion on a legal topic because of the question's obvious political ramifications. The Court, in a nutshell, declared this in the WHO Regional Office case, summarising its view based on its jurisprudence.

In the Eastern Carelia case (Advisory Opinion No. 5), the Permanent Court of International Justice declined to issue an Opinion since doing so would determine the

disagreement between the parties. The present situation is very different from that one. The House of Representatives has requested a ruling from the Supreme Court on this subject.

That is what the Court said in the accords above, so there is that. At least in cases where the Opinion's primary goal is to aid a U.N. body, the ICJ has recently shown a tendency to soften this requirement.

Eastern Carelia principle would bar the Security Council from using the Court's advisory authority under Chapter VI of the Charter. Perhaps both of these are correct. To start, this has never been used as the reason for the Council's unwillingness to make use of the Court. Second, the foundation of the Eastern Carelia principle should be reexamined in its entirety.

An important concept, the right of a state to be bound by the Court's judgment only where it has consented to the Court's jurisdiction only applies where the state has done so. The following are conditions under which we will assume a disagreement exists.

1. Under U.N. Chapter VI, the Security Council has designated this conflict as a threat to international peace and security.
2. The Council recommended that the disputing nations take the matter to Court under article 36(3). However, the disputing parties have rejected this suggestion.
3. Without the Court's direction regarding the parties' various legal rights, the Council cannot make its settlement recommendations under article 37(2).

Binding Advisory Opinion

Various treaties on constitutional protections, headquarters agreements, 30, and other U.N. treaties have employed the concept of giving a prima facie Advisory Opinion a binding character by permitting parties to agree on a separate instrument. 29 The 1946 "U.N. Convention on Privileges and Immunities" anticipated this use. So, in theory, the method might be broadened by using more equipment that features this gadget. Any such "binding" nature would come from some other source, such as Staff Rules and Regulations, and not from the Opinion or the Court's statutory authority.

Locus stands for international organizations.

As the United Nations and its Specialized Agencies are legally entitled to bring and defend international claims, it would make little sense to bar them from accessing the Court and instead force them to resolve disputes through arbitration. No reasonable person should even consider the possibility that the Court is unfit because, as a United Nations institution, it would lack impartiality in conflicts between a United Nations organ and a third party; the Court's independence has been proved beyond a reasonable doubt. Each entity might make declarations comparable to those issued by states under the Optional Clause, outlining the extent to which it accepted jurisdiction. It is reasonable to assume that they will focus just on allegations related to the organization's outward operations rather than its internal ones [21].

International Organization and International Adjudication

Those who were brought up on the spirit of The Hague at the turn of the twentieth century and its realizations between the wars must be heartbroken by the stagnation and degeneration of arbitral proceedings and arbitration in our day. Despite having much room to grow, international organizations have failed to accomplish anything noteworthy in the field of law, despite having made significant strides in the legislative and executive branches. Although it was supposed to play a pivotal role in resolving international disputes, the International Court of Justice has seen very few cases and its advisory function has not significantly advanced international organization or international law.

The attitude of the United States of America

The United States, its policies and diplomacy, and its distinguished contribution in monetary terms as well as in terms of personnel, ideas, initiatives, and restraints, all have played a role in shaping what the international organization has done and has not done concerning law at least as much as elsewhere. However, American policy has not been consistent or monolithic, nor has it consistently and entirely prevailed.

Low Making

The United States' views on international law are reflected in its views on the legal operations of international organizations. Our nation was conceived with a "decent respect to the opinions of mankind," was born during the golden age of the "law of nature," and was raised by men who revered law; therefore, the law is deeply ingrained in our history, traditions, constitutions, institutions, values, "style," and national character. Many national issues have taken on a legal form thanks to a written constitution and a Supreme Court enforcing the complicated boundaries of federalism and distinct branches and the constraints of the Bill of Rights. American foreign policy has traditionally placed a premium on the rule of law. (In fact, American policy is sometimes attacked for an excess of "legalism")22 From the start, lawyers have played crucial roles in the conduct of American foreign affairs, and attorneys inside and outside of government have had significant influence—some would argue excessively.

Reform of International Law Regarding Relations with the Other States Is Urgently Needed

Scholarly research confirms two critical points about the case law governing international relations: first, legal certainty is challenging, and second, the case law demonstrates some balance of E.U. legislation/interests versus international law. The former is significant because the "dual nature" of law suggests that all lawyers ought to achieve legal certainty, the ability to predict an outcome, and justice, achieving the right outcome in a given case.[22] Without an authoritative balance between these aims, one must be cautious when proposing reforms. Scholars have been free to propose changes to the Court's approach in light of the lack of legal certainty, with the majority favoring a continuation of the balance between E.U. and international law. Surprisingly, however, only a few authors explicitly bring up proportionality, and even then, only in passing.

Uncertainty in Case Law Regarding International Relations Causes Concern

Etienne observes "uncertainty" about customary international laws and agreements [23] and asks the Court to

explain "what it is doing" in these areas. Holdgaard cites a "clear lack of clarity and coherence" [24] in the case law; Skordas cites "counter-systemic commotion" [25], and Odermatt urges "a more consistent and principled approach to international law concerns."

Even if there will always be those who complain about the lack of legal certainty, the CJEU's interpretation of international law is where those concerns are most vocal. Although most academics prefer some sort of balance, our external relations case law research will corroborate their concerns about a lack of legal certainty. However, we will go further than has been done so far in explaining why this is the case by focusing on the absence of proportionality.

1. Policy-related provisions

1(a The first criterion, based on the second preamble paragraph and article 2 paragraph 3 of the Declaration, is to foster steady improvement in human socioeconomic well-being. It is possible to phrase it as a preamble paragraph to a hypothetical treaty by considering the first characteristic determined by the working group ("comprehensive and human-cantered development policy").

We are committed to paving the path for expanded international and bilateral capital flows, increased local resource mobilization, and manageable debt to ensure that sufficient funds are available for development and make it as easy as possible to access those funds.

1(j) to formulate and periodically review national development strategies and action plans based on a participatory and transparent process. This conforms with articles 1 (1), 2 (3), 3 (1), and 8 (2) of the Declaration. The following are some possible formulations that could be used to make this clause an obligation under the treaty:

As a result of the Convention, individual states are obligated to draught and evaluate national development strategies and action plans. They are responsible for ensuring that information regarding these strategies and action plans is widely disseminated. That affected individuals, members of civil society, and elected officials at the local, regional, and national levels all participate meaningfully in developing, adopting, and reviewing these strategies and action plans. Because they overlap with pre-existing treaty regimes, it would be highly challenging to include other requirements, such as "1(i) to contribute to an environment of peace and security, " [26] in a general treaty on the right to development. This is because of the degree to which they already exist. The preamble may include language like "Recognizing the safety of victims of armed conflict, refugees, and immigrants and refugees as a responsibility that States Parties have undertaken through treaties and customary international law." This would serve to reaffirm the parties' intention to work toward the establishment of such an environment.

In order for a treaty to accurately reflect the draught sub-criteria, it would be required for the treaty to contain tediously repetitious preamble paragraphs as well as onerous provisions on substantive obligations. This would be the case even if the treaty did not contain substantive obligations. Either the substantive duties would be incomprehensibly vague to have any practical application (for instance, "to pledge to defend disadvantaged communities during armed conflict"), or they would merely restate the requirements of existing international agreements.

2. Participative Requirement

The normative requirements addressing the technique known as "Participatory human rights processes" specify five distinct processes that have the potential to be utilized in the process of creating treaty obligations, and these are as follows:

A legal framework for development, norms for human rights; non-discrimination, information accessibility, participation, and effective remedies; strong governance at both the international and national levels; and a framework for development that includes all of these elements. Some individuals might only repeat assurances that they have already provided. Criterion 2 (b), "To draw on relevant international human rights instruments in constructing development strategies," mentions "Human rights-based approach in national development strategies," which also includes "human rights in national development plans and [poverty reduction strategy papers]," among other things. Criterion 2 (b) is located in the 18th paragraph of the document. It is feasible that one of the following could be stated in a clause of a treaty:

In sub-criterion 2 (c) (ii) and (iii), respectively, the "development of a framework to promote participation" and the "procedures supporting participation in social and economic decision-making" are dissected in further depth. The following are examples of provisions in a treaty that could have legal force:

At every stage of the development process, including the formulation, implementation, monitoring, and evaluation of policies and programs, the population must have a voice, and the states that are parties to the process must provide sufficient political and financial support to make this participation possible.

Before any kind of exploitation of natural resources takes place on indigenous peoples' territories, the state parties are obligated to take whatever legal or administrative steps are required to guarantee that indigenous peoples give their permission, which is accessible and informed.

The topic of "to promote good governance at the international level and effective participation of all countries in international decision-making," which is addressed in criterion 2 (d), is of utmost relevance to nations still building their economies. In this scenario, the provisions of the treaty could draw on language that has already been agreed upon, such as that found in resolutions that the General Assembly has passed, conclusions that have been reached at conferences such as the Monterrey Agreement of the International Conference on Financing for Development (2002), and discussions that have taken place at forums such as Aid Efficientness (2008 and 2011). This suggests that the language described in the following phrase of a treaty could be eligible for inclusion in the document:

The states that have signed this Convention have pledged to give the ratification of human rights and anti-corruption accords higher priority in those instances where they have not done so in the past. States parties to this agreement have agreed that they will support the democratization of the international governance system through the decision-making process of the appropriate institutions. This is being done to improve the effective participation of developing countries in international decision-making.

It would be necessary for the introductory articles of the treaty to define terms such as "partner countries" (or "States Parties benefiting from development cooperation") and

"donor countries" (or "States Parties belonging to the donor community") in order for additional provisions relating to aid to be able to be based on commitments such as the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action. As a result, clauses pertinent to this criterion could include the following: Donor states commit to basing their overall support on partners' national development strategies and periodic reviews of progress in implementing these strategies, as articulated in country strategies, policy dialogues, and development cooperation programs. Donor states also commit to linking funding to a single framework of conditions and a manageable set of indicators derived from the national development strategy. Consequently, clauses that are pertinent to this criterion could include the following.

States The eligible parties to receive assistance for development are tasked with formulating and implementing their national development strategies through inclusive consultation processes. These strategies must be translated into prioritized, results-oriented operational programs articulated in medium-term expenditure frameworks and annual budgets.

Some of the commitments made in the Paris Declaration might be implemented as ordinary treaty articles when it is not required to differentiate between donor countries and partner countries.

The participating states have committed to working together to develop diagnostic reviews and performance assessment frameworks that can be integrated into country-led strategies for capacity development. Additionally, the participating states have committed to establishing frameworks that provide reliable assessments of national systems' performance, transparency, and accountability. This commitment was made in order to fulfill the goals of the initiative.

According to criterion 2(e), which states that the goal of the treaty is "to promote good governance and respect for the rule of law at the national level," the Accra Agenda could serve as a basis for the following types of treaty provisions:

States It is anticipated that parties that receive development assistance will increase legislative supervision by increasing the amount of information available to the public regarding government revenues, spending, purchases, and audits.

Donor states have committed to providing timely, comprehensive, and public reports on the amount, purpose, and impact of development aid to assist developing nations in better planning their finances, keeping track of their spending, and auditing their records. This will help developing nations better prepare for the future.

Other components of the right to development geared toward advancements, such as non-discrimination and gender equality, voting procedures in international financial organizations, and other potential areas of improvement, could also benefit from comparable standards.

3. Indicative provisions

The language of criteria 3 (a) reads, "To allow for equal access to and sharing of the advantages of development," which would work very well if it were to be used as a preamble paragraph. This is similar to the second preamble paragraph and article 2 (3) of the Declaration. This criterion, therefore, gives the third and final feature, which focuses on the results in progress toward social justice. This criterion aims to ensure that everyone has the opportunity to participate in and profit from the development process.

Convinced that in order to fulfill the right to development, national and international development policies and programs needs to result in a fair distribution of the benefits of progress,

It is not entirely impossible to draught provisions for a treaty that satisfy some of the four prerequisites. Consider the following criterion, 3(a) (ii), which states that there should be "equality of access to resources and public goods," as an example of how the following treaty provision might be drafted to solve this issue:

Because of the progress toward the development goals, all citizens of the States Parties will have access to public goods such as water, clean air, public recreation places, bandwidth, and other goods of a similar sort. These goods will be established by national policy to belong to all consumers based on need rather than on their ability to pay for them, and they will be available to them because of the progress made toward the development goals. This category includes water, air quality, public spaces for recreation, bandwidth, and other resources.

Issues such as climate change, the unintended repercussions of development investments and policies, and various sorts of environmental, financial, and other types of emergencies are some of the topics that we investigate as part of the third criterion ("To allow for fair sharing of the responsibilities of development"). If a convention were to be weighed down by repeating existing treaty duties in areas like climate change, migration, and humanitarian assistance, then some of the policy aims mentioned above would be ineffectual (e.g., securing peace and protecting refugees). On the other hand, a provision may be established to address specific issues, given the relevance of such issues to the right to growth and the social fairness it involves. To provide just one illustration of a potential article:

The parties have agreed that those harmed by development projects and policies, such as polluting factories, dams that force people to relocate, insufficiently beneficial natural resource concessions, and patents on indigenous knowledge, should be compensated adequately. This agreement is based on a fair distribution of blame between the international community and the state. The following are some of the unfavorable impacts, but the list is not exhaustive:

Following the principle of common but differentiated responsibilities and respective capabilities, the states that are parties to the United Nations Framework Convention on Climate Change and other related agreements have committed to ensuring that developing countries have access to the resources and technology necessary to implement nationally appropriate mitigation steps to reduce emissions and adapt to the effects of climate change. These steps will be taken following the concept of common but differentiated responsibilities and will consider social and economic conditions and other relevant variables. This responsibility is in keeping with the idea of "shared but differentiated obligations and respective capabilities," which considers the current social and economic climate and other characteristics of the situation.

It is possible to write similar regulations under criterion 3 (a) (iv), which would satisfy the requirements of both criterion 3 (a) (iii), which is titled "Reducing marginalization of least developed and vulnerable nations,"

and criterion 3 (a) I. This is because it is possible to write similar regulations under criterion 3 (a) (iv) ("Ease of immigration for education, labor, and revenue transfers"). In order to fulfill the requirements of criterion 3 (c), there may be a need for articles that specify the policy goals to which state parties would commit in light of the social justice dimension of the right to development. Some examples of these articles include those that deal with social protection, trafficking, child labor, and land reform ("To era di- cate social injustices through economic and social reforms"). Expanding the scope of gender parity to include, but not be limited to, ensuring that a gender perspective is applied as a cross-cutting issue in the process of achieving the right to development, as well as ensuring that women and girls have equal access to education and participation in civil, cultural, economic, political, and social activities. States Parties commit to expanding the scope of gender parity to include, but not be limited to, ensuring that a gender perspective is applied as a cross-cutting issue in This objective of achieving gender equality will be realized with the help of the Convention on the Rights of the Child, which will play the role of a guiding document in the process.

The treaty's provisions are nothing more than a thought experiment designed to determine whether or not it would be possible to translate the draught criteria developed by the task force into the language of the treaty in order to draw the task. This test was carried out to determine whether or not it would be possible to translate the draught criteria developed by the task force into treaty language. This test aimed to attract development experts' attention to development priorities and practices. Both of these objectives are distinct, and it would be a monumental waste of time to try to accomplish one by working toward the other.

Concluding Observations

This exercise sheds insight into the many obstacles that must be overcome to build a convention that meets the criteria. The first reason is that it is implausible that most governments will adopt the norms because they are either insufficiently specific to be of many services or excessively idealistic (although perhaps desirable from the perspective of an ideal right to development). Concepts such as "participation" and "equity" may be refined in a political proclamation; nonetheless, they must be defined and clarified in a legally enforceable treaty. Several years may pass before a formulation is discovered suitable for an intergovernmental drafting conference to consider. Nevertheless, the work group's criteria are not much more general than those established by a significant number of other human rights accords. The drafters may be more forthcoming with information if they perceive that both sides are trying to reach a reasonable agreement in good faith. The political climate is currently too tense to make it possible to facilitate the fleshing out of specific treaty standards that are built on the criteria, possibly in any feasible formulation. This is evidenced by the 53 votes cast against the mere idea of a convention, which can be found below.

Another problem is that many of the obligations imposed by the proposed treaty are comparable to or identical to those that another treaty would impose. A new treaty would need to check for two things before it could be considered justified: (a) uniformity among equivalent regulations and (b) substantial ground for innovation in terms of substance. Both of these items are required for justification. The more explicit the obligation of a treaty is, the greater the likelihood it will emphasize the divide between widespread support for the right to development and a willingness to reform the methods in which things are currently done.

Even if a global convention on the right to development is unlikely to be reached in the current political climate, independent legal experts and practitioners may be able to examine such an accord's potential benefits and drawbacks. Potential users of a treaty should not be judged by the number of states that support it; instead, they should be judged by the extent to which it would help relieve resource constraints for developing nations while also systematically incorporating human rights into the development process and, in the same way, development perspectives into human rights. This is because draught criteria concerning structure (conducive environment) overlap with draught criteria concerning procedure (principles of conduct) (just results).

The criteria expressed by the task force indicate six significant normative notions that should be included and can be articulated in language suitable for an international treaty. Although there must be political will to draught a treaty, the criteria: a) that the environment for development must be conducive to human-cantered and comprehensive development at the national and international levels, with the ongoing objective of improving the well-being of all people; b) that local ownership of development policies is essential to ensuring the success of those policies.

That monitoring must be based on reliable data and subject to ex-ante impact assessments, public scrutiny, and institutionalized mechanisms for mutual accountability and review; and g) that monitoring must be subject to ex-ante impact assessments, public scrutiny, and institutionalized mechanisms for mutual accountability and review.

Acceptance of subparagraph (b) of the Declaration by developing countries should be informed by articles 2 and 6 of the Declaration ("rights-based development"). In contrast, acceptance of subparagraph (e) of the Declaration by developed countries should be informed by articles 3 and 4 of the Declaration ("development-based human rights").

This would remove the concept of a right to development from the realm of political rhetoric and place it within the realm of development practice. At this point, there is very little evidence to suggest that such an environment or dedication exists.

References

1. In accordance with objectives of the present volume, this chapter is confined to the ICJ, though there have also been some very interesting decisions on these matters by the PCIJ, such as the Lotus case (PCIJ, Series A, No. 10 (1927)). Shortage of space precludes, for the most part, an examination of the Separate and Dissenting Opinions of members of the ICJ.
2. The present volume is intended to contain a number of other chapters relating to individual sources (or possible sources) of law. This chapter is not based on them; for the most part, I have not seen them before writing it.
3. A partial exception is the statement in the judgment of the Chamber in the Gulf of Maine case (ICJ Reports,19843:3:246-299.
4. Strictly, article 38(1) seems by its terms confined to contentious cases, since it refers to 'disputes' and assumes that there are 'contesting States' before the

Court, as Jennings has pointed out in his 'General Course on Principles of International Law', Recueil des corns, 121 (1967-11), pp. 323, 330. However, in practice, the same sources have been applied in the exercise of the Court's advisory jurisdiction.

5. See Mario Mendez, the Legal Effects of EU Agreements: Maximalist Treaty Enforcement And Judicial Avoidance Techniques; Mario Mendez, The Legal Effect of Community Agreements: Maximalist Treaty Enforcement and Judicial Avoidance Techniques, 21 EUR. J. INT'L L,2013:83:2010.
6. See ECJ, Case C-308/06, Intertanko and Others, ECLI:EU:C:2008:312, 2008, 69, http://curia.europa.eu/juris/liste.jsf?language=en&num=C-308/06. See also ECJ, Case C-344/04, IATA and ELFAA, ECLI:EU:C:2006:10 (Jan. 10, 2006), para 68, http://curia.europa.eu/juris/liste.jsf?language=en&num=C-344/04.
7. ECJ, Case C-366/10, Air Transport Association of America and Others, ECLI:EU:C:2011:864, 2011, 68, http://curia.europa.eu/juris/liste.jsf?language=en&num=C-366/10
8. Joseph Raz, Legal Principles and the Limits of Law, 81 Yale l.j. 823, 841 (1972); Lord Denning, the Discipline of Law 293 (1979); Jürgen Habermas, between Facts and norms 199 (william rehg trans., 1997); Stefano Bertea, Certainty, Reasonableness and Argumentation in Law, 18 ARGUMENTATION 465, 475 (2004); Robert Alexy, The Dual Nature of Law, 23 RATIO JURIS 167 (2010); William Twining, Karl Llewellyn And The Realist Movement (2d ed. 2012); and BECK, supra note 1, at 274, 2012, 157(2).
9. Bertea, supra note 7, at 475.
10. Aristotle, The Nicomachean Ethics (David Ross trans., Oxford University Press 2009, 80-88.
11. See, e.g.,. Perelman CH, Kenneth I. Winston, On Treating Like Case Alike, 62 CALIF. L. REV. 1, 22, 1967, 21-24.
12. Hare RM. moral thinking: its levels, method and point 157 (1981); h.l.a. Hart, the concept of law 159 (3d ed. 2012); gerard conway, the limits of legal reasoning and the european court of justice 244 (2012); and sionaidh douglas-scott, law after modernity, 1974, 185(2013).
13. See, e.g., ECJ, Case C-459/03, Commission v Ireland, ECLI:EU:C:2006:345 (May 30, 2006), para 123, http://curia.europa.eu/juris/liste.jsf?language=en&num=C-459/03. See also Joined Cases C–402/05 P and C–415/05 P, Kadi & Al Barakaat Int'l Found. v. Council and Comm'n, ECLI:EU:C:2008:461, 2008, 282, https://curia.europa.eu/juris/liste.jsf?oqp=&for=&mat=or&jge=&td=%3BALL&jur=C%2CT%2CF&num=402%252F05&page=1&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=12821209.
14. ECJ, Case C-181/73, Haegeman v. Belgium, ECLI:EU:C:1974:41, 1974, 5, http://curia.europa.eu/juris/liste.jsf?language=en&num=C-181/73.
15. Tor-Inge Harbo, The Function of the Proportionality Principle in EU Law, 16 EUR. L.J. 158, 159 (2010) (citing Nicholas Emiliou, the Principle of Proportionality in Eu Law: A Comparative Study, 1996, 115.
16. Robert Alexy, The Dual Nature of Law, 23 RATIO JURIS 167 (2010). See also Joseph Raz, Legal Principles and the Limits of Law, 81 YALE L.J. 823, 841 (1972); DENNING, supra note 7, at 293; HABERMAS, supra note 7, at 199; Bertea, supra note 7, at 475; TWINING, supra note 7, at 157; and BECK, supra note 1, at 274.
17. Raas Holdgaard, External Relations Law of The European Community: Legal Reasoning And Legal Discourses, 2008, 235.
18. Achilles Skordas, Völkerrechtsfreundlichkeit as Comity and the Disquiet of Neoformalism: A Response to Jan Klabbers, in European Foreign Policy: Legal and Political Perspectives (Panos Koutrakos ed.,) 2011, 116
19. Jed Odermatt, The Court of Justice of the European Union: International or Domestic Court?, 3 Cambridge J. Int'l & Comp. L,2014:696:702.
20. Judicaël Etienne, Loyalty Towards International Law as a Constitutional Principle of EU Law? 14 (Jean Monnet Working Paper Series, 03/2011, 2011), http://jeanmonnetprogram.org/wp-content/uploads/2014/12/110301.pdf (last accessed Apr. 30, 2021).
21. For use of this term see Tim Dunne, Good Citizen Europe, 84 International Affairs, 2008, 13,
22. On the interesting and seemingly expanding practice of EU agreements expressing when they will not have direct effect,
23. see Narine Ghazaryan, Who are the 'Gatekeepers'?: In Continuation of the Debate on the Direct Applicability and Direct Effect of EU International Agreements, 37 Y.B. EUR. L, 2018, 27.
24. Jurisdiction of the Courts of Danzig (Pecuniary Claims of Danzig Railway Officials who have Passed into the Polish Service, against the Polish Railways Administration), Advisory Opinion, 1928 P.C.I.J. (ser. B) No. 15.
25. Id. at 17-18.
26. André Nollkaemper, National Courts and the International Rule of Law, 2011, 125.
27. La Grand Case (Ger. v. U.S.), Judgment, I.C.J., 2001, 466.
28. Avena and Other Mexican Nationals (Mex. v. U.S.), Judgment, I.C.J., 2004, 12.
29. Nollkaemper, supra note 27, 11.
30. Yuval Shany, Toward a General Margin of Appreciation Doctrine in International Law?, 16 EUR. J. INT'L L. 907 (2006); Jean d'Aspremont & Frédéric Dopagne, Kadi: The ECJ's Reminder of the Elementary Divide Between Legal Orders, 5 INT'L ORGS. L. REV. 371 (2008); NOLLKAEMPER, supra note 27, at 11, 120, 299–304; André Nollkaemper, The Duality of Direct Effect, 25 EUR. J. INT'L L.,2014:105:122.
31. Kadi and Al Barakaat International Foundation v. Council and Commission, Joined Cases C–402/05 P and C–415/05 P 316.