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EDITORIAL

Editorial: Aren't We Sick and Tired of This Broken System Called "International Law"?

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International law is undergoing a profound structural and normative crisis, one that has been the subject of sustained scholarly critique and reflection. This crisis arises not merely from episodic failures of enforcement or compliance but from foundational tensions within the discipline itself. The regime's historical evolution, its reliance on state consent, and its fragmented institutional architecture have all contributed to a system increasingly ill-equipped to address the complexities of the contemporary international order. Moreover, the proliferation of actors—ranging from multinational corporations and international organizations to armed non-state entities—has further eroded the centrality of the state and complicated the application of traditional legal categories. Geopolitical competition, economic asymmetries, and the accelerating pace of technological change—particularly in the domains of artificial intelligence and big data—have reshaped the landscape in which international law operates (Dworkin, 2013; Howse and Ruti Teitel, 2010; Steinberg and Zasloff, 2006; Kammerhofer, 2004; Allott, 1999; Carty, 1991). Despite ongoing efforts to reform the system, including the development of soft law instruments and specialized regimes, many of these efforts have failed to resolve core deficiencies. The wars in Lebanon and Ukraine illustrate these shortcomings vividly, revealing how the existing legal order struggles to address asymmetric conflicts and the increasing role of non-state actors in shaping global security dynamics.

The growing tendency of states to disengage from binding international commitments reflects a deeper crisis within the international legal order. High-profile withdrawals—such as the United States' exit from the Paris Agreement on climate change and Japan's departure from the International Whaling Convention—are not isolated incidents but symptomatic of a broader pattern of retreat from multilateralism. This phenomenon coincides with the rise of alternative governance mechanisms, including private regulatory bodies like the International Organization for Standardization and the increasing reliance on soft law instruments, which often lack enforceability but proliferate, nonetheless. Together, these developments cast doubt on the efficacy of traditional international legal frameworks in shaping or constraining state behaviour. Despite its normative aspirations, international law appears increasingly disconnected from the geopolitical realities it purports to regulate. Armed conflicts, including those in Syria, Ukraine, and Yemen, continue to unfold with limited regard for international legal norms, revealing a persistent gap between legal idealism and practical enforcement. If international law cannot prevent or even meaningfully mediate such crises, one must ask whether the system remains fit for purpose. The persistence of this dysfunction lies not in

recent aberrations, but in the structural foundations of international law itself—particularly its reliance on voluntarism, decentralization, and politicized consent.

One of the defining features of contemporary international law is its increasing technical complexity, a trend closely tied to the expanding role of science and technology in global governance. From trade regulation to environmental protection, and from digital infrastructure to public health, international legal instruments are now frequently informed—if not shaped—by technical expertise drawn from disciplines beyond the legal sphere. This growing reliance on scientific evidence and economic modelling in the negotiation, interpretation, and implementation of treaties has raised critical questions about the normative and democratic legitimacy of international law (Deeks, 2020). As expertise becomes central, the legal domain is progressively dominated by technocratic institutions and expert bodies operating under soft law regimes. These bodies often provide guidance and coordination without creating binding obligations, contributing to the proliferation of specialized treaty regimes with sector-specific mechanisms (Koskenniemi, 2007). This evolution led to what might be termed a legal-technical divide, wherein the normative foundations of international law—rooted in sovereignty, consent, and public deliberation—are increasingly displaced by functionalist rationales and technocratic processes. In this context, soft law has emerged as a preferred modality for regulating evolving sectors, such as digital governance and decentralized systems (Schultz, 2008), thereby reshaping the architecture and authority of the international legal order.

The increasing technical complexity of international law is further compounded by its growing fragmentation—an enduring trend that accelerated in the post–Cold War era. This fragmentation is driven by multiple, intersecting developments: the proliferation of specialized treaties and legal regimes, the diversification of actors in the international system, the ascendancy of regional organizations, and the influence of transnational entities such as non-governmental organizations, multinational corporations, and global standard-setting bodies (Odermatt, 2016). While this evolution has enabled more targeted and, at times, more effective regulatory responses in specific areas, it has simultaneously exposed the deep structural inconsistencies and normative dissonance within the international legal order (Hafner, 2004). The absence of a unifying framework has raised serious concerns about the coherence and legitimacy of international law as a system (Peters, 2017). In particular, the rise of self-contained regimes—regulatory spheres with their own institutions, procedures, and enforcement mechanisms—threatens to insulate areas of law from broader systemic oversight and accountability (Ajevski, 2014; Duong, 2024). Nevertheless, fragmentation may also be interpreted as a functional adaptation to a pluralistic international landscape, allowing legal regimes to evolve in response to the demands of a world increasingly governed by competing norms, diverse interests, and complex institutional arrangements (Peters, 2017).

A central consequence of the fragmentation of international law is the emergence of multi-level conflicts of law, manifesting both horizontally and vertically across legal systems. Horizontally, conflicts arise between distinct international or transnational regimes—often developed in isolation and without coordination—each claiming authority over overlapping subject matter. These conflicts typically take the form of "norm collisions," where two or more legal instruments prescribe incompatible obligations, making simultaneous compliance legally or practically impossible (Yip, 2025). For example, a state that is party to multiple international treaties may find itself legally bound to divergent standards, such as environmental protection measures that conflict with trade liberalization commitments (Vranes, 2006). Vertically, conflicts occur between international norms and regional or domestic legal systems. These tensions are especially pronounced in federated or supranational contexts such as the European Union, where regional legal orders may assert supremacy over international obligations or challenge their domestic implementation (Krieger, Lange and Aust, 2024). While such conflicts are

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particularly evident in the field of private international law, where jurisdictional pluralism is routine, they increasingly characterize public international law as well. Resolving these conflicts requires not only doctrinal finesse but also a political and institutional willingness to mediate competing claims of legal authority and normative hierarchy (Ucin, 2024).

The assumption that international law operates independently of politics is both empirically and theoretically untenable. While often framed as an objective, rules-based system, international law is deeply embedded in—and frequently shaped by—political processes. Treaty negotiation, ratification, and withdrawal are not neutral legal acts; they are expressions of state interests, often reflecting broader strategic, ideological, or economic considerations. Even the adoption of legal instruments ostensibly grounded in technical expertise is inherently political, as is the framing and adjudication of international disputes (Koskenniemi, 2017). Scholars have challenged the notion that international law is uniquely politicized by drawing parallels to domestic law-making, which is similarly situated within political structures (Koskenniemi, 2007). Nevertheless, international law is particularly vulnerable to political manipulation, given the absence of a central authority and the reliance on voluntary compliance. Sovereignty, territorial integrity, and historical grievances are all matters of intense political contestation, yet they are routinely cast in legal terms. Legal arguments are often deployed as instruments of diplomacy or resistance, rather than as neutral adjudicative tools. Moreover, the intentional breach of international obligations frequently functions as a form of political signalling, exposing the structural limitations of law in constraining state behaviour and reinforcing its instrumental character (Goldsmith and Posner, 2006).

The political role of international law is profoundly shaped by enduring ideological divisions among states concerning the purpose, values, and function of international legal frameworks. These divisions reflect fundamentally divergent visions about sovereignty, justice, and order in the global arena. Consequently, states frequently engage in contestations that reveal competing attempts to organize international relations in a manner conducive to their national interests. Some states advocate for reforming the existing legal order, which they perceive as privileging dominant powers at their expense. Others resist change, seeking to preserve the established system that secures their entrenched advantages. A distinct third cohort regards international law primarily as a protective mechanism, ensuring security and stability against external threats (Wright, 2017). Historically, the ideological confrontation of the Cold War epitomized these tensions, significantly impeding the progressive development of international law and undermining the consistent enforcement of established norms and procedures. It was not until the post-Cold War era, following the Soviet Union's collapse, that a renewed consensus allowed previously contested legal norms to regain traction (Reisman, 2017). Yet, the 21st century presents new ideological fractures that challenge the universality and legitimacy of the international legal order. The contemporary global milieu is characterized by pluralistic and often incompatible legal conceptions, which render the prospect of a unified, consensual international framework increasingly elusive (Wilk, 1951; Rosenfeld, 2008).

Achieving consensus among the diverse array of international stakeholders—encompassing both state and non-state actors—remains one of the most formidable challenges in the practice and development of international law. Consensus is widely regarded as the foundational principle underpinning the legitimacy and efficacy of the international legal order (Cronin, 2008). It serves not only as the mechanism through which decisions are made but also as the normative basis that fosters general agreement regarding the governance and functioning of the global system under public international law (Pascual-Vives, 2019). Yet, this reliance on consensus has attracted substantial critique. Scholars argue that it often perpetuates existing power asymmetries, privileging

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dominant actors and marginalizing less influential ones, thereby raising tensions with democratic ideals and human rights commitments (Krisch, 2014). The difficulties are compounded by persistent disagreements over suitable governance models across multiple regulatory layers, as well as divergent views on the appropriate timing, scope, and content of state obligations within particular issue areas (Weiss, 2000; Meguro, 2020). Moreover, even when consensus is reached, it tends to be precarious, as participants retain the capacity to withdraw their consent, thus threatening the durability and coherence of collective legal commitments (Weiss, 2011). These realities underscore the inherent fragility and complexity of consensus as the linchpin of international legal cooperation.

Participation within the international legal system remains a critical yet inherently fluid concept, as states and other key actors—such as international organizations and multinational corporations—retain the ability to withdraw their involvement at any time. This contrasts sharply with civil society organizations and the broader public, who face significant barriers to disengagement, despite the profound impact that global regulatory regimes exert upon their lives (Ebbesson, 1997). Increasingly, participation is understood not merely as a formal right but as a vital mechanism for fostering global cooperation and legitimacy (Voeten, 2013). Reflecting this shift, soft law instruments have emerged as important tools for expanding inclusion, providing space for marginalized groups, notably Indigenous peoples, and extending participatory rights to new actors such as non-governmental organizations (Koivurova and Heinamaki, 2006; Nowrot, 1999). Empirical evidence suggests that treaties dealing with less contentious issues generally attract broader participation compared to those imposing significant substantive commitments, including stringent monitoring and enforcement provisions (Bernauer, 2013). Moreover, while soft laws tend to garner greater participation than binding hard laws, their efficacy is often undermined by the absence of sufficient incentives to compel behavioural change by states (Von Stein, 2008). The increasing engagement of non-state actors introduces novel forms of influence and challenges longstanding principles of sovereignty, thereby generating tensions over the evolving nature of authority in the international legal order (Hollis, 2002).

Compliance with treaty obligations presents enduring challenges, largely due to the potential for divergent interpretations that depart from the drafters' original intent. Despite these difficulties, compliance remains widely recognized as a cornerstone of the effectiveness and legitimacy of international legal regimes (Howse and Ruti Teitel, 2010). This recognition has inspired various proposals, including the development of incentive-based reward systems aimed at promoting adherence to treaty commitments (Van Aaken and Simsek, 2021). Non-compliance stems from multiple sources: the practical necessity for governments to prioritize efficiency amid resource constraints; the inability of parties to fulfil their obligations; conflicting national interests that diminish the political will to remain bound; and the frequent use of ambiguous or vague treaty language that complicates interpretation and enforcement (Chayes and Chayes, 1993). At its core, compliance hinges on a rational cost-benefit calculus, weighing the domestic political costs of compliance against the reputational and material consequences of non-compliance (Kosar and Petrov, 2018). A state's desire to preserve its standing as a responsible and cooperative member of the international community often plays a pivotal role in this calculation (Mushkat, 2011). To address these complexities, mechanisms to manage and remediate non-compliance have been institutionalized (Fitzmaurice and Redgwell, 2000). Nonetheless, securing compliance from non-state actors remains a pronounced challenge, as these entities frequently evade accountability and resist adherence to established international norms (Jo and Thomson, 2014).

The challenge of ensuring compliance with international legal obligations is fundamentally exacerbated by the voluntary nature of state commitments under international law. While sanctions are theoretically available as enforcement tools, their

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practical application is fraught with difficulties: they are costly to implement, often politically unpopular, and frequently fail to produce the desired outcomes (Bradford and Ben-Shahar, 2012). Similarly, the use of positive incentives to encourage compliance encounters significant resistance at the domestic level, rendering such strategies both expensive and difficult to sustain. Aspirations or good intentions articulated by the international community and other stakeholders, without effective enforcement mechanisms, are insufficient to guarantee adherence to treaty obligations (Nagan and Atkins, 2001). The enforcement of international law largely depends on states' willingness to incorporate treaty commitments into domestic legal frameworks, a process reflecting the inherently decentralized nature of the international legal order and limiting the overall effectiveness of enforcement efforts (Hathaway, 2005). This decentralization is further complicated by the perception of enforcement as inherently confrontational, which may foster division and conflict rather than cooperation among states (Downs, 1998). The enforcement dilemma is acute in states with weak rule of law institutions and varies significantly between developing and developed countries, where capacity and political will differ markedly (Chimni, 2006). Ultimately, the preservation of a state's international reputation often emerges as the principal incentive for compliance with international obligations (Downs and Jones, 2002).

The principal difficulty in enforcing international legal rules stems from the absence of a centralized global authority vested with coercive power—a stark contrast to domestic legal systems where a sovereign state exercises comprehensive control and can enforce laws unilaterally (Reisman, 1985). While international bodies such as the United Nations Security Council wield significant influence, their authority remains circumscribed and subject to political constraints. In the international legal order, rules primarily function as frameworks to regulate relations among sovereign states, with international organizations possessing only limited delegated powers (Niemeyer and Henry, 2001). No global government exists to perform the full spectrum of sovereign functions; rather, international governance operates through a complex network of treaties that reflect the interests of consenting states, often with little regard for the rights or interests of non-participating third parties. The notion of an "international society" attempts to approximate a global community bound by shared norms, yet it lacks the institutional capacity to compel compliance or prevent treaty withdrawal (Posner, 2003). This structural limitation fuels ongoing debates about the efficacy of international law in directing state conduct absent an enforcement apparatus analogous to a domestic police force. Indeed, sanctions, when applied, are rare and generally reserved for extraordinary circumstances, underscoring the fragile nature of international legal enforcement (Goldsmith and Levinson, 2009).

International tribunals, including the International Court of Justice, the World Trade Organization dispute panels, and various arbitration bodies, constitute the most direct mechanisms for enforcing states' international obligations (Baxter, 1980). Over recent decades, the expansion of these adjudicative forums has produced what some commentators term "tribunal fatigue," reflecting concerns over the proliferation and growing reliance on such institutions (Alford, 2000). This multiplicity has generated significant challenges, including overlapping jurisdictions, conflicting jurisprudence, forum shopping, and disputes over institutional authority, all of which risk fragmenting the coherence and predictability of international law (Caminos, 2013). Moreover, the effectiveness of international tribunals varies markedly, with some institutions commanding greater legitimacy and influence than others. Judicial independence remains a foundational concern, as impartiality is indispensable to the credibility and authority of these bodies (Posner and Yoo, 2005). Although tribunal rulings are legally binding on states that consent to adjudication (Guzman and Meyer, 2009), enforcement is often problematic. Notably, powerful states may refuse to participate or decline to comply with adverse

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decisions, undermining the tribunal's authority and the broader enforcement architecture. This dynamic reveals the limits of international adjudication in constraining state behaviour, especially where geopolitical interests and national sovereignty prevail.

Despite the existence of international laws and adjudicative bodies, states that choose to breach their treaty obligations frequently evade meaningful sanctions or accountability. Ensuring state responsibility within a strictly legal framework remains an elusive goal, often shifting the locus of enforcement to the court of public opinion, whose influence is nonetheless limited and inconsistent. This persistent enforcement gap has prompted calls for the establishment of clearer, more robust accountability mechanisms by global institutions (Efrony, 2024). Yet, the very concept of accountability remains conceptually fraught and ambiguously defined, particularly in relation to the principle of state responsibility under international law (Lorenzo, 2024). The inadequacy of current legal frameworks is starkly illustrated by the failure to prevent or adequately address mass atrocities and genocides, as recent conflicts—including the Ukraine–Russia war and the Israeli–Gazan crisis—demonstrate, where victims are often denied effective redress (Jacob, 2024). Fundamental obstacles to enforcing accountability include entrenched norms of state sovereignty and non-interference, which constrain external intervention (Soltani, 2024). Additionally, evolving considerations such as national security, especially amid rapid technological advancements, further complicate efforts to hold states to account (Pawlak, 2023). These challenges underscore the limits of existing international legal regimes in delivering justice and upholding the rule of law on the global stage.

The incorporation of international legal obligations into domestic legal systems presents profound challenges, reflecting the complex interplay between growing regulatory demands and domestic political resistance to the unconditional primacy of international law (Peters, 2009). The relative ease with which international norms are assimilated depends significantly on their source—be it treaties, customary international law, general principles, or judicial decisions—each presenting distinct degrees of compatibility with domestic frameworks (Shelton, 2012). While some international norms find ready acceptance, others, particularly those emanating from authoritative bodies such as the United Nations Security Council or international courts, often provoke legislative and political opposition (Owada, 2015). This tension is especially pronounced in the domain of international human rights law, where sensitivities around sovereignty and national identity impede seamless domestic adoption (Klein, 1988). The accelerating forces of globalization have intensified these challenges by creating interdependent economies that demand greater harmonization of legal standards across borders. Within this milieu, global administrative law has gained prominence, yet the ascendancy of international agencies has, paradoxically, diminished the role of domestic institutions and curtailed public participation in regulatory processes. This deficit is compounded by the opaque operations of many international organizations and mounting concerns over judicial independence, as courts increasingly face pressure to conform to executive prerogatives (Feldman, 2013).

At its core, the enforcement and development of international law are inextricably bound to the dynamics of power, producing a complex and often fragmented global legal landscape. Weiss's characterization of this milieu as a "kaleidoscopic world" aptly captures the fluidity and contestation surrounding emerging norms, many of which remain unsettled and unevenly applied (Weiss, 2020). While normative legal scholarship and idealist perspectives often depict international law as an objective, neutral framework grounded in universal principles and institutional structures (Krisch, 2005; Hathaway, 2005), the practical reality diverges sharply. Power politics invariably shape the interpretation and application of international law, which continues to function fundamentally as a tool for advancing state interests rather than as an impartial arbiter. Public international law, despite its aspirational rhetoric, has limited capacity to constrain the exercise of power on the global stage (Steinberg and Zasloff, 2006). The distribution of

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power among international actors remains uneven and dynamic (Howse and Ruti Teitel, 2010), with institutions such as the United Nations Security Council exemplifying entrenched hierarchies where dominant states maintain disproportionate influence and control (Brownlie, 1998). Consequently, the interplay of law and power remains central to understanding both the promise and limitations of the international legal order.

This special issue addresses these pressing concerns by examining the Belt and Road Initiative (BRI) and its influence on the development of international law and legal frameworks. Focusing specifically on the Middle East and North Africa, this collection critically explores how the BRI shapes regional legal landscapes, promotes regulatory convergence, and impacts sovereignty and governance. By situating the BRI within broader international legal debates, the issue offers nuanced insights into China's role in advancing—or contesting—the evolution of global legal norms.

In the opening article, "*China's Path to Legal Pluralism: Transplants and the Belt and Road Initiative*," Davide Zoppolato and Paolo Davide Farah provide a nuanced analysis of China's state practices and their influence on other legal systems. The authors explore the distinctive features of the Chinese legal order and its complex engagement with international law, emphasizing how territorial proximity, ideological affinity, political dynamics, and economic interests shape this interaction. Their study offers valuable insights into the evolving legal pluralism emerging under the BRI and its broader implications for global legal governance.

In his article, "*China's Belt and Road Initiative is Not a Novel Approach to International Law-Making*," Imad Antoine Ibrahim offers a comparative analysis of China's legal influence in the Arab world alongside European and American models. Ibrahim contends that the BRI utilizes a combination of soft and hard law instruments comparable to those employed by Western powers. However, he underscores the distinctly Chinese elements of pragmatism and flexibility that characterize the Initiative, reflecting China's unique legal culture and strategic objectives within the evolving landscape of international law-making.

In their article, "*The Digital Silk Road: 'Tech-Diplomacy' as a Paradigm for Understanding Technological Adoption and Emerging Digital Regulations in MENA*," Andrew Dahdal and Adel Abdel Ghafar analyse China's expanding digital influence in the Middle East and North Africa. They contextualize this shift within the broader decline of American dominance and the concurrent rise of a Chinese-led legal framework. Focusing on key regulatory areas such as data protection, cybercrime legislation, and digital economic integration, the authors elucidate how the Digital Silk Road is reshaping regional governance and legal norms in the rapidly evolving digital landscape.

In "*Sino-Arab FTAs, AI Diplomacy and the Realisation of AI and Sustainability Goals in the Middle East*," Jon Truby critically examines the trade agreements between China and Arab states. Truby underscores the imperative of integrating both trade and non-trade dimensions—particularly artificial intelligence and sustainability objectives—within these negotiations and associated conventions. He argues that current frameworks largely fail to harness these synergies, thereby limiting the potential for comprehensive and effective cooperation. This analysis highlights significant gaps in the alignment of economic and technological agendas, calling for a more holistic approach to Sino-Arab diplomatic and legal engagement.

In "*MENA Businesses and Global Trade: Conflicting Rule of Law Approaches and Transaction Costs*," Henrik Andersen critically examines the application of the rule of law in the Arab world, particularly within the context of international trade. Andersen's analysis considers the interplay between regional legal frameworks and global institutions such as the World Trade Organization, the European Neighbourhood Policy, and China's BRI. The study identifies both strengths and significant deficiencies in the region's legal environment, emphasizing the consequential transaction costs borne by businesses. Andersen ultimately

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calls for substantive reforms to enhance legal certainty and facilitate more effective integration into the global trading system.

In "*The Impact of the Belt and Road Initiative on Indigenous Communities in the Middle East: The Precarious Foundation of the Right to Consultation*," Naimeh Masumy critically examines the shortcomings of domestic legal frameworks and economic partnership agreements in adequately protecting Indigenous communities affected by the BRI. Masumy argues that existing mechanisms fail to secure meaningful consultation rights, thereby exacerbating vulnerabilities. She advocates for the development of an alternative legal framework that not only strengthens but also ensures effective implementation of the right to consultation. This approach aims to foster greater inclusivity and practical protections for Indigenous peoples within the evolving geopolitical and economic landscape.

In their article, "*China's Belt and Road Initiative and Its Impact on the Energy Independence of the European Union*," Paolo Davide Farah, Tivadar Ötvös, and Davide Zoppolato adopt a comprehensive approach that situates the BRI within the context of European energy policy. Through comparative analysis, they illuminate the strategic implications of the BRI for the EU's pursuit of energy independence, highlighting both challenges and opportunities. Their study provides a framework for assessing similar energy-related initiatives linked to the BRI in the Middle East and North Africa, offering critical insights into the intersection of infrastructure, geopolitics, and regional energy governance.

The legal implications of the BRI mirror longstanding challenges in international law, notably the increasing technical complexity that generates fragmentation across legal regimes and conflicts between divergent frameworks. Chinese legal norms, deeply informed by political and ideological considerations, require the explicit consent of host states for incorporation into domestic systems. In the absence of such approval, states often resist external legal influences, selectively adopting Chinese principles while relying on their national courts as protective mechanisms. This dynamic highlights ongoing tensions between state sovereignty and the expanding legal reach of powerful actors within the global order.

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