

# International Law's Role in a Strat- Dominated World

"Even the finest warrior is defeated when he goes against natural law. By his own hand he is doomed and all creatures are likely to despise him."

by Arthur Appleton and Justin Frosini



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## Introduction

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Public international lawyers imagine themselves at the center of the moral universe, where international and natural law, international institutions, and progressive democratic values radiate to all quadrants. By definition we are liberalists. We favor democratic values, free trade, international and regional institutions, and international dialogue. Institutions like the United Nations, the World Bank, and the World Trade Organization reflect our philosophical ideals.

At the moment, public international law is more like gravity – given the right

conditions (emergencies in international relations) we attract sovereign states to our point of view, but for now we struggle to hold what remains of liberalism in place. In stark contrast to the post-WWII period, we have become instruments of the status quo. Our efforts to promote liberalism are in tatters. Progressive ideals are in decline.

Larger forces are at work reshaping the international order. Their core is composed of realists, most obviously from China and Russia, who see international relations from a state-centric perspective where wealth and power prevail. The United States is not outside this universe. The Trump administration attacked liberalism. Globalization became a dirty word and the United States turned its back on regional trade agreements and the international institutions that America helped to create.

Russian aggression against Ukraine, the failure of North Korea to abide by UN resolutions, the international community's difficulty to address climate change, and US steps to undermine the World Trade Organization's judicial mechanism, are emblematic of the rise of realism. These actions raise difficult questions about the authority of international institutions and the liberalist legal philosophy that underpins them. Abba Eban looks increasingly right when he remarked that international law is "the law which the wicked do not obey and the righteous do not enforce."<sup>1</sup>

In this essay, we argue that even in a world dominated by realists, international law has an important role to play in promoting peace and prosperity, preserving international security, and addressing global issues such as climate change. We further argue that international law, while often aspirational, amorphous, imperfect, and lacking dynamic enforcement capability, merits study by international relations students and professionals as a policy tool that even realists rely upon when it suits their interests.

## International Law and the Russian Invasion of Ukraine: National Sanctions

The Russian invasion of Ukraine upended the world order and brought into question the viability and value of international law. Yet, when we study the totality of events, the coalition opposing the Russian Federation is united by one important factor – a belief in right and wrong reflected in the Geneva Convention of 1949,<sup>2</sup> and the Additional Protocol of 1997.<sup>3</sup> Much of the criticism directed at Russia is couched in the form of Russia's violation of international humanitarian law (the laws of war). Violations include: indiscriminate shelling of civilian targets, torture, rape, destruction of hospitals, pharmacies, and historical patrimony including churches; as well as seizure of nuclear power plants, mass deportations, and the use of indiscriminate weaponry such as anti-personnel mines, cluster bombs, and phosphorus shells. The members of the United Nations General Assembly moved quickly to "deplore in the strongest terms" Russian aggression against Ukraine and to condemn Russia's violation of international humanitarian law and its human rights abuses.<sup>4</sup> Western countries have used international law strategically to build a consensus to oppose Russian aggression. International law, derived from the Hague and Geneva Conventions, has served as a rallying point to build a coalition and impose sanctions against Russia, and to supply arms to Ukraine.

## North Korean Nuclear and Missile Tests: International Action

North Korea's violation of its inspection commitments under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which it signed in 1985,<sup>5</sup> led the International Atomic Energy Agency to find that North Korea was not in compliance with its nuclear Safeguards Agreement and referral of this matter to the United Nations Security Council.<sup>6</sup> Since 2006 the United Nations Security Council has adopted nine resolutions directed at North Korea in response to its nuclear activities and missile tests.<sup>7</sup> These resolutions call upon the DPRK to halt its nuclear and missile programs, and contain provisions regarding monitoring, inspection of North

Korean vessels, seizure of illicit shipments, and other economic sanctions, targeting, in particular, the supply of goods to North Korea's military sector, limiting petroleum exports to North Korea, and restricting North Korean mineral exports. Although the Security Council's resolutions have not succeeded in stopping North Korea's nuclear and missile programs, they have helped to unite international opposition to North Korea's nuclear and missile programs and serve as a legal basis for sanctions imposed against North Korea by the United States, the EU, Russia, Japan, China Australia, and other countries. The international economic and political sanctions imposed by the international community against North Korea are rooted in international law – treaty violations and Security Council decisions.

## Climate Change

With 198 parties,<sup>8</sup> the 1992 United Nations Framework Convention on Climate Control (UNFCCC), and its progeny<sup>9</sup> set the international agenda for greenhouse gas reductions and eventual stabilization. Although aspirational and unenforceable, these agreements nevertheless illustrate the ability of international law to serve as a platform for coalescing world opinion, shaping international norms, and diffusing agreed upon goals once norms are developed. The power of international law to build a consensus and underpin international action should not be underestimated, as illustrated by the consensus achieved among western states in the aftermath of Russia's invasion of Ukraine and the international sanctions imposed against North Korea. What makes achieving a climate change consensus more difficult is that we are dealing with the creation of international norms, as opposed to measures (sanctions) enacted based on already existing norms. Unfortunately, this means that the pathway to international action will take longer as it involves risk assessment, consensus building, and the national political action necessary to address and manage climate change.

## Trade Policy

The treaty establishing the World Trade Organization has cemented in place trade rules involving goods, services, and intellectual property. In a period marked by anti-globalization sentiment, the WTO is emblematic of the power of international law to preserve stability – the economic status quo through which WTO members continue to reap the economic gains from trade. This same treaty has a strategic dimension much appreciated by politicians and the business community alike. This is most visible in the implementation of sanctions based on national security concerns, and the use of trade remedies (anti-dumping duties and countervailing duties) to combat "unfair" trade practices. It is also visible in the growing calls that the trade regime be used to advance other social norms favored by international lawyers, including human rights, labor rights, and environmental law, by conditioning trade on meeting established international norms in these domains. Nevertheless, the trade regime is an imperfect tool in a realist's arsenal, as illustrated by the WTO's consensus practice, which allows any member to block certain WTO actions, including the appointment of its Director General and Appellate Body judges, and trade rules that constrain member action.

## Conclusion

In a world dominated by Realpolitik it is no surprise that academics focus on strategic studies. Instead, what is noteworthy is the extent to which international law enters into strategic thought. Even if international law does not bind political actors to the degree liberalists would prefer, and is frequently devoid of meaningful enforcement routes it does serve to: (i) coalesce rules of international behavior, (ii) construct an international consensus, (iii) chart a moral roadmap, and (iv) establish a basis for economic and political measures.

Although international law, perhaps owing to its roots in natural law, forms a moral center that is capable of steering society in a peaceful, prosperous, and progressive direction, it is only one arrow in a politician's strategic quiver. Until international law earns greater respect and a larger following from political leaders and strategic

thinkers alike, and more adherents from the public at large, it will remain a moral compass supporting strategic options and not a guiding light. In short, international law is an important but undervalued policy tool – not so much based on its effectiveness, but instead on its ability to shape and reshape public opinion and support the strategic agenda of sovereign states.

## About the Authors & Footnotes

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- *Subtile attributed to Lao Tzu, Tao Te Ching, Verse 31.*

## Footnotes

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