



## The Future of International Law amid the Structural and Substantive Challenges of the International System

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### Abstract:

This article examines the major contemporary challenges confronting international law in its effort to regulate relations among the various actors within the international system. The continuous transformations—particularly in the structural configurations of the international order—have generated fundamental challenges for international law. These can be summarized in two main aspects.

The first concerns the challenges arising from structural shifts in the architecture of the international system, which have affected some of the long-established principles of international law, such as the nation-state and sovereignty, in addition to the law's inability to adequately accommodate new actors emerging within the international arena.

The second aspect pertains to conceptual and practical challenges, foremost among them the Western intellectual dominance over the conceptualization and philosophical foundations of international law, as well as the United States' antagonistic stance toward many of its norms and institutions.

**Keywords:** international system, international law, structural changes, nation-state, sovereignty, intellectual hegemon.

**Received:** 28/07/2025

**Accepted:** 25/01/2026

**Published:** 20/03/2026

### Introduction

Throughout its historical evolution, the international system—as the institutional, political, economic, diplomatic, and legal framework governing international relations—has undergone structural transformations that have affected its core components and actors. It has also faced substantive challenges that have reshaped its intellectual and conceptual foundations.

Among the most significant turning points was the advent of the unipolar moment, which emerged following the collapse of one of the system's major poles—the Eastern bloc. Since then, scholars and experts have diverged in their assessments of the current stage: some uphold the notion of a continuing unipolar order, while others advocate the view that international relations have entered a new phase of global reconfiguration.

Amidst these divergent interpretations, one reality remains evident: such transformations have had a tangible impact on the principles and norms of international law, which serve as the regulatory foundation of this system. Consequently, international law has been compelled to confront these challenges, seeking to understand, adapt, and respond to the evolving dynamics of the international order.

From this perspective, the significance of the present study lies in its attempt to analyze the extent to which these transformations have affected international law and to assess the capacity of its norms to confront emerging challenges within an international system increasingly distanced from the normativity that traditionally characterizes international legal rules, and ever more driven by power and interest as the principal determinants of state behavior.

This evolution has consequently reinforced the dialectical relationship between power and interest on the one hand, and international law on the other, raising fundamental questions about the law's autonomy, effectiveness, and normative authority in an era where pragmatic considerations often prevail over legal and moral imperatives.

The rapid developments within the international system reveal a disturbing decline in the authority and normative coherence of international law. In contrast, there is a growing conviction regarding its ineffectiveness—or at least its limited capacity—to withstand the overwhelming forces of power and interest that dominate global politics.

Accordingly, it is no exaggeration to assert that international law is currently facing an existential crisis on multiple levels, including the formal political sphere. More critically, this crisis has extended into the academic, intellectual, and cultural realms. It is not confined to scholars and policymakers in major powers—who often perceive international legal norms as restrictive constraints on state sovereignty—but also affects those who once placed their hopes in international law as a last refuge for the realization of justice, liberty, and universal values.

Building on the foregoing, the central research problem addressed in this article revolves around the following question:

To what extent are the rules of international law capable of adapting to the structural and substantive challenges currently confronting the international system?

Accordingly, this article seeks to address the aforementioned research question through two main sections. The first section examines the structural challenges, namely the set of variables that have transformed the structure of the international system. The second section focuses on the substantive challenges, which are primarily conceptual and practical in nature. The detailed outline of the study is as follows:

- 1 .The Concept of International Law and the International System
  - 1.1 .Definition of International Law and the International System
    - 1.1.1 .The Relationship between International Law and the International System
    - 1.1.2 .The Evolution of the International System
  - 2 .Structural Changes in the International System
    - 2.1 .The Subjects of International Law
    - 2.2 .The Nation-State
    - 2.3 .Sovereignty
  - 3 .Substantive Challenges to International Law
    - 3.1 .Western Intellectual Hegemony over the Conceptual Framework of International Law
    - 3.2 .Preconceived Legal Concepts
    - 3.3 .The United States' Position toward International Law

## **1 .The Concept of International Law and the International System**

It is essential to define both international law and the international system in order to identify the conceptual distinctions and interconnections between them.

### **1.1 .Defining International Law and the International System**

Given the conceptual interdependence between international law and the international system, each must first be defined separately. <sup>1</sup>

#### **1.1.1 .Definition of International Law**

International law may be defined as the set of legal norms governing relations among the subjects of international law.

### **1.1.2 .Definition of the International System**

The international system refers to the set of rules, norms, and behavioral patterns observed by all actors within the system. It may also be described as the institutional, diplomatic, political, economic, legal, and cultural framework that organizes international relations within a given historical period.<sup>2</sup>

### **1.2 .The Relationship between International Law and the International System**

Explaining the relationship between international law and the international system requires reference to a key linking element—international relations—which can be defined as the network of interactions and relationships among the various actors operating within the international system.

The nature and form of these interactions determine the structure and dynamics of the international system, as well as the collective and individual attitudes of its components toward international law.

Historically, the evolution of the international system—from the Peace of Westphalia through the two World Wars, the Cold War, and the emergence of the post-Cold War international order—has generated diverse impacts on the established legal concepts of international law, such as sovereignty and the nation-state.

One of the most influential phases in this regard is what is commonly referred to as the “New International Order,” which emerged after the end of the Cold War and the advent of unipolarity. The repercussions of this system remain visible today, notwithstanding the variety of analyses suggesting that international relations are now transitioning toward a new multipolar configuration distinct from the unipolar paradigm.

### **1.3 .The Evolution of the International System**

The international system has evolved through several historical stages, each marking a critical juncture in its development.

The first major transformation occurred with the Peace of Westphalia (1648) <sup>3</sup>, which established a new international order replacing the pre-Westphalian system. This was followed by the World Wars, the Cold War, and the subsequent unipolar system, which some argue persists today, while others maintain that the world has entered a multipolar order.

Some scholars categorize the historical evolution of the international system into three main phases:<sup>4</sup>

- The Pre-Modern Phase (prior to Westphalia),
- The Modern Phase (from Westphalia to the mid-Cold War period), and
- The Post-Modern Phase, beginning in the later stages of the Cold War and continuing thereafter.

From the perspective of historical sociology, Barry Buzan identifies four evolutionary stages of the international system, each representing a distinct form of international order:<sup>5</sup>

- The Pre-National System, characterized by the absence of the state as a political entity.
- The Classical System, marked by the emergence of cities and empires as the earliest forms of political organization.
- The Global System, distinguished by the rise of the sovereign nation-state and its interactions with other states.
- The Post-Modern International System, which emerged as a result of globalization.

In this context, every transition from one system to another entails profound changes in structures, actors, patterns of interaction, and the political, economic, and ideological dimensions of the order. Such transformations require considerable time and do not occur simultaneously across all domains.<sup>6</sup>

Hence, the structural and substantive evolution of the international system is a historical reality that cannot be denied. This underscores the importance of examining the reciprocal relationship between the evolution

of the international system and international law, which functions as the normative framework governing relations among the system's components in each historical period.

Since history demonstrates that the international system is inherently dynamic, it logically follows that international law must also evolve—in its form, content, concepts, philosophical foundations, and teleological purposes. Otherwise, linking a static legal order to a dynamic international reality would render the law ineffective and detached from the very system it seeks to regulate.

## **2 .Structural Changes in the International System**

Structural changes refer to the emergence of new and influential actors in international relations. Since the mid-twentieth century, the international system has undergone profound transformations with the rise of new actors exerting political, economic, technological, and media influence that sometimes surpasses that of states, whose functional scope and impact indicators have relatively declined.

Among the most prominent of these actors are non-governmental organizations (NGOs) <sup>7</sup>, whose power lies in their widespread presence across states, their ability to mobilize international public opinion, and their capacity to recruit large numbers of participants. Likewise, the individual has become a significant actor given the evolution of their legal status in international law, enjoying rights of an international character — particularly within various human rights instruments — and bearing international criminal responsibility through mechanisms ranging from ad hoc international tribunals to the International Criminal Court.

Many specialists in international relations also highlight other non-state actors that exert considerable influence, such as pressure groups, major media corporations, and certain large religious organizations.

Additionally, transnational corporations constitute <sup>8</sup> a powerful category of actors whose influence stems from three main sources: financial strength, human resources, and technological monopoly across diverse sectors.

From the above, it becomes evident that the international system operates on two levels of actors. The first is a formal level, which includes states and international organizations — a limited set of legally recognized actors. The second is a multi-centric level, comprising an unlimited number of actors capable of operating internationally and autonomously from the states to which they ostensibly belong.<sup>9</sup>

### **2.1 .Subjects of International Law**

International law is defined as the body of rules governing relations among the subjects of the international community. Accordingly, it recognizes only two primary legal persons: the state, which enjoys absolute legal personality, and the international organization, which possesses a functional and limited legal personality. One may also include national liberation movements, which enjoy a restricted legal personality insofar as they exercise the right to self-determination.

Consequently, the other influential actors in international relations lack recognized legal personality under current international law. Although they may at times be objects of international law, this does not obscure the fact that international law remains largely out of step with the structural transformations of the international system, which has witnessed the rise of new and unconventional actors.

Hence, international law continues to operate primarily at the first level of actors — states and international organizations — while remaining disconnected from the second level of non-traditional actors mentioned above. This disconnect suggests that international law has not kept pace with the transformations occurring within the international system, thereby limiting its ability to regulate or influence these new actors' behavior.

In other words, if we compare international law with international relations or the international system in terms of concept and composition, we find that international law lags behind the latter in adapting to the emergence of new actors. Whereas international relations theory readily accommodates such actors, international law remains confined to its classical framework. This disparity reflects the philosophical

foundation upon which international law was built — the Westphalian paradigm, where the nation-state (L'État-nation) emerged as the central unit of analysis and the principal source of legal order.

This raises a fundamental question :Has the time come for international law to move beyond its Westphalian legacy?

## **2.2 .The Nation-State**

The nation-state represents one of the most significant outcomes of the Peace of Westphalia (1648). It constituted the epistemological and philosophical foundation of both traditional and modern international law, as well as the cornerstone of international organization — from the League of Nations to the United Nations.

Many of the enduring principles of international law and international relations stem directly from the idea of the nation-state, notably the principles of sovereign equality, non-intervention in domestic affairs, and the prohibition of the use of force in international relations.

### **2.2.1 .The Epistemological Perspectives on the Nation-State**

The concept of the nation-state has been a central theme in various epistemological approaches within the field of international relations, particularly in discussions of transformations in the international system. It has long been considered the principal actor in the international system and the primary legal subject under international law.

A considerable number of theoretical perspectives converge — or nearly do — on the idea that the role of the state is declining in international relations, giving way to other actors. Some even go so far as to predict the complete disappearance of the state from the matrix of international interactions.

While such a vision may seem unrealistic — since it is difficult to imagine an international society without states — a historical reading of the evolution of the international system, especially as analyzed through historical sociology, renders such a scenario conceivable. This marks a radical epistemological shift, challenging one of the most entrenched concepts in international law: the nation-state.

For instance, neoliberal theorists argue that the era of the nation-state as the dominant actor in international relations belongs to the past. The state is now merely one among several active units, coexisting with various other structures. Consequently, the competencies of the nation-state are expected to shrink progressively, eventually disappearing altogether. <sup>10</sup>

In a similar vein, proponents of the concept of a non-polar world contend that globalization will continue to expand, extending the reach and influence of the Western liberal model across the globe. This, in turn, would pave the way for the emergence of a world government — a cooperative framework uniting representatives of nations that share common liberal values. <sup>11</sup>

These interpretations converge substantially with Francis Fukuyama's "End of History" thesis, which posits that liberal democracy and the free-market economy represent the final stage of political and ideological evolution. According to this view, the spread of these values will resolve humanity's fundamental challenges, accelerating globalization and the erosion of traditional sovereignty. Consequently, the age of the nation-state is ending, and humanity stands on the brink of global integration, evolving into a single, cosmopolitan civil society.<sup>12</sup>

Within another theoretical framework, Marxist theory — both classical and contemporary — envisions the future of the international system as shaped by the interaction between the capitalist world and the global proletariat. Continuous migration toward the capitalist core will eventually trigger a global workers' revolution, culminating in worldwide governance by the proletariat. <sup>13</sup>

From this perspective, the nation-state has no place in the international order to come. Even before such a revolution occurs, Marxist thought maintains that the main actors in international relations are not nation-states, but rather transnational social classes — the global proletariat and the global bourgeoisie.

Continuing with this epistemological survey, Samuel Huntington, in his “Clash of Civilizations” thesis, placed civilizations at the center of global interaction and conflict <sup>14</sup>, effectively elevating them to the status of principal actors in the post-Cold War international system. Similarly, Alexander Dugin, in his theory of multipolarity, grounds his argument in civilizational pluralism, asserting that the nation-state is merely a vehicle for globalization. Therefore, it lacks intrinsic value and need not be preserved in a truly multipolar order — except in cases where the nation-state defends distinct cultural and civilizational identities or aligns harmoniously with the principles of multipolarity. <sup>15</sup>

### **2.2.2 .The Nation-State and Postmodernity**

The postmodern paradigm rests on the assumption that the process of modernizing traditional societies has been completed, and that nothing remains sacred in the social, political, or economic spheres — including the nation-state itself.

If modernity advanced the concept of the state as a replacement for the empire, postmodernity promotes globalization and the planetary civil society as substitutes for the nation-state. This is the explicit claim of postmodernism.

Implicitly, however, postmodern thought also champions individualism and detachment from collective ideologies, further weakening the cultural and social role of the state. Consequently, postmodernism contributes to the diminution of the nation-state’s significance as both a political and symbolic entity. <sup>16</sup>

### **3.2 .Sovereignty**

Sovereignty refers to the exclusive authority of a state to regulate its internal and external affairs without interference from any other power. It is also defined as the absolute and indivisible jurisdiction exercised by a state within the limits of its territory. <sup>17</sup>

Sovereignty constitutes one of the foundational principles of modern international law, as well as a cornerstone of the contemporary international order. This is particularly evident in the Charter of the United Nations, which enshrines the principle of sovereign equality among all states — meaning that each state enjoys the same rights and bears the same obligations derived from sovereignty, while also possessing identical legal standing within the international community.

However, a careful examination of the current international order reveals a starkly different reality. The Russian philosopher Alexander Dugin argues that the Westphalian model of sovereignty — premised on complete legal equality among sovereign states — would logically lead to a multipolar distribution of power in international decision-making.

In practice, however, the global system exhibits hierarchy and dependency, structured according to the index of power. This disparity in material and strategic capabilities prevents many states from defending their sovereignty vis-à-vis the major powers. Consequently, sovereignty, in many instances, becomes a legal fiction rather than an empirical fact. <sup>18</sup>

After reviewing the principal structural transformations within the international system, it is important to address one of its most prominent institutional frameworks: the United Nations — particularly through the lens of competing theories interpreting and forecasting the future of the international order.

Proponents of unipolarity advocate the creation of a new institutional framework, often described as a “League of Democracies” led by the United States, to replace the United Nations.

Similarly, globalization theorists envision the rise of a world government as a successor to the UN, designed to institutionalize liberal globalization.

In contrast, advocates of multipolarity adopt a pragmatic perspective toward the United Nations. They view it as a temporary mechanism that should be utilized to counterbalance unipolar and globalist tendencies, since it remains the only global institution providing even a minimal degree of pluralism.

Nevertheless, from this standpoint, the UN is seen as a legacy institution of both the Westphalian and bipolar orders. Once it fulfills its transitional role in founding multipolar structures, it will, according to this view, become an obsolete relic of a bygone global order.<sup>19</sup>

### **3 .The Substantive Challenges to International Law**

In addition to structural challenges, international law faces a set of conceptual and substantive challenges, which can be outlined as follows:

#### **3.1 .Western Intellectual Hegemony over the Conceptual Framework of International Law**

Although both traditional and modern international law are of European origin, a careful examination of the philosophical and conceptual foundations of this legal system reveals that the formulation of its rules — which are supposedly consensual and reflective of the collective will of the international community — was carried out within Western intellectual and philosophical frameworks, characterized by uniformity of thought and direction.

This hegemony became especially evident during the unipolar era, where the dominant philosophy of human rights, the international legal frameworks governing trade, economic freedom, and public rights and liberties (whether individual, collective, political, economic, or even cultural) were all conceived through a Western methodological lens. These frameworks were presented as historical necessities and universal developmental stages of human society — beyond question or relativism — and were treated as universal norms for all humankind.

This intellectual dominance has been further reinforced by the absence of strong critical and deconstructive intellectual efforts aimed at exposing or challenging it. Yet, Western culture represents only one set of values among many, and therefore there is no reason to insist upon the universality of Western standards. Such insistence amounts to a form of ethnocentrism that is imposed by all possible means.

Consequently, Western values should be understood as local and historically bounded, not eternal or universal. Based on this understanding, the world order built upon them reflects a structure of power and domination, rather than an objective or inevitable path of human evolution.<sup>20</sup>

#### **3.2 .Preconceived Legal Concepts**

A preconceived legal concept—or pre-legal concept—refers to the process by which political and factual notions are transformed into supranational legal norms, which, over time, become internationally recognized legal principles.<sup>21</sup>

A close examination of the rules of international law reveals numerous such preconceived notions. A notable example is the United Nations Charter, which granted the victorious powers of World War II permanent membership in the Security Council and the right of veto. This demonstrates how a political arrangement reflecting the post-war balance of power was transformed into a binding legal principle (*erga omnes*), requiring universal respect.

This arrangement has made membership in the world's foremost international organization unequal, structured around a hierarchy of power rather than the principle of sovereign equality enshrined in the same Charter. States seeking membership must accept this political and legal reality, which effectively mirrors contracts of adhesion in domestic law.

Similarly, the 1963 Treaty on the Non-Proliferation of Nuclear Weapons (NPT) prohibits new states from acquiring nuclear weapons while legitimizing possession by states that had acquired them before 1963—known as the “nuclear club.” This represents a legal codification of a political reality grounded in power and interest, which has gradually evolved into one of the most binding and peremptory norms of international law.

The preconceived legal concept thus embodies a profound conceptual contradiction between what exists *de facto* (by virtue of fact) and what should exist *de jure* (by virtue of law). The transition from the rule of law to the rule of fact marks a regression inconsistent with legal rationality. Yet, for reasons of power and

expediency, pre-legal concepts tend to merge these opposites, converting undesirable political realities into normative obligations.

Substantively, these concepts were designed to reflect hierarchical power structures, while formally they were drafted by a limited group of states, later imposed as universal normative standards upon a global community that neither participated in their formulation nor debated their legitimacy.

This situation recalls the crisis of customary international law, when newly independent states rejected European-origin customs—both in form and substance—on the grounds that they had played no role in their creation. Thus arises the question: Is the international community now facing a crisis of international law itself, or at least a crisis of its preconceived concepts?

The problem becomes more acute when powerful states attempt to universalize their own cultural and social norms by codifying them into international legal instruments, particularly in the field of human rights and freedoms—as seen, for example, in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

### **3.3 .The Position of the United States of America toward International Law**

At first glance, the title may seem unusual—why focus specifically on the United States in a discussion of law that is supposed to be universal and abstract? The answer lies in the fact that, in the contemporary international system, linking global transformations to the United States is both logical and realistic, given its status as the world’s most powerful military, political, and economic actor.

Its strategic and political behavior has profound implications for both international order and international law. A clear example is the Trump administration’s decision to impose tariffs on numerous countries, which significantly impacted global financial markets and reshaped traditional U.S.–European alliances.

Regarding its attitude toward international law, two levels of analysis can be distinguished: the popular (societal) level and the official (governmental) one.

According to British international law scholar Philippe Sands, most Americans—including many legal professionals—are unenthusiastic about international law. In discussing the case of a Paraguayan citizen executed in Virginia despite a ruling by the International Court of Justice (ICJ) requesting suspension of the execution, Sands observed: “Most Americans are uncomfortable with the idea that foreign judges in a distant international court can stop an execution in Virginia”.

He further quotes an American citizen saying: “International law is for others, not for us”.

Sands also notes that most U.S. law schools either do not teach international law or treat it as peripheral to political science and international relations.<sup>22</sup>

At the official level, the U.S. record abounds with violations of international law, both in form and substance, revealing a consistent political and intellectual approach to international legality. For instance, the United States took forty years to ratify the 1948 Genocide Convention, fifteen years to accede to the International Covenant on Civil and Political Rights, ten years to the Convention against Torture, and six years to the four Geneva Conventions.

This pattern underscores a systematic U.S. strategy, particularly after September 11, 2001, aimed at restructuring the international legal order on the premise that existing norms are inadequate to confront emerging global challenges. This strategy manifests in its opposition to the International Criminal Court (ICC), rejection of the Kyoto Protocol, and non-application of human rights standards to detainees in Guantánamo Bay.

The legal foundation of the international system rests on three core principles:

- The prohibition of the use of force,
- The protection of human rights, and
- The liberalization of trade and the economy.

Yet, the United States appears to be gradually abandoning the first two, and under the Trump administration, even renounced the third, by imposing global tariffs.

Moreover, in February 2025, the U.S. president issued an executive order authorizing sanctions against ICC officials and their supporters, further deepening the confrontation between the United States and international legality.<sup>23</sup>

As Philippe Sands remarked, the United States seems to be redesigning global legal rules without a coherent plan, much like the Iraq invasion, where it had no strategy for the post-Saddam phase.<sup>24</sup> Similarly, Jed Rubenfeld observed that the situation is paradoxical: “The United States, which played a leading role in creating the international legal order, is now resisting it. Key institutions within American foreign policy actively oppose the idea that international law should have transformative power over U.S. law.”<sup>25</sup>

## Conclusion

After examining the various challenges confronting international law within an international system characterized by the constant transformation of its structures and interactions, it becomes evident that international law faces both fundamental and existential challenges. These challenges concern, on the one hand, the effectiveness of its norms in regulating the behavior of the actors that compose the international system, and on the other, the conceptual adaptability of those norms to the rapid and complex transformations of that system.

From this analysis, it can be concluded that international law is confronted with two principal dilemmas:

- The first concerns the effectiveness and enforceability of its rules;
- The second relates to the need to reformulate and update certain legal concepts so as to align them with the evolving realities of the international order.

Undoubtedly, addressing the first challenge requires the active engagement of formal state actors and international institutions, whereas overcoming the second calls for a shared intellectual effort—one that combines official, academic, and philosophical contributions—to ensure that international law remains both normatively relevant and functionally effective in an ever-changing world.

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