

MECHANISMS FOR THE ENFORCEMENT OF INTERNATIONAL LAW – STRENGTH AND DOWNSIDE*

Abstract

The idea of international law is to establish a set of rules that will regulate the conduct of States and other non-State actors. However, enforcement mechanism is one key challenges of international law against the backdrop that international law is created by the consensus of States and only by their cooperation can the violation of same be enforced. This cooperation entails, among others putting in place some mechanisms to ensure that the violation of international law does not go unpunished. International law has thus been frustrated by the issue of enforcement mechanisms. Hence, quite unlike municipal law, it has been argued that international law lacks the characteristic enforcement mechanisms evident in every domestic legal system. Against this background, the paper examined the enforcement mechanisms of international law and the downside of these mechanisms. To achieve its aim, the paper adopted doctrinal method of legal research which entails the use of primary sources of law such as international treaties/ conventions, international customary rules, and case-laws. The paper also employed secondary sources of law such as relevant journal articles and textbooks. Based on the analysis of these materials, the paper revealed that international law does in fact have some mechanisms for its enforcement but then that the principle of State sovereignty; lack of cooperation and political will by States; lack of voluntary submission to the ICJ's jurisdiction and poor funding are some of the major obstacles of the mechanisms. To surmount these challenges, the paper recommended, among others, compulsory submission by States to ICJ's Jurisdiction; political will/ cooperation by States; and adequate funding of the mechanisms. These, it is hoped, will help strengthen these mechanisms and make them more effective to meet the demands of international law.

Keywords: International law, Enforcement, Mechanism, International Treaties, Conventions.

1. Introduction

International law creates rights and imposes responsibilities on States and other subjects of international law.¹ The idea is to provide an international framework that will ensure peaceful co-existence among States in their conduct with one another; and in their interaction with individuals within their various States. Generally, international law is established by State practice; and through international agreements²also known as treaties/conventions. The Vienna Convention on the Law of Treaties (VCLT)³, for instance plays an important role in treaty-making as it provides for the procedure of treaty-making; the method of assenting to a treaty; its coming into force;⁴ interpretation;⁵ amendment and modification of a treaty;⁶ and the suspension and termination of a treaty,⁷ among others. As a matter of fact, States are required to carry out their international obligation (*pacta sunt servanda*);⁸ and not to raise the deficiencies in their laws as a justification for not performing their international obligation.⁹To that extent, it is not enough that States enter into international agreements since the beauty of any law

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¹ Tim Hillier, *Sourcebook on international law* (London: Cavendish Publishing Limited, 1998) at 5.

² By bilateral agreement (involving two sovereign states); or multilateral agreement (involving more than two sovereign States).

³ 1969.

⁴Vienna Convention on the Law of Treaties, VCLT 1969, Art 24.

⁵Ibid, Arts 31- 33.

⁶Ibid,Arts 39 - 41.

⁷Ibid, Arts 42 - 45.

⁸ Whether under treaties/conventions or under customary international law.

⁹ VCLT, Art 27.

lies in its enforcement, discharged through the instrumentality of some mechanisms put in place in that regard. Hence,

Yasmen¹⁰ asserts: ‘in order for a law to be effective, parties must agree to comply to it.’¹¹ However, enforcement is a fundamental challenge for international law.¹² Quite unlike municipal legal systems that have properly constituted bodies imbued with the powers to enforce same in the event of any breach; some quarters¹³ have argued that international law is enforced by moral sanctions.¹⁴ In other words, international law lacks the character enforcement mechanisms existing within the framework of domestic law.¹⁵ This is remarkably so, by the positivist school of law which perceives law as a command of a sovereign to his subordinate and backed by sanction against disobedience.¹⁶ One of the prominent advocates of this school of thought - John Austin, had his brand of positivism which is commonly referred to as the ‘command theory of law’¹⁷ which perceives law as a command which proceeds from a determinate political superior to political inferiors and backed up by sanctions against disobedience.¹⁸ The implication is that Austin and other positivists perceive anybody of law which lacks these essential ingredients as embodied in his definition of law, as ‘law improperly so called.’¹⁹ According to John Austin, international law does not draw from the command of a sovereign but from general opinion (agreement of States on the basis of *pacta sunt servanda*) and that it is enforced by moral sanctions only.²⁰

Another critic of international law is Martin Wight.²¹ He posits that international law is weak, unclear, decentralized, unpoliced, and unenforceable and that there is no sovereign power above States²² charged with the function of enforcing international law. The paper seeks to answer the following pertinent questions: Does international law have enforcement mechanisms? If yes, what are the downsides of these mechanisms? It is against this background that the paper examined the enforcement mechanisms of international law and the downside of these mechanisms. The paper argued that international law does have enforcement mechanisms. This notwithstanding, the paper revealed that the effective functioning of these mechanisms are left at the mercy of States as they are being politicized and most often limited by the principle of State sovereignty. More so, lack of voluntary submission to the jurisdiction of the International Court; and poor funding have also been observed as some of the major obstacles of the enforcement mechanisms of international law. To surmount these challenges, the paper recommended, among others, cooperation by States; adequate funding of the mechanisms; and the amendment of Article 35(1) of the Statute of the ICJ to give room for compulsory submission by States to the ICJ’s Jurisdiction.

¹⁰Yasmen Muyano, “Enforcement Mechanisms and their Effects on International Law” (26 June 2019), online: GRIN Verlag<<https://www.grin.com/document/477616>>Accessed 18 February 2024.

¹¹Ibid.

¹²Omri Ben-Shahar & Anu Bradford, “Efficient Enforcement in International Law” (2012) 12 *Chicago JIL*, 375 at 375.

¹³Positivist school of law championed by the likes of John Austin

¹⁴John Austin, *The Province of Jurisprudence Determined* (London: Richard Taylor, 1832) at 146-148.

¹⁵Ibid.

¹⁶Ibid.

¹⁷Ibid.

¹⁸Ibid.

¹⁹Ibid.

²⁰John Austin, at 146-148.

²¹Martin Wight, *Power politics* (London: Pelican Books, 1978) at 110-112.

²²Kenneth Waltz, *Theory of International Politics* (New York: McGraw-Hill, 1979).

2. Conceptual framework

The famous expression ‘no man is an island’ holds true for States. Thus, States all over the world interact and depend on one another for economic, security, political, cultural, social, and other assistance. Directly drawing from this inter-dependence is the regulation of the conduct of States in order to determine the extent of the rights of individual States; the duties they owe to each other; and their liability in the event of the breach of their duties. This regulation is achieved through the instrumentality of international law otherwise called the Law of Nations.²³

International law is a universal legal system that regulates the conducts of nations; international organizations; and individuals whose acts may have international consequences.²⁴ It is

the body of rules which are legally binding on States in their intercourse with each other.

These rules are primarily those which govern the relations of States, but States are not the only subjects of international law. International organisations and, to some extent, also individuals may be subjects of rights conferred and duties imposed by international law.²⁵

A more explicit definition of international law (which captures the nature, sources, basis, subjects and enforcement mechanism of international law) was offered by Lauterpacht. Thus, Lauterpacht defines international law as:

the body of rules of conduct, enforceable by external sanction, which confer rights and impose obligations primarily, though not exclusively, upon sovereign States and which owe their validity both to the consent of States as expressed in custom and treaties and to the fact of the existence of an international community of States and individuals.²⁶

Thus, international law creates rights and imposes obligations. These rights and obligations are achieved through international agreements²⁷ and the practice of States. While international treaties and conventions bind States that are parties to them;²⁸ treaty provisions can only bind States that are not parties to them where such treaty provisions are customary international law.²⁹ Thus, international law consists of treaties and State practice. While it is correct to say that international law regulates the conduct of States and other subjects such as individuals and international organizations, international law must be obeyed in order for it to achieve this goal. This process is known as enforcement.

Enforcement is the act of obeying a law or rule or making a particular situation happen or accepted.³⁰ Put differently, enforcement is “the act of compelling people to do what is legally mandated.”³¹ It is in fact the “the proper execution of the process of ensuring compliance with laws, regulations, rules, standards and social norms.”³² Enforcement of international law may range from public condemnation

²³ This misconception led Prof L. Oppenheim to declare that ‘States solely and exclusively are the subjects of international law’ (L Oppenheim, *International Law* (New York: Longmans, Green & Co., 1912).

²⁴ Tim Hillier, at 5.

²⁵ R Jennings and A Watts (eds), *Oppenheim’s International Law*, Volume 1: Peace (9th edn, Oxford: Oxford University Press, 2008) 4.

²⁶ H Lauterpacht, *International Law Collected Papers*, Volume 1, (Cambridge: Cambridge University Press, 1970).

²⁷ Treaties and Conventions.

²⁸ Malcolm N Shaw, *International law* (Cambridge: Cambridge University Press, 2017) at 70-71; VCLT, Art 26.

²⁹ *Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands*, ICJ Reports, 1969 at paras 3, 25, 41 [*North Sea Continental Shelf Cases*].

³⁰ Cambridge Dictionary, “Enforcement” (12 May 2024), Online: Cambridge Dictionary <<https://dictionary.cambridge.org>> Accessed 18 February 2024.

³¹ IGI Global, “What is enforcement” (12 May 2024), Online: IGI Global <<https://www.igi.global.com/dictionary>>

³² <www.en.m.wikipedia.org>.

of violation of international law; State responsibility for the wrongful acts of States constituting a breach of their international obligation; individual criminal liability; reparations for violation international law and so on.³³These enforcement measures are carried out through certain bodies, systems or processes established for that purpose. These are known as enforcement mechanisms.

A mechanism is thus a method of achieving something. It is “a way of doing something...; a part of a machine, or a set of parts that work together.”³⁴ It is “a natural or established process by which something takes place or is brought about.”³⁵On the other hand, enforcement mechanisms are “methods used to induce compliance and increase cooperation from international bodies.”³⁶To that effect, enforcement of international law requires the establishment of a number of bodies, systems and procedures at the national, regional and international levels which together and ultimately facilitate the achievement of the objectives of international law. The mechanisms may be judicial³⁷ or non-judicial in nature.³⁸ Thus, like in the domestic legal systems, international law has certain bodies, methods, systems or machinery through which violations are addressed. These includes national/domestic mechanisms (the courts); Regional mechanisms (human rights bodies and Committees) ; international mechanisms consisting of the International Court of Justice, the International Criminal Court, the United Nations System (UN Security Council and UN General Assembly); and other bodies. Each of these bodies has one role or the other to play to see to the enforcement of international law. The role of these mechanisms ranges from monitoring compliance with international law, reporting and investigating violations, condemning and punishing violations. This is achieved through a coordinated and systematic fashion as would be revealed in this wo

3. Enforcement Mechanisms of International Law

The enforcement mechanisms of international law may be judicial or non-judicial in nature. Such judicial mechanisms may include the International Court of Justice and the International Criminal Court while the non-judicial mechanisms includes the UN Security Council, UN General Assembly, human rights bodies, and other means of enforcement such as arbitration, sanctions, shaming and so on . These are treated below:

3.1 Judicial Mechanisms

The international Court of Justice (ICJ) and International Criminal Court (ICC) remain the principal judicial mechanisms for the enforcement of international law. While the ICJ exercises civil jurisdiction over sovereign States,³⁹ the ICC exercises criminal jurisdiction over individuals for international crimes.⁴⁰ These mechanisms aim at preventing, ameliorating (cushioning), remediating or punishing the violation of international law.

³³Gentian Zyberi, “Enforcement of International Humanitarian Law” in Gerd Oberleitner (ed) *International Human Rights Institutions, Tribunals, and Courts: Legacy and Promise* (Singapore: Springer, 2018) 377 at 378.

³⁴ Cambridge Dictionary, “Mechanisms” (12 May 2024), Online: Cambridge Dictionary <<https://www.dictionary.cambridge.org>> Accessed 18 February 2024.

³⁵ Computer Security Resource Center, “Mechanism” (12 May 2024), Online: CSRC NIST Glossary <<https://www.google.com>>

³⁶Yasmen Muyano (n 10).

³⁷ Such as the International Court of Justice and the International Criminal Court.

³⁸ Such as the United Nations system (UN Security Council and UN General Assembly), Human Rights bodies and Committees etc.

³⁹United Nations Charter 1945 (UN Charter), Art 34(1).

⁴⁰ Rome Statute of the International Criminal Court 1998 (Rome Statute of the ICC), Art 1.

3.1.1 International Court of Justice

The International Court of Justice (ICJ) is the judicial arm of the UN. It is charged with the settlement of dispute between States. The ICJ has contentious⁴¹ and advisory jurisdictions.⁴² While the contentious jurisdiction is only available to States; the Advisory jurisdiction of the court is reserve to organs of the UN. The decisions of the ICJ are binding on the parties before it.⁴³ The ICJ has played vital role in the enforcement of international law through its decisions⁴⁴ while drawing insight from international treaties and conventions, international customs, and general principles of international law among other.⁴⁵ This is particularly as it regards State responsibility and Reparation for the violation of international law. Such reparatory measure was ordered by the ICJ against Israel towards the victims of the Construction of a wall by Israel.⁴⁶

3.1.2 International Criminal Court

The International Criminal Court is a permanent international court set up to ensure that grievous violations of international law are enforced. The Court has jurisdiction to try the perpetrators of war Crimes, crimes against humanity, genocide and aggression. In the discharge of its mandate under the Rome Statute of the International Criminal Court,⁴⁷ the ICC applies, primarily the Rome Statute, Elements of Crimes and its Rules of Procedure and Evidence.⁴⁸ In addition to these, the court also applies treaties, judicial precedents of the court, and general principles of law that are not inconsistent with the Rome Statute.⁴⁹ While the ICJ enforces international law in relation to States, the ICC does so with respect to individuals who have committed international crimes.⁵⁰ The ICC has as a matter of fact made some landmark decisions in history enforcing internal law.⁵¹

3.1.3 Regional Human Rights Courts and Commissions

These are regional judicial mechanisms for the protection and enforcement of international law in particular – human rights protection. These includes the European Court of Human Rights, Inter-American Human Rights Court and Commission; and African Court of Human and People’s Rights and Commission established under the European Convention on Human Rights; Inter-American Convention on Human Rights; and African Charter on Human and People’s Rights respectively. These Courts and Commission have made their marks with respect to the enforcement of human rights and specifically human rights enforcement.⁵²

⁴¹ Statute of the International Court of Justice 1945 (Statute of the ICJ) Art 34(1).

⁴² Statute of the ICJ Art 65;C Greenwood, “The International Court of Justice and the Development of International Humanitarian Law” (2022)104 920-921IRCR1840 at 1840.

⁴³ Statute of the ICJ, Art 59.

⁴⁴ *Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory* 2004 ICJ Report at para 152 [*Legal Consequences of the Construction of a Wall case*].

⁴⁵ Statute of the ICJ, Art 38(1)

⁴⁶ *Legal Consequences of the Construction of a Wall case*, para 152.

⁴⁷ 1998.

⁴⁸ Rome Statute of the ICC, Art 21 (1)(a).

⁴⁹ *Ibid*, Art 21(1)(a).

⁵⁰ *The Prosecutor v Germain Katanga*, ICC-01/04-01/07.

⁵¹ Thomas Lubanga of the Democratic Republic of Congo (DRC); German Katanga of Congo; Charles Taylor of Sierra Leone; and Al Ahmed of Timbuktu.

⁵² *ACmHPR, Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan*, AHRLR 2009 at para153; *Pueblo Bello Massacre v Colombia, del Carmen Alvaren Blanco and Orsv Colombia, Merits, Reparations and Costs*, IACHR Series C no 140, IHRL 1524 (IACHR 2006); *Cyprus v Turkey(IV)* (2001 (No. 25781/94); and *Georgia v Russian Federation(II)*(Application no. 38263/08).

3.1.4 States (Domestic Courts)

This is also classified as decentralized or horizontal enforcement mechanism. In this case, international law is enforced by States individually against other States. This is to be distinguished from the centralized mechanisms where States act under the umbrella of an organization like the UN. In the former, the States do not so act, and it may involve just one State acting alone to enforce international law. In other words, states here implement international law against one another without recourse to any supranational body.

It is important to note that the primary duty of ensuring compliance with international law lies on the shoulder of States. As part of this duty, States must ensure the respect for their international obligation and must enforce the violation same within their State territory through their domestic courts. Hence, domestic courts complement the international judicial mechanisms.

3.2 Non-Judicial Mechanisms

3.2.1 United Nations System

This is also classified as centralized or vertical enforcement mechanisms. This is implementation of international law by international bodies other than States acting individually. It is a concerted conduct of States, acting in unison, to implement international law either by punishing a breach thereof, or interpreting the law so as to forestall any breach of same. This does not however suggest that all the States of the world must be acting in unison under the same umbrella. It is sufficient that a number of States organized under an association act, not individually but, through that association to implement international law. It is the implementation of international law by supranational bodies. A clear instance of this is the implementation of international law by the UN and its organs. A discussion of some of these mechanisms is made below.

This mechanism is made up of the UN Security Council and the UN General Assembly. The United Nations Security Council was established under the United Nations Charter;⁵³ with the responsibility of maintaining international peace and security.⁵⁴ Thus, the UN Security Council “shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security.”⁵⁵ It may also take preventive or enforcement measures⁵⁶ in order to enforce its decisions including the use of force.⁵⁷ These measures include but are not limited to the use of force,⁵⁸ complete or partial interruption of economic relations and severance of diplomatic relations.⁵⁹ The UN Security Council has for instance the power to take certain actions ranging from the imposition of sanctions;⁶⁰ referral of individuals who commit war crimes, crimes of aggression, and other crimes of international concern to the ICC for trial and punishment where applicable.⁶¹ The enforcement power of the Council also extends to encouraging parties to a dispute to approach the ICJ for adjudication; and recommending pacific settlement of international disputes.⁶²

⁵³ Art 37.

⁵⁴ UN Charter Art 1(1).

⁵⁵ *Ibid*, Art 39.

⁵⁶ *Ibid*, Arts 41, 44 & 50.

⁵⁷ *Ibid*, Art 42.

⁵⁸ UN Charter Arts 41 & 44.

⁵⁹ *Ibid*, Arts 41.

⁶⁰ *Ibid*, Art 41.

⁶¹ Rome Statute of the ICC, Art 13(b); Chapter VII UN Charter.

⁶² UN Charter Art 38.

Furthermore, the Security Council has the power to take special measures, at the instance of an injured State, to enforce the decision of the ICJ.⁶³

States may also take collective action to enforce international law against an erring State, under the framework of the United Nations,⁶⁴ until the UN Security Council takes the necessary measures to maintain international peace and security.⁶⁵

3.2.2. International Human Rights Bodies and Committees/IHL-based bodies

To ensure the effectiveness of International Human Right Bills, the UN has established certain mechanisms within its system made up of Treaty- based Human Rights bodies; and Charter-based bodies.⁶⁶

3.2.2.1 Treaty-based bodies

The Treaty-based bodies consist of 10 Committee⁶⁷ made up of Committee on the Elimination of Racial Discrimination (CERD); Committee on Economic, Social and Cultural Rights (CESCR); Human Rights Committee on Civil and Political Rights (CCRC); Committee on the Elimination of Discrimination against Women (CEDAW); Committee against Torture (CAT); Committee on the Rights of the Child (CRC); Committee on Migrant Workers (CMW); Subcommittee on Prevention of Torture and other Cruel, inhuman and Degrading Treatment or Punishment (SPT); Committee on the Rights of Persons with Disability (CRPD); and Committee on Enforced Disappearances (CED). These are independent experts that monitor the implementation of core human right treaties⁶⁸ by States.

3.2.2.2 Charter-based bodies

Charter-based bodies consist of Human Rights Council, Special Procedures and the Universal Periodic Review and Independent Investigations.⁶⁹ However, the Human Rights Council is at the apex of all the human rights mechanisms provided under the UN system. The Council is made up of 47 States parties with the mandate of promoting and protecting human rights across the globe⁷⁰ against the backdrop that human rights protection is one of the important objects of international law. To that effect, States parties are required to report on the steps they have taken to ensure the enjoyment of the rights provided under the Human Rights Treaty within their territory. The Geneva Conventions of 1949 and the Protocol Additional to the Geneva Conventions 1949 and relating to the Protection of Victims of International Armed Conflict of 1977 (AP I) being *lex specialis*, also established some enforcement mechanisms since human rights protection is not limited to peacetime⁷¹ but also extends to situations of armed conflict. These includes:

⁶³ Statute of the ICJ Art 94(2).

⁶⁴ Art 51.

⁶⁵ *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* Jurisdiction and Admissibility, 1984 ICJ REP. 392 June 27, 1986 para 14.

⁶⁶ United Nations, “Instruments and Mechanisms” (12 May 2024), Online: United Nations <www.ohchr.org> accessed 11 May 2024.

⁶⁷ Ibid.

⁶⁸ Like the International Covenant on Civil and Political Rights.

⁶⁹ United Nations, “United Nations Human Rights Committee” (15 May 2024), Online: United Nations <www.ohchr.org> Accessed 11 May 2024.

⁷⁰ United Nations, “Instruments and Mechanisms” (15 May 2024), Online: United Nations <www.ohchr.org>

⁷¹ *Cyprus v Turkey*, 120 ILR, para 10.

3.2.2.1 International Humanitarian Fact Finding Commission

This is an “independent and confidential mechanism” established under the AP I,⁷² with the power to investigate any alleged grave breach or serious violations of the Geneva Conventions and the Protocol I.⁷³ However, to be competent to exercise this power, a minimum of 20 States is required to accept its competence,⁷⁴ an enquiry can only be requested by a Party to the conflict with the consent of the adverse party.⁷⁵

3.2.2.2 International Committee of the Red Cross (ICRC)

The ICRC as a custodian of International Humanitarian Law plays a vital role in its enforcement.⁷⁶ Such enforcement role includes but is not limited to advising States and parties to a conflict on the need to respect IHL.

3.2.2.3 Protecting Powers

These are neutral States⁷⁷ appointed by the parties to a conflict to monitor and ensure that parties comply with International Humanitarian Law (IHL).⁷⁸ The Protecting Powers are vested with the⁷⁹ right to visit protected persons in occupied territories, and places of detention or internment; evaluate the living condition of internees and detainees; and ensuring that parties adhere to the protective measures and judicial guarantees.⁸⁰ This way, these mechanisms facilitate the enforcement of international law.

3.3 Other Methods of Enforcing International Law

Apart from the above mechanisms, there are also other means that proved very effective in enforcing international law. These are discussed below.

3.3.1 Arbitration

Arbitration is provided for under the UN Charter⁸¹ as one of the methods of settlement of international disputes. Arbitration in international law is the settlement of dispute between two or more States by an arbitral body other than the ICJ. This means it is less formalistic than the adjudicatory process of the ICJ, and is based solely on agreement between the States in dispute. As is typical with arbitration, the States, before the commencement of the arbitration, must be in agreement as to who the arbitrator(s) would be (i.e. the constitution of the court); the venue for the arbitration; the applicable law; the procedure of the court and so on. Arbitral awards are binding on the parties.

3.3.2 Withholding of Foreign Assistance

Withdrawal of foreign assistance has been adopted on several occasions to enforce international law and this has proved potent in ensuring compliance with international law, especially with regards to

⁷²Protocol Additional to the Geneva Conventions 1949 and relating to the Protection of Victims of International Armed Conflict of 8 June 1977 (AP I), Art 90.

⁷³*Ibid.*

⁷⁴ Medecins Sans Frontieres, ‘The Practical Guide to Humanitarian Law – International Humanitarian Fact Finding Commission’ (15 May 2024), Online: Medecins Sans Frontieres <<https://www.humanitarian.law.org>> Accessed 11 May 2024.

⁷⁵AP I Art 90(2)(a); K Sachariew, “States’ Entitlement to take action to Enforce International Humanitarian Law” (1989) 270 *International Review of the Red Cross*, 177 at 189.

⁷⁶ Gentian Zyberi, at 10.

⁷⁷ They may also be impartial humanitarian organizations like the International Committee of the Red Cross.

⁷⁸ Medecins Sans Frontieres ‘Protecting Powers – The Practical Guide to Humanitarian Law’ (15 May 2024), Online: Medecins Sans Frontieres <<https://guide.humanitarian.law.org>> Accessed 13 May 2024.

⁷⁹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC IV) 1949, Arts 30 & 143

⁸⁰ Geneva Convention Relative to the Treatment of Prisoners of War (GC III) 1949, Art 126(1); GC IV, Arts 76 & 143.

⁸¹ Article 33.

largely dependent States.⁸² This means of enforcement is commonly used by rich and powerful States against “weak” States. Here, a powerful State totally withdraws or suspends aid and assistance to a “weak” State that is in breach of international law; or a State intending to breach international law. The foreign assistance may be in the form of monetary grants, military personnel, military or medical equipment, loans, among others. The idea of withdrawal of foreign assistance is to compel the State in question to stop the violation; or the intended violation of its international obligations. On the other hand, foreign assistance can also be used as a means of inducing compliance with international law by rewarding States for complying with international law.

3.3.3 Sanctions/Withdrawal & Conferment of Rights and Privileges

This is also referred to as negative enforcement mechanisms. Sanctions are punitive measures imposed on erring States in order to pressurize them into compliance with international law. For instance, the United Nations Security Council can determine measures to be taken in order to ensure observance and compliance with international law.⁸³ Hence, sanctions may be diplomatic, military or sports sanctions or even withdrawal of rights and privileges under international law. These methods aim at preventing, ameliorating, re-mediating or punishing the violation of international law. Diplomatic sanctions are political measures that aim to demonstrate displeasure with or disapproval of certain actions, stopping short of taking economic or military steps.⁸⁴ Diplomatic sanctions involve the severance of diplomatic ties/relations with a State that is in violation of its international obligation. This is usually imposed by States severally or collectively on the erring State. Diplomatic sanctions can take different forms, including diplomatic isolation, suspension of diplomatic relations, and expulsion of diplomats.⁸⁵ Diplomatic sanctions or sanctions characterized by political disengagement are seen as a low-cost means of isolating and delegitimizing regimes.⁸⁶

A military sanction is usually deployed only in extraordinary circumstances. Military sanctions are a form of punishment aimed at limiting a target country's military capabilities. They are intended to signal disapproval and to put pressure on a target State to change its behavior. Military sanctions can take diverse forms, including arms embargoes, no-fly zones, and military interventions.⁸⁷ Military Interventions: In extreme cases, military sanctions can escalate to the point of military intervention. This involves the use of armed forces to bring an end to the target country's aggressive actions or to establish peace.⁸⁸

Sports sanctions are restrictions that prevent an erring State's athletes from competing in all or major international sporting events until the erring State comply with its international obligation.⁸⁹ For instance, the UN Security Council imposed such sanction on the Federal Republic of Yugoslavia (Serbia

⁸² Joshua Goodman, ‘US Official Warns El Salvador’s President that Aid at Risk’, (3 September 2020), Online: AP News <www.apnews.com/article/virus-outbreak-latin-america-caribbean-us-news-d623694bbb0006b3cb1116e031e5d009> Accessed 15 May 2024.

⁸³ UN Charter, Art 39.

⁸⁴ LexisNexis, “What are Sanctions?” (15 May 2023), Online: *LexisNexis* <<https://internationalsales.lexisnexis.com/glossary/compliance/sanctions>> Accessed 17 May 2024.

⁸⁵ Sanction Scanner, ‘International Sanctions’ (15 May 2024), Online: *Sanction Scanner* <<https://sanctionscanner.com/knowledge-base/international-sanctions>> Accessed 17 May 2024.

⁸⁶ Tara Maller, ‘Diplomacy Derailed: The Consequences of Diplomatic Sanctions’ (24 June 2010), Online: Semantic Scholar <<https://www.semanticscholar.org>> Accessed 17 May 2024.

⁸⁷ Sanction Scanner, ‘International Sanctions’ (15 May 2024), Online: *Sanction Scanner* <<https://sanctionscanner.com/knowledge-base/international-sanctions>> Accessed 17 May 2024.

⁸⁸ *Ibid.*

⁸⁹ LexisNexis, “What are Sanctions?” (15 May 2023), Online: *LexisNexis* <<https://internationalsales.lexisnexis.com/glossary/compliance/sanctions>> Accessed 17 May 2024.

& Montenegro) from 1992–1995, in order to compel it to withdraw the Croatian Army in Bosnia and Herzegovina in accordance with resolution 752.⁹⁰ Sanctions may also take the form of withdrawal of rights and privileges under international law. Such withdrawal of rights and privileges may for instance include refusal to recognize the government of a country which has come into power through unconstitutional means;⁹¹ or refusal to allow aircrafts from the defaulting country pass through its airspace;⁹² rescindment of contracts;⁹³ imposition of embargo on trade with, or on specific goods from, a defaulting State, to mention but a few. On the other hand, additional rights and privileges may be conferred on States in return for their compliance with international law just like it applies to foreign assistance.

3.3.4 Self-help

It is important to point out here that self-help is unpopular in the modern world as States are prohibited from using self-help.⁹⁴ Simply put, self-help is the use of extra-legal means to enforce or defend a right. Self-help may also be referred to as self-defense.⁹⁵ Under international law, self-help (self-defense) is used to refer to the use of force by a State to enforce international law. States mostly do this in the defense of their territorial integrity (as in the most recent case of Ukraine against Russia⁹⁶ and Israel against Hamas); or in the protection of their citizens;⁹⁷ or interests outside their territory. In unusual situations, a State may preemptively act in self-help to forestall a breach of international law by another state.⁹⁸ Israel had once adopted this method in 1967 against its Arab neighbours;⁹⁹ and the US against Al Qaeda in Afghanistan.¹⁰⁰ To be lawful however, the pre-conditions for the exercise of self-defense must be satisfied.¹⁰¹ Such pre-conditions include: (1) a State must show that it a victim of attack and that the attack is intentional;¹⁰² (2) the attack must be necessary;¹⁰³ and proportionality.¹⁰⁴ This notwithstanding, where a State acts in exercise of self-defense as provided under the UN Charter,¹⁰⁵

⁹⁰ S/RES/757 (1992).

⁹¹ Ali Latifi, ‘Taliban Still Struggling for International Recognition’, (October 7, 2021), Online: Aljazeera <www.aljazeera.com/amp/news/2021/10/7/taliban-afghanistan-international-recognition> Accessed 17 May 2024.

⁹² Mia Jankowicz, ‘Map Shows Countries that have Closed their Airspace to Russia over Ukraine Invasion’, (March 2, 2022), Online: Business Insider <www.businessinsider.com/map-shows-countries-that-closed-airspace-russia-over-ukraine-war-2022-3> Accessed 17 May 2024.

⁹³ Sarah Marsh and Madeline Chambers, ‘Germany Freezes Nord Stream 2 Gas Project as Ukraine Crisis Deepens’, (February 22, 2022), Online: Reuters <www.reuters.com/business/energy/germanys-scholz-halts-nord-stream-2-certification-2022-02-22/> Accessed 19 May 2024.

⁹⁴ UN Charter Art 2(4).

⁹⁵ Ibid, Art 51.

⁹⁶ John Psaropoulos, ‘Timeline: Six Months of Russia’s War in Ukraine’, (August 24, 2022), Online: Aljazeera <www.aljazeera.com/amp/news/2022/8/24/timeline-six-months-of-russias-war-in-ukraine> Accessed 19 May 2024.

⁹⁷ Brownlie, *Principles of Public International Law* (8th edn Oxford, 2012), 754; N Shaw 871.

⁹⁸ The Associated Press, ‘Putin Says Russia Could Adopt US Preemptive Strike Concept’, (December 9, 2022), Online: ABC News <www.abcnews.go.com/international/wireStory/putin-russia-adopt-us-preemptive-strike-concept-94876110> Accessed 21 May 2024.

⁹⁹ Malcolm N Shaw at 866.

¹⁰⁰ Ibid, at 865.

¹⁰¹ *Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda)* ICJ Reports, 2005, paras 168, 223.

¹⁰² *Oil Platforms (Islamic Republic of Iran v United States of America)* ICJ Reports 4, 2003, 161, para 187.

¹⁰³ *Legality of the Threat or Use of Nuclear Weapons – Advisory Opinions* [1996] ICJ 3 ICJ Report 1996 para ...; Malcolm N Shaw at 868.

¹⁰⁴ Ibid.

¹⁰⁵ Article 51.

such a State must cease such act once the UN Security come in to intervene pursuant to its mandate of maintaining international peace and security.¹⁰⁶

3.3.5 Rewards

This is also classified as positive enforcement mechanism. Rewards are transfers of positively valued material or immaterial goods, such as opportunities for and benefits of cooperation, money, technology, or social approval/good reputation.¹⁰⁷ The basis for reward is to encourage cooperation as one party uses the reward to offset the benefits that the other country draws from non-compliance.¹⁰⁸ In other words, compliance can be achieved if a reward outweighs the benefits from breaching international law. Hence, compliance could be achieved if a reward outweighs the benefits of violating international law. A typical example of reward is side payment. In 1990, the Soviet Union agreed to withdraw its troops from East Germany in return for economic aid.¹⁰⁹

3.3.6 Reparation

Reparation refers to measures to redress violations of human rights by providing a range of material and symbolic benefits to victims or their families as well as affected communities.¹¹⁰ Reparation must be adequate, effective, prompt, and should be proportional to the gravity of the violations and the harm suffered. The purpose of reparation is generally understood to re-establish the situation that existed before the harm occurred. It is a vehicle for reconciliation or for restoring relations between the violator and injured parties, as well as a basis of repairing or rehabilitating physical and psychological integrity and dignity. In international law, a breach of an international obligation gives rise to a duty to repair the harm caused.¹¹¹ Full reparation for the injury caused by the internationally wrongful act of a State takes the form of restitution, compensation, and satisfaction.¹¹² In *Germany v Poland*¹¹³ it was held that ‘any breach of an engagement involves an obligation to make reparation.’ The obligation to make reparation follows a determination that a particular act caused, or sufficiently contributed to the harm or damages suffered and therefore, implies a level of wrongfulness.¹¹⁴

3.3.7 Fear Tactics

Fear tactics refers to ways of achieving a particular result by frightening people so much that they do what they are required to do. According to Ganser,¹¹⁵ arguably the most effective, dangerous and the most secret weapons are those we cannot see, and fear is one of them. He stated that creating fear is part of the little known area in military and strategic studies called ‘Psychological warfare’. He defined

¹⁰⁶ UN Charter Art 51.

¹⁰⁷ Van Aaken and Betül Simsek, ‘Rewarding in International Law’ (2021) 115(2), *AJ Intl Law*, 195 at 196.

¹⁰⁸ *Ibid*, 196.

¹⁰⁹ Randall Newnham, “The Price of German Unity: The Role of Economic Aid in the German-Soviet Negotiations” (1999) (22), *German Studies Review* 421 at 144.

¹¹⁰ United Nations Human Right, Office of the High Commissioner, “Reparations” (15 March 2024), Online: United Nations <<https://www.ohchr.org/en/transitionaljustice/reparations#:~:text=This%20refers%20to%20measures%20to,violations%20and%20the%20harm%20suffered>> Accessed 23 May 2024.

¹¹¹ Draft Articles on Responsibility of States for Internationally Wrongful Acts (Draft Articles on Responsibility of States) 2001, Art 31.

¹¹² Draft Articles on Responsibility of States, Art 34.

¹¹³ [1928] PCIJ Ser A No 12, 29.

¹¹⁴ Carla Ferstman, “Reparations” (13 June 2017), Online: Oxford Bibliographies <<https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0003.xml>> Accessed 23 May 2024.

¹¹⁵ Daniele Ganser, ‘Fear as Weapon – the Effects of Psychological Warfare on Domestic and International Politics’ (2005) 9 (4), *World Affairs*, 28 at 28.

psychological warfare as an unusual form of warfare, as it does not physically attack the target group in order to destroy them, but the minds of the target group.

3.3.8 Reciprocity

Reciprocity is an enforcement method by which States are assured that if they offend another State that the offended State will respond by returning the same behavior.¹¹⁶This may also be referred to as Mutual Assured Destruction Doctrine.¹¹⁷Reciprocity has been proven very potent in discouraging powerful States from attacking each other, especially with nuclear weapons. It was used by the US and Russia during the period of the cold war.¹¹⁸ The idea is that, since both parties would suffer the same fate, States will apply caution.

3.3.9 Naming and Shaming

Naming and Shaming has been defined as “the collection and dissemination of evidence of human rights violations, with the goal of embarrassing, or shaming, governments into complying.”¹¹⁹ This is also known as “name and shame” approach. It is one of the means of enforcing international law (particularly human rights violations)¹²⁰ against the background that political leaders abhor the denting of their international image or reputation. The approach is mostly used by nongovernmental organizations such as Human Rights Watch, Amnesty International, UN Rights Council, government agencies, among others to enforce human rights violations.¹²¹The name and shame approach entails the use of independent information or reports on human rights violations around the world and using such report as a basis for naming and shaming the violators.¹²²For instance, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment blacklisted some State parties to the Convention against Torture that failed to comply with their obligation to establish a national preventive mechanism in accordance with Article 17 of the Optional Protocol to the Convention.¹²³ However, research shows that the name and shame approach may not be as effective as one would think given that (1) one may not know how political leaders feel; (2) shame and guilt are distinct emotions, hence, while shame may likely provoke defensive anger, denial and aggression, it may not necessarily provoke guilt as to make violators end violations; (3) often, the type of political leaders involved in worst human rights violations came into power through the use of force or unlawful means and therefore lack sense of shame and guilt; and (4) name and shame approach may not be effective against political leaders are usually surrounded by advisers who tend to support them even in the worse human rights violations while they rationalize and justify their violations using local values, national security and sovereignty.¹²⁴ It has therefore been suggested that in order to make the approach more useful, naming and shaming should be not dependent on the psychological state of the target but should rather be based

¹¹⁶ Yasmeen Muyano (n 10).

¹¹⁷ <<https://www.oxfordreference.com/display/10.1093/acref/9780199891580.001.0001/acref-9780199891580-e-4787?rskey=mdU1qK&result=4601>> Accessed March 3, 2024.

¹¹⁸ John A Battilega, “Soviet views on Nuclear Warfare: The Post-Cold War Interviews” in Henry D Sokolski (ed), *Getting Mad: Nuclear Mutual Assured Destruction, Its Origins and Practice* (Pennsylvania: Strategic Studies Institute, 2004) 151 at 156.

¹¹⁹ Sonia Cardenas, “Human Rights in Comparative Politics” in Michael Goodheart (ed) *Human Rights and Practice* (3rd edn, Oxford: Oxford University Press, 2016) at 77.

¹²⁰ Emilie M Hafner-Burton, “Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem” (2008) 62 *International Organisation*, 689 at 689.

¹²¹ James C Frank, “Human Rights Naming and Shaming: International and Domestic Processes” in HRichard Friman (eds) *The Politics of Leverage in International Relations: Name, Shame and Sanction*(New York: Palgrave Macmillan,2015) 43 at 43.

¹²² *Ibid.*

¹²³ United Nations Human Rights, Office of the High Commissioner (June 2016), Online: United Nations<<http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Article17.aspx>>Accessed 14 June 2024.

¹²⁴ JC Frank at 44.

on the idea that naming and shaming publicizes actions that the person that named finds shameful because they violate accepted norms.¹²⁵

4. Challenges of the Enforcement Mechanisms of International Law

Despite the mechanisms put in place to ensure the enforcement of international law, there are still a number of factors militating against the effective of the enforcement mechanisms of international law. Below are some of the challenges:

4.1 Political Factors

These are politically motivated actions or omissions by States that undermine the effectiveness of the enforcement mechanisms of international law. These include lack of political will; lack of cooperation by States; and selfishness on the part of States.

4.1.1 Lack of Cooperation among States/Selfish interest

The UN Charter noted that cooperation by States is necessary in order to enforce international law.¹²⁶ This notwithstanding, lack of cooperation among States and selfish interests of States have continue to frustrate the effective functioning of the enforcement mechanisms of international law. A typical example is as it concerns the failure of some States to submit to the jurisdiction of the ICJ; and to assist the ICC in the investigation of alleged war criminals or failure to hand over such persons to the ICC for prosecution. This has been frustrating the effect performance of both the ICJ and ICC.

On the other hand, States tend to comply with international law only when it is in line with their interest(s), but they disregard same when it is antithetical to their interest. For instance, a State that is interested in getting gas at a cheaper rate may continue to purchase gas from a State that is embargoed for breaching international law. China is very illustrative of this point China continues to purchase Russia's gas despite European Union's embargo on the latter's gas for its aggression against Ukraine.¹²⁷

4.1.2 Lack of Political Will by States

This mostly has to do with the disposition of a government in power, of a given State to discharge their international obligations. While some governments may be willing to follow through with their obligations under international law, other governments may either be politically unwilling to, or may negligent in, carrying out their obligations. This is for instance evident in the jurisdiction of the ICJ and the ICC, where some State are politically unwilling to accept the jurisdiction of the courts or to implement the decisions/orders of the courts. This frustrates the effectiveness of these courts.

4.1.3 Imbalance of the membership of the UN Security Council

It is pertinent to note that 3 out of the 5 permanent members of the UN Security Council are European States. On the other hand, 4out of the 5 permanent members are predominantly white developed nations. Again, only 2 out of the 7 continents of the world occupy the UN permanent Security Council. These all go to show the high level of imbalance in the membership of the UN Security Council; and non-inclusivity. To that effect, the Security Council has been described as a pillar of global apartheid by

¹²⁵JC Frank at 44.

¹²⁶ UN Charter, Article 1(3).

¹²⁷ ErinHale, "How China and India's Appetite for Oil and Gas Kept Russia Afloat", (24 February 2024), Onloine Aljeera<www.aljazeera.com/amp/economy/2023/2/24/how-china-and-indias-appetite-for-oil-and-gas-kept-russia-afloat> ; Aljazeera, "China Agrees to Pay for Russian Gas in Roubles ana Yuan: Gazprom", (6 September 2022), Online: Aljazeera <www.aljazeera.com/amp/economy/2022/9/6/china-agrees-to-pay-for-russian-gazprom-gas-in-rubles-and-yuan> Accessed 14 June 2024.

Titus Alexander, former Chair of Westminster United Nations Association.¹²⁸ Paul Kennedy also concurs to this imbalance and wrote: “Everyone agrees that the present structure is flawed. But consensus on how to fix it remains out of reach.”¹²⁹

4.2 Legal Factors

4.2.1 Principle of Territorial sovereignty

The principle of territorial sovereignty is well established in international.¹³⁰ The principle prohibits Members States of the UN against interfering within the domestic jurisdiction of another sovereign States; or to require Member States to submit such matters to settlement under the UN Charter, subject to the application of the enforcement measures of the UN Security Council.¹³¹ This is against the backdrop that respect for territorial sovereignty is the foundation of international peace and security. Sovereignty, in essence, means that a State has absolute power to rule and regulate within its own specified territory, and that the State is not subject to the jurisdiction of another State or to foreign law.¹³² This long respected system is still in effect today, subject to some overriding policy considerations and customary international law. Therefore, in order for a State to be subject to the jurisdiction of such adjudicatory bodies like the ICJ and ICC, it must in some meaningful way give up a measure of its sovereignty.¹³³ This constitutes a serious challenge to the effective operations of these mechanisms. Hence, the reason States are urged to develop political will to respect international law.

4.2.2 Lack of compulsory submission to the jurisdiction of the ICJ

Under the ICJ Statute, the jurisdiction of the court is based on: voluntary declaration of acceptance of the court’s jurisdiction;¹³⁴ special agreement by the parties before it to accept its jurisdiction;¹³⁵ matters provided for in treaties and conventions;¹³⁶ and forum *prorogatum*.¹³⁷ The implication is that the ICJ can only exercise jurisdiction if the parties so agree. This is a *lacuna* as it allows States to violate international law and go free. This should be contrasted with what is obtainable in municipal law, where persons are not given the option to elect whether municipal courts will exercise jurisdiction over them or not.

4.2.3 Selective Application of some of the Mechanisms

The principle of equality of States is one of the most reaffirmed principles of the law of nations.¹³⁸ The determination of the rights of States under international law, based on the principle of equality of State,

¹²⁸ Titus Alexander, *Unravelling Global Apartheid: An Overview of World Politics* (Cambridge, Massachusetts: Polity Press 1996), 158-160

¹²⁹ Paul Kennedy, *The Parliament of Man: The Past, Present, and Future of the United Nations* (New York: Random House, 2006) at 76.

¹³⁰ UN Charter, Art 2(7); Malcolm N Shaw at 388; Advisory Opinion of 22 July 2010 on *Accordance with International Law of the Universal Declaration of Independence in respect of Kosovo*, ICJ Reports, 2010, paras 403, 437.

¹³¹ UN Charter Arts 2(7).

¹³² Malcolm N Shaw at 493.

¹³³ Stephen Dicks, “International Enforcement Methods in a Modern System Through the Rainbow Warrior Affair” (7 October 2013) *University of Utah* <<https://www.law.utah.edu/international-enforcement-methods-in-a-modern-system-through-the-rainbow-warrior-affair/>> Accessed 14 June 2024.

¹³⁴ Statute of the ICJ, Art 36(2).

¹³⁵ *Ibid*, Art 36(1).

¹³⁶ *Ibid*, Art 37.

¹³⁷ International Court of Justice, “Jurisdiction: Basis of the Court’s Jurisdiction” (15 May 2024), Online: International Court of Justice <www.icj-cij.org/basis-of-jurisdiction> Accessed 14 June 2024.

¹³⁸ UN Charter, Art 2(1).

is fundamental for the existence of the rule of law.¹³⁹ However, some enforcement mechanisms of international law like the UN Security Council and the ICC sometimes apply to States selectively/differently.¹⁴⁰ This defeats the very idea of the principle of equality of States as enshrined under the UN Charter;¹⁴¹ and frustrating the effective working of the mechanisms. While some of the mechanisms “respect” some powerful States in the discharge of their function; the less powerful States are subjected to the jurisdiction of, for instance the ICC. Addressing this issue, Kofi Anan stated: “At the international levels, all States – strong and weak, big and small – need a framework of fair rules, which each can be confident that others will obey. Fortunately, such a framework exists...this is one of our organization’s proudest achievements. And yet this framework is riddled with gaps and weaknesses. Too often it is applied selectively, and enforced arbitrarily. It lacks the teeth that turns a body of laws into an effective legal system.”¹⁴²The United States of America, for instance, without any consequence, resisted an attempt by the ICC to investigate US personnel for their role in Afghanistan by imposing visa ban on the ICC officials.¹⁴³ Again, since the beginning of Russia’s aggression against Ukraine, the ICC is yet to exercise jurisdiction over Russia for all the alleged atrocities taking place in both Russia and Gaza. The case would have been different if less powerful States are involved.

4.2.4 Arbitrary use of Veto Power by the Permanent Members of the United Nations Security Council

Since the creation of the United Nations in 1945, 5 States (China, France, Russia, United Kingdom and the United States of America)¹⁴⁴ have remained the permanent members of the UN Security Council. Importantly, these members are vested with veto power which they sometime use arbitrarily and for their selfish interests rather than the good of the international community. The power conferred on the UN Security Council under the UN Charter 1945¹⁴⁵ is not one to be left permanently in the hands of a few. This is because, as Lord Acton rightly observed: “Power tends to corrupt and absolute power corrupts absolutely.”¹⁴⁶There are several instances where the veto power of the UN Permanent Security Members has been used arbitrarily. For instance, in 2008 Russia vetoed a measure by the Security Council condemning its occupation of the Georgian Republics of South Ossetia and Abkhazia. In another instance, after Russia illegally annexed the Ukrainian Republic of Crimea in March 2014, it vetoed a Security Council Resolution condemning its act. On the other hand, when Russian-backed militants shot down Malaysia Airlines flight MH17 over eastern Ukraine, Russia vetoed a resolution that would have created an international tribunal to investigate and prosecute those responsible for the

¹³⁹ Naomi Choi, “Rule of Law” (15 May 2024), Online: *Encyclopedia Britannica* <<https://www.britannica.com/topic/rule-of-law>> Accessed 14 June 2024.

¹⁴⁰ Kirgis, cited in Luana M Dengre, “The Issue of Enforcement in International Law: A Case Study of the War in Ukraine, undergraduate Honours Thesis Presented to the Faculty of Law, University of San Francisco, 2023; Ann Thomas and Archibald Thomas, “Equality of States in International Law: Fact or Fiction?” (1951) 37 (6) *Virginia Law Review*, 791.

¹⁴¹ UN Charter, Art 2 (1).

¹⁴² Kofi Anan, “Secretary-General’s Address to the General Assembly,” (21 September 2004), Online: United Nations <<http://news.un.org/en/story/2004/09/115712>> Accessed 15 June 2024.

¹⁴³ Humans Right Watch, “US Threatens International Criminal Court” (15 March 2019) <<https://www.hrw.org/news/2019/03/15/us-threatens-international-criminal-court>> “The US decision to put visa bans on ICC staff is an outrageous effort to bully the Court and deter scrutiny of US conduct,” said Richard Dicker, international justice director at Human Rights Watch.

¹⁴⁴ UN Charter Art 23.

¹⁴⁵ Chapter VII.

¹⁴⁶ Lord Acton, Letter to Bishop Creighton, published in the Collection of Lord Acton’s Work, Historical Essays and Studies (15 April 1887), Online: Lord Acton’s Work <<https://www.acton.org>> Accessed 15 June 2024.

loss of 298 lives.¹⁴⁷In 2023, US vetoed a resolution of the Council seeking humanitarian corridors in Gaza. These arbitrary exercises of veto power work against the UN Security Council as one of the enforcement mechanisms of international law.

4.2.5 Inadequate Funding of the Enforcement Mechanisms

Adequate funding is essential for any functional legal system. Under international law, there are no established armed forces for the United Nations. Hence, in carrying out its operations for the maintenance of international peace and security, the UN Security Council relies on other sovereign States for assistance. These includes funding, military personnel, military supplies etc.¹⁴⁸However, it is important to note that the funding of some enforcement mechanisms of international law like the ICC and the ICJ is dependent on Member States and this has often been politicized thereby constituting a clog on the wheels of these mechanisms.

4.2.6 Lack of International Rule of Law

International rule of law is the “concept that acknowledges the superiority of the law over all forms of power.”¹⁴⁹ It provides the political platform on the basis of which States and other subjects of international law operate.¹⁵⁰ The rule of law also exists in the obligation of States to respect their international obligations since compliance remains central to international law (*pacta sunt servanda*).¹⁵¹ It is in fact the foundation of international order.¹⁵² One of the components of the rule of law is supremacy of the law. However, this is obviously lacking especially in dualist States. Furthermore, the ICJ Statute allows parties to a suit before it to each have one national representative to sit as a judge in such matter. This is against the principle of *nemo iudex in causa sua* which is one of the two pillars of natural justice. Such practice is equally against the principle of fair hearing which is a component of rule of law and constitutes a hurdle to the effective operation of the enforcement mechanisms of international law.

5. Conclusion & Recommendations

As a body of law that regulates the conduct of States and other subjects of international law, international law, like every other body of law, is susceptible to violation. However, in the event of violation, mechanisms do exist for its enforcement. This ensures that States and other subjects of international live up to their international obligations. Hence, the notion that international law has no enforcement mechanisms does not hold sway. The paper examined the enforcement mechanisms of international law. It identified, among others, the International Court of Justice, International Criminal Court and the UN Security Council as some of the mechanisms through which international law is enforced. The paper however revealed the principle of State sovereignty; lack of compulsory submission to the jurisdiction of the ICJ; lack of cooperation /political will on the part of States; and inadequate funding, among others, as some of the challenges militating against the effective functioning of these mechanisms. To mitigate these challenges, the paper recommends the following:

¹⁴⁷ Britannica, The Editors of Encyclopaedia, “United Nations Security Council,” (21 February 2023), Online: Encyclopaedia Britannica<<https://www.britannica.com/topic/United-Nations-Security-Council>> Accessed 15 June 2024.

¹⁴⁸ UN Charter, Art 43.

¹⁴⁹ Diplomatic Bluebook, “The Rule of Law in the International Community,” (2020), Online: Diplomatic Bluebook <<https://www.mofa.go.jp>>Accessed 15 June 2024.

¹⁵⁰Ian Hurd, “Round Table: The International Rule of Law: Law and the Limit of Politics,” (2014) 28(1) *Ethics and International Affairs*, 39 at 39.

¹⁵¹ Ian Hurd at 42.

¹⁵²Ibid, 39.

NWOTITE: Mechanisms for the Enforcement of International Law – Strength and Downside

1. The amendment of Article 36 of the Statute of the International Court of Justice, 1945 which gives parties the option to accept the jurisdiction of the ICJ. The idea is to confer on the ICJ, compulsory jurisdiction to hear all contentious matters between States, except disputes arising out of treaties where it is provided that recourse must be had to arbitration in the event of a dispute.
2. Restructuring of the permanent membership of the United Nations Security Council. This can be made possible through the adoption of a rotational system whereby the position of the 5 permanent members of the UN Security Council will be occupied on rotational basis. This will, to a greater extent reduce the politicization of the Security Council and entrench the principle of equality of States.
3. Abolition of veto powers system. This will help translate the principle of equality of States from concept to reality. This way the UN Security Council, as an important mechanism of international law, will be strengthened.
4. Entrenchment of international rule of law.
5. Increased cooperation by States through respect for the orders/decisions of the ICJ and ICC; cooperation with the ICC to facilitate the prosecution of cases; and provision of adequate funds for the maintenance of these enforcement mechanisms.
6. States should cooperate with the UN Security to enable it discharge its mandate of maintaining international peace and security through collective action. This will help deter States and other subjects of international law from wilful or negligent breach of international law.