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STRENGTHENING THE BINDING FORCE OF INTERNATIONAL LAW IN THE 21ST CENTURY

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ABSTRACT

This article examines the causes of low enforceability of international law and explores ways to strengthen its binding force. It argues that the absence of a central sovereign authority, the principle of state sovereignty, and weak enforcement mechanisms limit the effectiveness of international legal obligations. The role of power politics, selective application of sanctions, and ambiguity in legal norms further weaken compliance. Recent state practice, including actions by the Trump administration toward the ICC, UNRWA, and multilateral agreements, illustrates these dilemmas in contemporary international relations. The article suggests that clearer treaty design, domestic incorporation, consistent enforcement, and reputational costs can enhance compliance. Capacity building and regional integration are also identified as key tools to improve implementation. It concludes that while coercion remains limited, international law gains binding force when states perceive adherence as beneficial to stability and cooperation. Ultimately, maintaining the authority of international law requires balancing respect for sovereignty with stronger accountability and political will.

Keywords: *ICC, UNRWA, ICJ, PACTA SUND SERVENDA*

INTRODUCTION

With regard to the actual position concerning the enforceability of the international legal system, there has always been a respectable body of international lawyers that has both considered enforceability to be a necessary characteristic of any system of law, properly so called, and has also believed that international law possessed this characteristic, even if only in a rough and rudimentary form. Oppenheim, for instance, whose treatise may be cited because it constitutes so very much the practitioner's Bible, so to speak, begins by stating (8th ed., p. 8, 4 8) that a characteristic of rules of law is that they shall, if necessary, be enforced by external power." He then (ibid., p. 10, 4 6) defines law as "a body of rules for human conduct within a community which, by common consent of this community, shall be enforced by external power." In support of this dictum, Oppenheim cites Westlake and Travers Twiss. He then goes on to express the view that international law is a system that is both intended by States to be enforceable, and is actually enforceable, if necessary by a process of self-help on the part of States. Finally (ibid., p. 14, 4 O), he says that, subject to the provisions of such instruments as the Charter of the United Nations and the so-called Kellogg Pact of 1928, "war is the ultimate instrument for defending violated legal rights." Nor are the writers of Oppenheim's generation alone in putting forward such a view. For instance, so great

a modernist as Kelsen seems, in one of his latest works, Principles of International Law, published in 1952, to incline towards a similar view. He says, on p. 5 of this work, that,"law is a coercive order. It provides for. socially organised sanctions, and these can be clearly distinguished from a religious order on the one hand and a merely moral order on the other hand. As a coercive order, the law is that specific social technique which consists in the attempt to bring about the desired social conduct of men through the threat of a measure of coercion which is to be taken in case of legally wrong conduct."

Here Kelsen's view may be recalled, that war is either an international sanction or an international delinquency. In the work cited above, he goes on to point out that the effect of recent instruments, such as the Charter of the United Nations-at any rate as he and many others interpret it-is to reduce the legitimate role of force to selfdefence, and counter-action against aggression or breaches of the peace. But he makes no reference to one rather odd result of this, namely that whereas international law now forbids the use of force except as a counter-measure to an illegality, it by no means permits it in every case of illegality, but on the contrary, confines it to a very limited class of illegalities only. One might sum the matter up by saying that the provisions of the Charter of the United Nations relating to aggression, breach of the peace, and the threat or use of force-at any rate as they are frequently interpreted-go far towards rendering unenforceable by direct action the whole of international law, except that one part of it that now prohibits resort to war or the use of force except in self-defence or to counter aggression. If this is the position, then it must be asked how far the international society has, in respect of breaches of international law generally, provided any new sanction to take the place of the former sanctions which, however crude and unsatisfactory their operation, did in some sort exist. It is sometimes thought that the Charter of the United Nations provides such a substitute, or at any rate the beginnings of one, particularly by means of those provisions which enable collective action of a forcible kind to be taken against aggression or breach of the peace. But this involves a misconception as to the scope of these Charter provisions. It is not against law-breaking as such that they are directed, but against that particular type of law-breaking that takes the form of an act of aggression or of committing a breach of the peace. Now it is possible to violate a large part of international law in all sorts of different ways, and to commit breaches of treaties right and left, without ever having recourse to aggression.

The Security Council has power under Article 89 of the Charter to determine the existence not only of an act of aggression or breach of the peace, but also of a threat to the peace, and to take consequential counter-action-and therefore if a violation of international law occurred of such a character as to constitute, or give rise to, such a threat, then, even if no one country was actually threatening another, the Council could act. But-and this is the point-under this same Article 89 and the rest of Chapter VII, it can only act in order to " maintain or restore international peace and security.)) This is not the same thing as acting to settle the dispute as such, or to prevent or punish the actual violation of international law involved, though indirectly those results might in certain cases be achieved.

Research Methodology.

This article uses a doctrinal and qualitative research methodology based on secondary sources.

It analyzes treaties, UN resolutions, ICJ and ICC judgments, and scholarly works to examine how international law is enforced.A historical approach is applied to trace the development of enforcement mechanisms from customary law to modern institutions.Comparative analysis is used to evaluate enforcement between state-based systems and international bodies.Case studies of major disputes and compliance issues are reviewed to assess practical effectiveness.The study also examines the role of sanctions, arbitration, and state consent as tools of enforcement.Limitations of sovereignty and lack of a central enforcement authority are critically evaluated through legal analysis.Thus, the methodology combines legal interpretation with case-based evaluation to determine the enforceability of international law in practice.

Significance.

The enforceability of international law is significant because it determines whether states actually comply with treaties, conventions, and customary rules.It maintains international peace and security by providing mechanisms to hold states accountable for violations. Without enforceability, international law would remain only theoretical and lack authority in resolving disputes between nations.It protects human rights, trade, and the environment by ensuring that agreements are implemented beyond mere promises.The study of enforcement also highlights the role of institutions like the ICJ, ICC, and UN Security Council in global governance. It is significant for understanding how sanctions, diplomacy, and arbitration work as alternatives to a central police force. Thus, examining enforceability is essential to evaluate the real effectiveness and future credibility of international law.

Factors which reduces binding nature of International Law.

International law governs the conduct of states, international organizations, and in some cases individuals, across borders. It covers peace and security, human rights, trade, the environment, and armed conflict. Yet unlike domestic law, it is widely observed that international law suffers from low enforceability. This does not mean states ignore it completely. Most states comply with most rules most of the time. But when violations occur, the mechanisms to force compliance are weak, slow, and politically dependent. Understanding why enforceability is low requires looking at the structure of the international system, the nature of sovereignty, the design of institutions, and the realities of power politics.The first and most fundamental cause is the absence of a centralized sovereign authority above states. In domestic legal systems, the state has a monopoly on the legitimate use of force. Police, courts, and prisons exist to investigate violations and impose consequences. At the international level, there is no world government. The United Nations was created to coordinate, not to command. The Security Council can authorize force, but it is composed of states that retain veto power. The General Assembly can pass resolutions, but they are generally recommendations. The International Court of Justice can issue judgments, but it has no bailiff to carry them out. Because law without a central enforcer depends on voluntary compliance, its binding force is inherently limited. States remain the ultimate authors and subjects of the law, and they have not delegated ultimate authority to any body above them.Closely linked to this is the principle of state sovereignty. Sovereignty means that each state is legally equal and has supreme authority within its own territory. This principle is embedded in the UN Charter and in customary law. As a result, states must consent to be bound by treaties and to accept the jurisdiction of international courts. The ICJ only hears cases when both parties agree. The ICC can only prosecute nationals of states that are members, or when the Security Council refers a situation. Many states, including major powers, have not joined key treaties or have attached reservations that limit obligations. This opt-in structure means international law cannot be imposed on a reluctant state the way domestic law can be imposed on a citizen. Sovereignty thus creates a legal firewall against external enforcement.A third cause is the lack of effective and independent enforcement machinery. In municipal systems, enforcement is routine. In international law, enforcement is exceptional and political. The main tools are diplomatic pressure, economic sanctions, countermeasures, and in rare cases collective security action. Sanctions require coordination and often cause collateral harm to civilian populations, making states reluctant to use them. Military enforcement requires Security Council authorization, but the five permanent members can veto any action, including action against themselves or their allies. This veto structure was a political compromise to ensure great power participation, but it paralyzes enforcement in precisely the cases where it is most needed. Arbitration and adjudication can produce awards, but winning a case does not guarantee payment or compliance. The losing state must choose to comply, and if it does not, the winning state must mobilize other states to apply pressure.The role of power and national interest is a fourth major factor. International law operates in an anarchic system where survival and interest drive state behavior.

Powerful states have greater capacity to resist enforcement and to shape the rules. They fund international institutions, host headquarters, and influence appointments. When their vital interests are at stake, they are more likely to disregard legal obligations, and weaker states are less able to hold them accountable. Conversely, weaker states may comply more often because they depend on trade, aid, and legitimacy. This asymmetry means enforcement is not applied evenly. Selective enforcement undermines the perception of law as neutral and reduces the incentive for all states to comply. Realism in international relations thus explains part of the gap between law on paper and law in practice.Fifth, the decentralized nature of law-making and interpretation creates ambiguity and disagreement. International law comes from treaties, custom, general principles, judicial decisions, and the writings of scholars. Unlike a legislature that passes clear statutes, this process produces norms that are often broad, open-textured, and subject to different readings. States disagree on what the law requires in concrete situations, from the use of force to the scope of human rights. Without a single authoritative interpreter, each state can advance its own legal justification. This ambiguity makes enforcement harder because it is difficult to prove a clear violation that all other states will recognize. The lack of precedent binding on all courts also means that jurisprudence develops unevenly.Sixth, the design of compliance mechanisms in treaties themselves is often weak. Many multilateral agreements were negotiated to achieve the widest possible membership, which meant watering down obligations and omitting strong enforcement clauses. Trade law under the WTO is an exception with a relatively strong dispute settlement system, but even there the Appellate Body has faced blockages and retaliation is the ultimate remedy. In human rights and environmental treaties, monitoring bodies can issue reports and recommendations, but they cannot impose fines or imprisonment. Reporting is periodic and relies on state self-reporting. Verification mechanisms for arms control depend on inspections that states can limit. Because negotiators anticipated sovereignty concerns, they built in flexibility, which reduces enforceability.Seventh, the absence of direct effect for individuals contributes to weak enforcement. In domestic law, individuals can sue to enforce rights. In international law, individuals historically had no standing. Regional systems like the European Court of Human Rights and the Inter-American system have changed this to some degree, but globally the individual remains dependent on their state to bring a claim. The ICC allows victim participation but cannot compel arrests. Transnational corporations are increasingly regulated, but they are not direct subjects of most international treaties. Without a broad base of private litigants, violations are less likely to be detected and challenged quickly.Eighth, political and economic interdependence creates both incentives to comply and reasons not to enforce. States are linked by trade, investment, migration, and security. This interdependence makes cooperation valuable, so states generally obey the law to maintain reputations and relationships. But it also means that punishing a violator can hurt the punisher. Cutting off trade with a major partner over a legal violation imposes costs at home. States therefore often choose quiet diplomacy over public confrontation. The desire to preserve broader cooperation leads to tolerance of minor violations and to compromises that stop short of full enforcement. This pragmatic calculus keeps the system functioning but dilutes strict legal accountability.Ninth, cultural and legal diversity affects how norms are internalized. States have different legal traditions, political systems, and understandings of rights and duties. What one state sees as a clear breach, another may see as a legitimate policy choice. This diversity slows the formation of custom and makes consensus on enforcement difficult. It also means that legitimacy, which is crucial for voluntary compliance, is contested. Law that is perceived as externally imposed or culturally alien is less likely to be followed without coercion.Finally, resource and capacity constraints matter. Many states lack the technical capacity to implement complex treaty obligations on climate, health, or trade. Enforcement is not just about punishing bad actors, it is also about helping states meet their commitments. International institutions are underfunded and understaffed compared to the scope of their mandates. Fact-finding missions,

monitoring, and technical assistance are limited. When capacity is low, non-compliance may not be willful, but the result is the same: the law is not effectively realized.Taken together, these causes explain why international law relies more on consent, reciprocity, reputation, and retaliation than on direct coercion. The system was designed this way deliberately to secure state participation. The trade-off is clear: broader membership and legitimacy in exchange for weaker enforcement. Over time, practice has developed substitutes. Reputational costs, shaming through public reports, targeted sanctions, asset freezes, and arbitration awards all create pressure to comply. Regional integration projects have gone further by pooling sovereignty and creating stronger courts. Technology is also changing the landscape, making violations more visible and enabling new forms of accountability.Low enforceability does not mean international law is irrelevant. Most trade is conducted under WTO rules, most states respect diplomatic immunity, and most treaties are implemented domestically. But the structural causes above mean that enforcement will remain uneven and political. The central challenge is to strengthen compliance without undermining the sovereignty that makes states willing to participate in the first place. That balance is what continues to define the effectiveness and limits of international law today.

Set back on international law under the Trump administration (2025-2026).

A major dilemma is the administration's renewed campaign to isolate and sanction the International Criminal Court, including travel bans and asset freezes on ICC judges and prosecutors after the court issued arrest warrants for Israeli leaders.The ICC and three of its judges have responded by suing Trump in US federal court, arguing the sanctions are unlawful extrajudicial pressure.The administration also reversed nearly 80 years of US practice by arguing in April 2025 that UNRWA does not have absolute immunity, exposing UN officials and agencies to US civil litigation.On trade, the administration imposed new 10%-12.5% tariffs on 60+ countries citing forced labor, prompting 25 US states to sue claiming the tariffs exceed presidential authority under IEEPA.It has stepped back from international environmental cooperation, rolling back participation in the UN climate regime and cutting support for conservation programs.

Immigration policy has raised non-refoulement concerns, with deportations to South Sudan, Eswatini and Ghana despite court orders protecting some individuals from return to risk of torture.

Experts describe a broader "sovereigntist" approach: withdrawing from multilateral commitments, obstructing the WTO Appellate Body, and pausing WTO contributions.Critics argue this pattern of disregarding rules and alliances undermines the post-WWII rules-based order, especially around use of force, territorial integrity, and conduct in war.

International Court of Justice.

There is, however, another organ of the United Nations, of a different and specifically legal character, namely the International Court of Justice, which, potentially at least, can play a decisive part in the enforcement of international law. But the Court can only function with the consent of the parties to 'any particular dispute, given either ad hoc for the purposes of that dispute, or generally and in advance for all disputes, or for one or more classes of disputes, and with or without certain reservations. To the extent that States do confer jurisdiction upon the Court or some other tribunal, the enforcement of international legal rights, and the redress of international legal wrongs, can be said to be, in practice, a reality, and perhaps the only reality of that kind at present contained in the international legal system. It may be objected that the difficulty is only removed a stage further back, for it is not enough for a court to adjudicate and give judgment -its decisions must also be carried out and, if necessary, imposed upon the parties; and it may be said that there is no guarantee that the decisions of the International Court, or other international tribunal, will be carried out in fact, and that there is no machinery for enforcing them if they are not. But while this would be correct in a sense, it would give a misleading picture of the position. The authority of a decision of the International Court is very great, and in practice it is extremely difficult for the parties not to accept, or to refuse to act in accordance with such a

decision, or, indeed, the decision of any other international tribunal to which they have submitted their dispute. This is demonstrated by experience, for in all the fairly long history of international arbitration tion and adjudication, going back now perhaps 150 years, in th course of which many cases have been submitted to international tribunals of all kinds, there have been very few instances in which the parties refused to accept the decision of the tribunal, or to act in apcordance with it-so few indeed that these exceptional cases could almost be numbered on the fingers of one hand. Nor is it altogether true now, so far as the International Court is concerned, to say that no machinery exists for enforcing its decisions. Article 94 of the United Nations Charter provides that if a party to a dispute fails to perform the obligations incumbent on it under a judgment rendered by the Court, the other party may have recourse to the Security Council-which is then empowered to " decide upon measures to be taken to give effect to the judgment." Of course, this only goes part of the way, for the Security Council may fail to act, or its action may be ineffective. Still, it does constitute in some sort the beginnings of a mechanism for the enforcement of international law as such. It can be concluded, therefore, that the process of adjudication or arbitration by international courts and tribunals, and in particular the International Court of Justice, offers a real way by which international law, and international rights and obligations generally, can find enforcement-a way of which greater use ought to be made. Judge Lauterpacht in his book The Functions of Law in the International Community, has expressed the view that States ought to regard themselves as being under a duty to submit disputes to adjudication; for if States are bound by international law, as they profess to be, they cannot at the same time set up to be final judges or arbiters of what that law is. Only courts can do that. But, in the international field, courts can only do it if they are allowed to. What then is the present position? It is not very satisfactory. Out of some 80 independent States in the world today (not all of them, of course, members of the United Nations), only about half have signed and ratified the so-called " Optional Clause ') accepting the compulsory jurisdiction of the International Court at The Hague, and then often only with extensive reservations. During the ten years of its existence, this Court has had far fewer matters submitted or referred to it than did its predecessor, the Permanent Court, in the corresponding period from 1920-1980; and the number of matters that go to the International Court seems to be growing less. Nor does the United Nations itself seem particularly eager to use the Court. In ten years, the Assembly has only on nine occasions requested an Advisory Opinion from the International Court; and the Security Council not once.

Problems of Binding force of International Law.

It must be concluded that although the international order may have made some attempt at progress in repressing or countering that particular type of illegality that consists in armed aggression or breach of the peace, it has not yet made much progress in the enforcement of international rights and obligations generally, or of international law as such. It now frowns on self-help, without, however, as yet having put anything in its place. It is obvious that such a situation is unsatisfactory. Fortunately, there can be set against it not only the fact that international law has never, in practice, been more than partly dependent for its authority on the possibility of its physical enforcement, but also the principle that no system of law depends, or can, in the last resort, depend for its authority solely on the chances of enforcement. If it did, it could never in practice be enforced. The assumed certainty of enforcement in the national society masks the fact that, in general, the law does not have to be enforced, not so much because it is taken for granted that it would be, but because it commands in practice the general assent or tolerance of the community. The real foundation of the authprity of international law resides similarly in the fact that the States making up the international society recognise it as binding upon them, and, moreover, as a system that ips0 facto binds them as members of that society, irrespective of their individual wills. But this is not the end of the matter. Just as in the national society the law would not command the assent of the individual unless it were felt to be binding precisely because, and for no other reason than that it was the law, so equally international law could derive

no authority from its acceptance by States as binding, or States would not give that acceptance, unless it were felt by them to be in fact inherently binding. There is, however, this difference between the national and the international position : in the national society, the individual has, normally, no difficulty in accounting for his feeling that the law is binding on him-for instance, because it has been enacted by the proper authority; whereas it is less easy -in fact it is very difftcult-in the international field, to say precisely what it is, in the ultimate and juridical sense, that makes international law a binding system that States have a duty to conform to, and which, moreover, makes that duty a legal and not merely a moral or social duty. This is the problem that has engaged the attention of many learned jurists and great thinkers, and the literature of the subject is vast; but if one studies that literature even a little, it is difilcult to avoid the impression that what is being pursued is a sort of will-o'-the-wisp, an ignis fatuus that only recedes further into the distance as one approaches it, and that can never actually be reached. Consider how the matter might present itself to a stranger in these fields of thought. He might begin with the convenient and comfortable proposition, which has commended itself to many international lawyers, that the consent of States in one form or another, express or tacit, or merely by way of acquiescence, is the source of the validity of the rules of international law, in the sense of constituting what makes them binding. But further reflection would soon convince him that this cannot be so, and that while consent may determine the content, scope, and character of a given rule, and may be the means of bringing it into operation, it cannot per se be,the reason why the rule is binding. As Verdross, Brierly and others have conclusively shown, it is not consent, as such, that creates the obligation, though it may be the occasion of it. It is a method of creating rules, but it is not, in the last resort, the element that makes the rules binding, when created. In short, consent could not, in itself, create obligations unless there were already in existence a rule of law according to which consent had just that effect.

How to International Law can be restored.

To maintain and strengthen the binding force of international law we have to address the fact that there is no central world government to enforce it, so its power comes from consent, reputation, reciprocity and consistent practice rather than coercion. The first step is to improve how treaties are made. When obligations are drafted in clear, specific language with defined timelines and measurable standards, states have less room to claim ambiguity. Reducing broad reservations and exceptions also helps, because when states opt out of core provisions the law becomes fragmented. Building compliance and reporting mechanisms directly into treaties from the beginning makes monitoring routine instead of political.The second step is to make consequences more credible and more even. At present enforcement depends on diplomatic pressure, economic sanctions, countermeasures and Security Council action, but these tools are applied selectively. Reforming the Security Council veto or creating agreed procedures for when force or sanctions can be used would reduce paralysis in cases involving major powers. Strengthening the International Court of Justice and the International Criminal Court by increasing state cooperation on arrests, evidence sharing and execution of judgments would close the gap between a legal decision and its implementation. Targeted sanctions, asset freezes and travel restrictions work best when they are predictable and applied to all violators, not just weaker states.Third, international law becomes more binding when it is absorbed into domestic legal systems. When states incorporate treaties directly into national law, domestic courts, lawyers and citizens can enforce them without waiting for action at the international level. Giving individuals and non-state actors standing in regional courts, as done in Europe and the Americas, also increases enforcement because violations are challenged quickly and publicly. The more that international rules operate inside national legal systems, the harder it is for a government to ignore them.Fourth, legitimacy and reputation are central compliance tools in a decentralized system. Regular reporting, independent monitoring bodies, and documentation by NGOs create transparency. When violations are exposed and discussed, states face reputational costs that affect trade, investment and alliances. That pressure is stronger when the law is applied consistently. If powerful states are

seen as exempt, weaker states have less incentive to comply. Equal application therefore protects the credibility of the whole system.Fifth, leverage reciprocity and interdependence. Most states obey trade, diplomatic and humanitarian rules because breaking them would invite retaliation and damage long-term cooperation. The relative success of WTO dispute settlement comes from the ability to authorize retaliation. Similar models can be expanded to other areas where mutual benefit exists, such as climate, health and maritime law. Regional integration also strengthens binding force because states pool sovereignty. The European Union, African Union and ASEAN show that when states accept common institutions and courts, compliance rises.Sixth, address capacity. Many breaches are not willful but result from lack of resources, technical knowledge or administrative capacity. Providing technical assistance, funding and training helps states actually implement complex obligations in environment, health and human rights law. When implementation is feasible, non-compliance drops.Seventh, reduce legal ambiguity by codifying customary law and encouraging consistent state practice. The more that states act the same way and cite the same legal justifications, the clearer the rule becomes. Consistent jurisprudence from international tribunals also builds predictability, which makes states more willing to be bound.In short, the binding force of international law is maintained when rules are clear, institutions are supported, consequences are real and impartial, and states see compliance as aligned with their interests. Without a world sovereign, binding force depends on making it more costly and less beneficial to violate the law than to follow it, and on embedding international obligations deeply into national politics, courts and daily practice.

Conclusion.

In conclusion, the binding force of international law cannot rely on a central enforcer like in domestic systems, so it must be maintained through clearer rules, stronger compliance mechanisms, and consistent political will. Its effectiveness depends on making obligations specific, incorporating them into national law, ensuring credible and impartial consequences, and building state capacity to implement them. Legitimacy, reputation, reciprocity, and regional cooperation also play a key role in encouraging compliance. While sovereignty will always limit direct coercion, the binding force of international law is strengthened when states see adherence as more beneficial than violation, and when the law is applied equally to both powerful and weaker states. Ultimately, maintaining the binding force of international law requires a balance between respecting sovereignty and creating enough accountability and incentive for states to uphold their commitments.

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