



LEGAL STUDY GUIDE



**Topic A: Discussing Institutional
Limitations on Free Speech on Social
Media Outlets**

**Topic B: The Role of International
Courts in Protecting Human Rights**



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CHAIR LETTER

Distinguished delegates!

We are more than glad to welcome you to our Legal Committee. Throughout the UN's existence, the Sixth Committee of the UNGA, the Legal Committee, has proven to be a force to be reckoned with in the international field. We are super excited to have the chance to chair you, guys, in ATIDMUN 2023! All three of us are seniors, and even though we have quite a lot of committees under our belt, we cannot wait to have our last ATIDMUN with you. Michelle is from Sharet High School in Netanya, while Tali and Amalya are from Ohel-Shem High School in Ramat Gan. All three of us met while we were only sophomores, only starting our journey and path in the Israeli scene of MUN. We are hopeful you will use the opportunity of ATIDMUN 2023 to find new friends, cherish new experiences, find your voice, and express yourself. We expect you to take this conference as seriously as we do - please learn carefully, take notes, make plans, and have fun! We are here for everything anytime, before, during, and after the conference.

Sincerely,

Michelle, Amalia and Tali

P.S If you need anything, feel safe to send a text over 0552279774



INTRODUCTION TO THE COMMITTEE

The Sixth Committee, commonly called the Legal Committee, is one of the six main committees of the United Nations General Assembly. Its primary mandate is to scrutinize legal matters that pertain to international law, fostering the development and codification thereof. Comprising representatives from all 193 UN member states, the committee functions as a forum for comprehensive deliberation on legal issues, facilitating multilateral negotiations and discussions among diverse stakeholders.

The committee's responsibilities are expansive, ranging from considering matters related to the Law of the Sea to international trade law, terrorism, and the laws governing diplomatic relations. Moreover, it plays a pivotal role in the drafting and adopting of international treaties and conventions, often acting as the initiating body for these legally binding instruments. Additionally, the Legal Committee offers advisory opinions, contributing to the interpretive framework of existing legal norms and principles.

Regarding its operational mechanics, the committee typically convenes annually, coinciding with the General Assembly's sessions. Decisions within the Sixth Committee, while requiring just a simple majority, are usually arrived at through consensus, a practice that underscores the cooperative ethos of the body. While it lacks enforcement powers, its recommendations often lead to resolutions passed by the General Assembly, which exert moral and political pressure on member states to adhere to international legal standards. Consequently, the Legal Committee remains a crucial organ in international governance architecture, shaping legal frameworks that underpin global interactions.



TOPIC A- DISCUSSING INSTITUTIONAL LIMITATIONS ON FREE SPEECH ON SOCIAL MEDIA OUTLETS

INTRODUCTION

The regulation of free speech on social media has evolved into a complex and divisive issue, implicating individual liberties and societal responsibilities. Central Technology giants like Facebook, Twitter, and Google are central to this debate and possess unprecedented power in moderating content and shaping public discourse. This authority has come under significant criticism, as critics assert that private entities should not serve as arbiters of free speech, particularly without democratic oversight. These concerns resonate within the First Amendment of the United States Constitution, which traditionally constrains governmental rather than private actions that impinge upon free speech.

However, the regulatory landscape varies significantly across countries, reflecting divergent cultural and legal perspectives on free speech. In some European nations, for instance, hate speech laws are more stringent, thus justifying some level of censorship to uphold societal values and protect marginalized groups. Proponents of regulation argue that such measures are necessary to prevent incitement to violence, the spread of misinformation, and other societal harms.

On the other hand, opponents caution against the slippery slope toward authoritarianism and the chilling effects that censorship can exert on democratic discourse. These critiques underscore the need for a balanced approach, which neither abrogates individual liberties nor abdicates societal responsibilities.

Given the intricate complexities involved, the discourse surrounding regulating free speech on social media must yield clear decisions that articulate the boundaries and responsibilities of all stakeholders involved.

BACKGROUND

Free speech as a universal right finds its intellectual origins in Enlightenment philosophy, where thinkers like Voltaire and John Locke championed the free exchange of ideas. This philosophical groundwork laid the foundation for legal codifications, most notably the First Amendment in the



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United States Constitution. The Amendment embodies this Enlightenment ideal by safeguarding the freedom of speech, thereby serving in ongoing global conversations about this fundamental right.

THE FIRST AMENDMENT

The First Amendment of the United States Constitution serves as a landmark for freedom of speech. It was the basis for numerous landmark legal cases and has influenced the development of free speech protections in many democracies worldwide. Within the conch, the First Amendment is a vital safeguard for the fundamental right to express one's thoughts, ideas, and opinions without government interference. It establishes the principle that the government cannot suppress or restrict the freedom of speech. Its citizens' freedom of speech or expression passes a wide range of speech, including political, artistic, and even controversial or unpopular viewpoints. While the First Amendment provides vital protection for free speech, it's essential to note that there are limitations, such as prohibitions on speech that incites violence, constitutes libel or slander, or poses a clear and present danger to national security. The First Amendment's commitment to free speech not only allows for open dialogue but also allows for open dialogue and the exchange of diverse ideas, rendering a vibrant and democratic society where citizens can voice their concerns, challenge the status quo, and hold those in power accountable. Court rulings and legal interpretations continually shape the boundaries of free speech in the United States, reflecting the evolving nature of this fundamental right.

THE UN STANCE ON THE ISSUE

The United Nations (UN) has increasingly grappled with the intricate balance between upholding free speech and preventing the proliferation of hate speech, disinformation, and violence on social media platforms. This has been articulated through various agreements and recommendations that have culminated in the organization's current stance. One of the foundational frameworks is the Universal Declaration of Human Rights (1948), which posits the fundamental right to freedom of expression. However, it also acknowledges that such freedom carries responsibilities and limitations for public order and general welfare.

Following this, the International Covenant on Civil and Political Rights (ICCPR) in 1966 further elaborated that any restriction on free speech must be established by law and must be necessary to respect the rights or reputations of others or for the protection of national security, public order,



or public health. In essence, it provides a legal groundwork for potential limitations on digital platforms.

The Rabat Plan of Action (2012) tackles explicitly the issue of hate speech, delineating that incitement to hatred should be prohibited by law while cautioning against definitions of hate speech that are too broad, which could infringe on the freedom of expression. This Plan of Action provided an operational base for evaluating content on social media that could incite violence or discrimination.

Most recently, the UN Human Rights Council's Resolution 38/7 (2018) emphasized combating religious intolerance and discrimination without impinging upon free speech. It serves as a guidepost for social media platforms to implement policies protecting against hate speech and freedom to express their opinions.

Collectively, these agreements form a nuanced framework that serves as the underpinning of the UN's current stance. While the organization staunchly supports the principle of free speech, it recognizes the necessity for certain limitations to maintain social cohesion and security. Such a balanced approach seeks to guide the global discourse and policies concerning the burgeoning realm of social media.

THE CRITICISM OVER REGULATING FREE SPEECH ON SOCIAL MEDIA

The debate surrounding the regulation of free speech on social media platforms has reached a crescendo, attracting a plethora of criticisms and viewpoints. International organizations like Human Rights Watch and Reporters Without Borders have raised concerns that such regulations could inadvertently stifle free expression, a cornerstone of democratic society. These organizations wield considerable influence by generating comprehensive reports and engaging in advocacy that shapes both public opinion and policy discussions at a global level.

Critics argue that regulatory measures risk becoming instruments of political or ideological censorship. For example, during the Arab Spring, social media platforms were essential for dissent; regulation could have quashed these transformative movements. Tech companies themselves echo this criticism, like Twitter, who face the Herculean task of content moderation while respecting free speech principles.



The international scope of this criticism has added complexity to the issue, as different countries have diverse legal and cultural norms surrounding free speech. This multinational discourse heightens the balance between safeguarding free expression and maintaining public order and safety. However, it also exacerbates divisions, contributing to a polarized debate that complicates finding an acceptable approach to regulation. The active involvement of these organizations and stakeholders underscores this unfolding debate's worldwide significance and inherent complexities.

Advocates for regulating free speech on social media argue that certain limitations are crucial for safeguarding public safety, preventing the spread of misinformation, and fostering a more inclusive digital environment. Significant international organizations like the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO) have participated in this advocacy. UNESCO works towards fostering digital literacy and ethical considerations in cyberspace, often publishing guidelines and best practices. The WHO has actively combated health-related misinformation, particularly during the COVID-19 pandemic.

These organizations exert considerable influence by shaping international policy recommendations, generating comprehensive research, and hosting dialogues that bring together experts from diverse disciplines. Participants in these activities range from governmental representatives and legal experts to academics and civil society activists. The collective input of these stakeholders provides a multifaceted perspective on the complexities surrounding free speech regulation.

The advocacy for regulation rests on several fundamental premises: preventing hate speech to protect marginalized communities, curbing misinformation for public safety, and the necessity to moderate content that incites violence or poses national security risks. While the call for regulation raises concerns about potential infringement on individual liberties, proponents contend that a balanced approach that respects societal well-being and the fundamental principles of free expression can be achieved—controversial Institutional Limitations on Free Speech.¹

INCITEMENT TO VIOLENCE

Recently, the debate surrounding the limitation of free speech on social media due to incitement to violence has intensified. Proponents argue that restrictions are crucial for public safety and social

¹ The list of controversial limitations on free speech in social media might as well be infinite. Considering that, this study guide will go into five specific examples. However, we will leave a list of several other issues at the end of the study guide under “Questions to Consider”.



harmony. For instance, the de-platforming of former U.S. President Donald Trump by major social media companies like Twitter and Facebook came after the Capitol insurrection on January 6, 2021. The argument is that unrestricted speech can lead to real-world violence, making it imperative to curtail expressions that incite harm.

Conversely, critics argue that limitations can be a slippery slope to stifling free expression and can be misused for political censorship. For example, in India, the government has been accused of forcing Twitter to block accounts critical of its policies, framing it as an action against incitement. Detractors argue that such measures can erode democratic values and inhibit constructive dialogue.

Both sides present compelling arguments. Protecting public welfare justifies some restrictions, particularly when speech can potentially escalate into physical violence. On the other hand, the risk of abuse and the erosion of democratic freedoms underscore the need for caution in implementing such limitations. Hence, the challenge lies in finding a balanced approach that upholds the sanctity of free speech while preventing incitement to violence.

ANTI-VACCINE MISINFORMATION

Limiting free speech on social media platforms due to the spread of anti-vaccine misinformation presents a complex ethical dilemma. Advocates for limitations assert that the unchecked dissemination of false information regarding vaccines poses a public health risk. For instance, social media platforms like Facebook have taken active steps to remove or flag posts promoting vaccine misinformation, citing the need to protect public health during the COVID-19 pandemic as the rationale for such actions. The World Health Organization has also recognized vaccine misinformation as a significant obstacle to global health efforts, reinforcing the argument for content regulation.

Conversely, critics of these limitations caution against the erosion of free speech and the potential for undue censorship. They point to the removal of a New York Post article on Facebook and Twitter about COVID-19 originating in a Wuhan lab as an instance where content moderation potentially suppressed legitimate debate. Critics argue that limiting free speech could set a dangerous precedent for suppressing dissenting viewpoints, even those that might later be vindicated by scientific evidence.

In summary, the debate hinges on two crucial issues: the imperative to safeguard public health and the equally compelling need to preserve democratic freedoms. Striking a balance between these



competing interests remains an ongoing challenge that calls for nuanced and judicious approaches to social media regulation.

WHISTLEBLOWING

The issue of limiting free speech on social media due to the release of confidential or classified information—commonly known as whistleblowing—has garnered considerable attention. Proponents of limitation argue that the unauthorized disclosure of sensitive information could jeopardize national security or harm individuals. A salient example is the case of Chelsea Manning, a U.S. Army intelligence analyst who leaked classified documents, leading to her imprisonment. Advocates for limitations contend that such actions can expose intelligence assets and compromise military operations, necessitating stringent speech control.

On the flip side, opponents argue that whistleblowing can serve the public interest by revealing misconduct, corruption, or actions that put the public at risk. The case of Edward Snowden, who disclosed mass surveillance practices by the U.S. government, is an illustrative example. Critics of limitation maintain that suppressing such revelations would stifle democratic discourse and inhibit accountability.

Essentially, the debate pivots on a tension between national security and the public's right to know. While there is an indisputable need to protect sensitive information, there is also a compelling argument for transparency and accountability, especially when it brings to light actions that contravene ethical or legal standards. Striking a balance between these conflicting priorities continues to be a complex and fraught endeavor, necessitating thoughtful deliberation.

DEEPFAKES

The emergence of Deepfake technology, which enables the creation of highly realistic manipulated videos and audio, has escalated the debate on limiting free speech on social media. Advocates for limitations contend that Deepfakes pose severe risks, including misinformation, identity theft, and undermining democratic processes. For example, in 2019, a Deepfake video of U.S. House Speaker Nancy Pelosi was circulated to depict her as inebriated falsely. The incident prompted social media platforms to consider policies specifying such manipulative content, arguing that Deepfakes could distort public perception and compromise truth.

Conversely, critics argue that limitations could stifle creativity and innovation. Deepfake technology has legitimate applications, such as in filmmaking and synthetic media. Restrictions



could inadvertently hamper these constructive uses. Furthermore, critics point to potential misuse restrictions for political or corporate censorship. For instance, a ban on Deepfake technology could have prevented the release of "Sassy Justice," a satirical video by the creators of "South Park," which employed Deepfakes to lampoon public figures.

In summary, the central tension resides between the need to mitigate the risks of Deepfake technology and the importance of preserving freedom of expression. Striking a balanced approach that safeguards public interest without inhibiting technological progress remains a formidable challenge.

HATE SPEECH

The topic of restricting free speech on social media due to hate speech poses a multifaceted ethical quandary. Proponents of limitation argue that permitting hate speech can engender real-world harm, including discrimination, harassment, and violence. The banning of conspiracy theorist Alex Jones from platforms like Facebook and YouTube serves as a high-profile example; these platforms cited violations of policies against hate speech as the justification for his removal. Advocates claim that such limitations are necessary to foster a safe online environment and to protect marginalized communities from harm.

Conversely, opponents argue that limiting hate speech can be difficult for democratic principles, including free expression. Some saw the suspension of controversial British commentator Katie Hopkins from Twitter as a suppression of unpopular opinions rather than an action against hate speech per se. Critics worry that broad definitions of hate speech may be exploited for political or ideological censorship, thus stifling open debate and eroding democratic freedoms.

In essence, the debate pivots on the trade-off between fostering a safe digital space and upholding the tenets of free speech. The challenge lies in crafting balanced policies that protect individuals and communities from hate speech's corrosive impact while not compromising the core democratic principle of free expression.

QUESTIONS TO CONSIDER

1. What are your country's laws regarding the limitations on freedom of speech?
2. What interests that regard freedom of speech does your country's government hold?



3. In what past cases has your country limited the use of free speech? How did they justify it?
4. Is your country democratic or authoritarian?
5. What boundaries should be set in the different controversial subjects (if any)?
6. How do you justify the specific boundaries you decided should be set?
7. How can these boundaries be enforced?
8. How do you minimize the risk of infringing on freedom of speech leading to authoritarianism?

WE HIGHLY ENCOURAGE YOU GO OVER THE BIBLIOGRAPHY

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TOPIC B – THE ROLE OF INTERNATIONAL COURTS IN PROTECTING HUMAN RIGHTS

Background

Human rights are fundamental entitlements granted to everyone regardless of background or identity. They encompass civil and political rights, such as the right to life and freedom of expression, and economic, social, and cultural rights, like education and health. These principles, shaped over centuries, are now embedded in international law, dictating how nations interact.

Unlike domestic laws, international law relies on "voluntary compliance." Three key points underpin this.

- Sovereignty: States must willingly accept and ratify international treaties for them to bind.
- Reputation and Reciprocity: States often comply due to mutual benefits and to uphold their international standing.
- Soft Power Mechanisms: Entities like the United Nations influence compliance through monitoring, reporting, and diplomacy.

The horrors of the World Wars in the 20th century propelled the establishment of foundational human rights documents, such as the Universal Declaration of Human Rights in 1948. This, alongside other treaties, solidified human rights within international law. While challenging, international law's "voluntary compliance" nature reflects the evolution of global norms and the collective pursuit of a just world order.

Two significant treaties underscore human rights in international law: the Geneva Conventions and the Universal Declaration of Human Rights (UDHR). The Geneva Conventions, established in 1864 and revised after that, provide legal protections for those impacted by war, including civilians and wounded soldiers. They emphasize the humane treatment of individuals not engaged in combat, aiming to mitigate the consequences of armed conflicts. The UDHR, on the other hand, was adopted in 1948 by the United Nations. It sets out the basic fundamental rights and freedoms that everyone is entitled to, establishing a foundational benchmark for international human rights law.

However, human rights aren't always absolute. These rights might be restricted in certain circumstances, like states of emergency or to maintain public safety. One recent and global example



is the response to the Covid-19 pandemic. Governments worldwide imposed lockdowns, travel bans, and quarantine measures, inherently restricting freedoms of movement, association, and in some cases, expression. For instance, during the pandemic, several countries enforced laws that penalized the spread of what they deemed "misinformation" about the virus, potentially curbing the freedom of expression. Another example would be during the 2011 riots in London; the UK government considered imposing curfews and restricting social media access to maintain public order. While controversial, such measures were argued by the government as necessary to prevent further violence and chaos. That is to say, when human rights are restricted, it should always be done proportionately, legally, and out of necessity.

Human rights are fundamental basic rights granted to all, underpinned by treaties like the Geneva Conventions and UDHR. Although sometimes restricted, they are crucial in ensuring the dignity and well-being of individuals. Organizations like UNHCR and courts like the ICC and ICJ are pivotal in upholding and enforcing these rights in the global law system.

International law governs the relationships between states and other entities recognized as subjects of international law. It exists as a framework that regulates the conduct of commodities on the international stage. Let's break down the various components:

Treaty Laws (Conventional Law): Treaty laws are legal agreements between states or between states and international organizations. These agreements are binding on the signatories, provided they have been ratified according to the constitutional requirements of the parties involved. They can be bilateral (between two parties) or multilateral (involving multiple parties). For example, the "Vienna Convention on the Law of Treaties" is a treaty about treaties. It provides the framework for creating, interpreting, and resolving disputes concerning international treaties.

Customary International Law: These practices have evolved and are considered binding on states, even if not codified in written form. For an approach to become a coursey international law, it must be widespread, consistent, and accepted as law by states. For instance, "Immunity of foreign heads of state" is part of customary international law, implying that a serving foreign state cannot prosecute a serving foreign head of state. Instruments are non-binding norms, guidelines, principles, or declarations that states and other international actors are encouraged to follow. They do not have the legal race of treaties or conventions. For example, the Helsinki, the Accords, or the Paris Agreements. However, they do stand to have significance in the courts as a reference or



interpretative aid; it doesn't carry the same weight as binding law. Its value lies in its ability to offer clarity, context, or evidence of evolving norms and consensus.

The International Court of Justice (ICJ): The ICJ is the principal judicial organ of the United Nations. It settles legal disputes submitted by states and provides advisory opinions on international legal questions referred by authorized UN organs and specialized agencies. The ICJ's significance lies in its capacity to provide a neutral forum for states to resolve their disputes peacefully and based on legal principles. One of its landmark decisions was in the Nicaragua v. United States case, where it tackled contentious issues like armed intervention and self-defense. By adjudicating such high-profile cases, the ICJ not only underscores the importance of adhering to international legal standards but also promotes the peaceful resolution of conflicts, setting precedents that influence future international relations.

The International Criminal Court (ICC): The ICC prosecutes individuals for crimes of international concern, such as genocide, war crimes, and crimes against humanity. Unlike the ICJ, which primarily deals with disputes between states, the ICC focuses on holding individuals accountable. Notably, it has dealt with cases involving leaders like Laurent Gbagbo and Charles Blé Goudé from Côte d'Ivoire, charging them with crimes against humanity.

The role of these international courts in safeguarding human rights has evolved. Initially, states were primarily responsible for upholding the rights of their citizens. But with globalization and increased interactions between nations, there arose a need for an international legal system that could address egregious human rights violations. By holding individuals and states accountable, these courts aim to ensure that human rights principles are not merely aspirational but can be enforced. However, as explained in the next section following the study guide, the ICJ and ICC rely heavily on the goodwill and cooperation of states and the international community for effective enforcement. While they possess formal mechanisms, their power is also significantly underpinned by diplomatic, political, and moral pressures.

ENFORCEMENT MECHANISM FOR THE ICJ

The ICJ operates under the auspices of the United Nations. If a country fails to comply with the ICJ's judgment, the matter can be referred to the UN Security Council, which can recommend or take measures to ensure compliance. However, the T of the ICJ carries considerable moral and



political weight. Non-compliance risks diplomatic estrangement, potential trade sanctions, and a tarnished international reputation.

ENFORCEMENT MECHANISM FOR THE ICC

The ICC relies on several Enforcement mechanisms:

- **State Cooperation:** The Rome Statute obliges member states to cooperate fully with the ICC. This includes arresting and surrendering accused individuals and providing evidence when requested².
- **Asset Freeze and Travel Ban:** The ICC can request the UN Security Council to impose targeted sanctions, like freezing assets or implementing travel bans against individuals.
- **Non-cooperation Proceedings:** If a state party refuses to cooperate, the ICC can initiate proceedings against it, potentially leading to a referral to the Assembly of States Parties or the Security Council.
- **International Pressure:** Global actors, including states and NGOs, exert pressure on non-compliant nations, advocating for adherence to the ICC's mandates.

THE CURRENT SITUATION

THE CHALLENGES AND HARDSHIPS OF THE INTERNATIONAL SYSTEM

While a beacon of hope for many seeking justice, the international law system often grapples with substantial obstacles, primarily the refusal of nations and individuals to cooperate with its apparatus. One primary deterrent is the lack of alignment between domestic and international legal systems. For instance, while being a vocal proponent of human rights, the United States hasn't ratified certain international treaties, like the Convention on the Rights of the Child, creating gaps in its commitment to international norms.

Political agendas play a pivotal role in this non-cooperation. Countries may sidestep international obligations to protect diplomatic relationships or strategic alliances. The case of Omar al-Bashir, Sudan's former leader indicted by the International Criminal Court for crimes against humanity in

² However, countries such as Russia can withdraw their signature from the Rome Statute.



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Darfur, is an apt example. Despite the indictment, several countries allowed him to travel freely within their borders, illustrating the tug-of-war between diplomatic ties and legal obligations.

Another significant roadblock is the assertion of national sovereignty. Countries like China, prioritizing their territorial and political integrity, have often rebuffed international interventions or rulings, as seen in their rejection of the Permanent Court of Arbitration's verdict on the South China Sea dispute³.

The credibility of international courts also comes under scrutiny, further complicating matters. Accusations of bias or neocolonial undertones, as levied by some African nations against institutions like the ICC, can undermine the court's legitimacy, even leading to withdrawals from international agreements.

Prominent individuals, leveraging their stature or political connections, further hinder the international law system's efficacy. High-ranking officials, shielded by their position or nation's power dynamics, often evade accountability. For instance, the case of Julian Assange, the WikiLeaks founder, illustrates how intricate international and political dynamics can prevent individuals from facing potential trials. His prolonged refuge in the Ecuadorian embassy in London, the coup, and the UK's hesitancy to extradite him to the US due to potential human rights concerns highlight the complex interplay of national interests, individual rights, and international justice.

Such myriad challenges, coupled with the problematic enforcement power of the international court, underscore the intricate tapestry of international law and the pressing need for reforms, cohesive global commitment, and a nuanced understanding of individual cases. To address these challenges, various measures have been considered to enhance the effectiveness of the international law system:

³ On July 12, 2016, the arbitral tribunal adjudicating the Philippines' case against China in the South China Sea ruled overwhelmingly in favor of the Philippines, determining that major elements of China's claim—including its nine-dash line, recent land reclamation activities, and other activities in Philippine waters—were unlawful. Predictably, China reacted negatively to the ruling, maintaining it was "null and void."



- **Strengthening Domestic Legal Frameworks:** Encouraging countries to establish or strengthen domestic legislation to enforce international law, such as adopting legislation to criminalize genocide, war crimes, and crimes against humanity.
- **Building International Cooperation:** Fostering international cooperation and collaboration among states, regional organizations, and international institutions to facilitate the arrest, extradition, and prosecution of individuals accused of international crimes.
- **Strengthening International Tribunals:** Ensuring the independence, impartiality, and credibility of international tribunals, as well as enhancing their capacity to investigate and prosecute crimes effectively. This may include providing adequate resources, addressing legal loopholes, and strengthening cooperation with states.
- **Engaging in Diplomatic Efforts:** Utilizing diplomatic channels to exert pressure on non-compliant countries, raising awareness about the importance of international justice, and promoting accountability for crimes committed.
- **Encouraging Universal Ratification:** Encouraging all states to ratify and implement relevant international treaties and conventions related to international crimes, such as the Rome Statute of the International Criminal Court (ICC).

THE RELATIONS BETWEEN INTERNATIONAL AND NATIONAL LAW

Countries take different approaches to incorporating international law, mainly the "dualist" and "monist" systems. In the dualist system, international law and domestic laws are separate entities. For an international treaty or convention to become effective domestically, it must be transformed into national law, typically through legislation. Simply ratifying an international agreement doesn't directly make up the country's domestic legal fabric. The UK exemplifies a dualist system. When it signs an international treaty, the treaty doesn't automatically embed itself in UK law. Parliament must enact a distinct piece of legislation to incorporate the treaty's terms.

Contrarily, in a monist system, international law and domestic law merge into one unified system. Once ratified, an international treaty frequently becomes part of domestic law without additional legislative action, depending on constitutional provisions. In this system, domestic courts can directly apply international law. Countries like France and the Netherlands operate primarily under monist principles. In such jurisdictions, ratified international treaties can now be cited in domestic courts and will supersede conflicting national laws.



However, while the dualist and monist distinction provides a foundational understanding, it's essential to recognize that this binary categorization isn't strictly adhered to universally. Some countries exhibit characteristics of both systems, creating a hybrid approach. South Africa, for instance, has a mixed policy. Its post-apartheid constitution, which began in 1997, manifests both dualist and monist elements. While certain international agreements become domestic law upon ratification, others require additional domestication through national legislation. This dual practice allows South Africa to selectively incorporate international laws based on their perceived importance and relevance to its national context. Such a system ensures that the country can be flexible in adopting international norms while guarding national interests when necessary.

RELIGION AND AUTHORITARIANISM

Religious and authoritarianism are also challenges to overcome:

Religious beliefs and doctrines can profoundly impact a nation's stance on human rights and, by extension, the role of international courts. For instance, in countries with predominant Islamic jurisprudence, such as Saudi Arabia, specific interpretations of Sharia law have historically been at odds with international gender rights standards, particularly regarding women's freedom of movement and dress. While some religious teachings align with global human rights standards, championing peace, justice, and equity, others may challenge specific rights like gender equality or freedom of expression. Consequently, nations with pronounced religious underpinnings, like Saudi Arabia, may perceive international court verdicts through the prism of their religious convictions, which could lead to potential conflicts or non-compliance.

Authoritarian regimes frequently exhibit distinct viewpoints on international law, often prioritizing national sovereignty and their interests over international commitments. Take Russia, for instance. Its annexation of Crimea in 2014 was widely criticized and deemed a violation of international law, but the Russian government defended its actions, asserting its national interests and sovereignty. For authoritarian governments like Russia, international courts can be perceived as adversaries challenging their autonomy. Such regimes might contest the legitimacy of these courts, as seen when Russia withdrew its signature from the Rome Statute⁴, effectively rejecting the International

⁴ the treaty that established the International Criminal Court (ICC) to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression.



Criminal Court (ICC) jurisdiction. By doing so, these regimes aim to curb international oversight, suppress internal dissent, and evade responsibility for potential human rights violations. This dynamic often leads to a tense relationship between international and national law, as these governments sidestep or undermine global standards to bolster their agendas.

IMPORTANT FURTHER NOTES, POINTERS

- Some regions have courts, such as the European Court of Human Rights or the African Court on Human and Peoples' Rights. These can serve as supplementary mechanisms to ensure justice.
- Before launching a full investigation, the ICC prosecutor conducts a preliminary examination to determine if a situation meets the criteria for further inquiry. Diplomatic considerations and state cooperation can influence this process.
- The ICJ and the ICC, while established as judicial entities, operate within a geopolitical landscape where political interests can shape their actions. The decision to prosecute or investigate often goes beyond mere legal considerations. For the ICC, states with significant clout or vested interests can influence referrals, deferrals, or funding. Similarly, while the ICJ adjudicates disputes between states based on international law, states' willingness to submit to the court's jurisdiction or to adhere to its rulings can be swayed by diplomatic pressures, alliances, or global power dynamics. As a result, these institutions' pure application of law can intersect with, and sometimes be overshadowed by, the broader political context in which they function.

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