DEVELOPING PEACE UNDER INTERNATIONAL LAW

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In order to define peace under international law, it is first important to define international law itself. Much of international law has been established by treaties. On a basic level, international law is traditionally defined as “the body of rules and principles of action which are binding upon civilized states in their relations with one another.”\(^1\) That is, a rule of international law is one that has been established and accepted as such by the international community to which it relates.\(^2\) This can arise either by international agreement\(^3\), or in the form of customary international law.\(^4\) International law – specifically public international law – strives to establish global peace. Following the atrocities which were committed during World War II, the international community came together in order to promote co-operation between states, which ultimately promotes peacekeeping.\(^5\) For example, the emergence of international human rights law was a reaction to the detrimental consequences and effects of World War II; expansive international laws were enacted as a safeguard to prevent such atrocities from happening again and to ensure more stringent protections for global peace. From this general definition of international law, one can begin to discuss the ways in which “peace” is thus defined by the international community.

First, it is important to define the difference between “positive peace” and “negative peace.” Negative peace is the situation in which there is no war, and no violent conflict between states or within states. By contrast, positive peace is the situation where there is no war or violent conflict combined with a situation where there is equity, justice and development.\(^6\) Depending on the cultural norms and practices of a region, nation or organization, peace can also be defined as both an internal and external issue. Indeed, international law can and has taken account of the concept of internal peace in relation to religions such as Buddhism and Hinduism. What is important and relevant in this sense, however, is external peace in terms of international relations and global co-operation as

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2. L. Henkin et al., *Human Rights* (2nd ed. 2009)
3. An agreement between several states and/or international organizations that is intended to be legally binding.
4. Customary international law is a general and consistent practice arising from a sense of legal obligation which is accepted as law; it is a practice as opposed to a written down rule.
governed by international law. There are different definitions of peace depending on the international body, region, or culture – among other factors – which is being utilized or discussed. Each region defines peace in relation to its cultural norms and customs, however, there is little difference in the fundamental notion of international peace globally.

The United Nations (UN) is tasked with promoting and maintaining international peace and security on a global scale. The Security Council has primary responsibility for this, and the UN continuously engages in peacebuilding efforts in an attempt to promote sustainable international peace, with measures “ranging from the disarming of warring factions to the rebuilding of political, economic, judicial and civil society institutions.” The UN also follows the concept of peacebuilding as defined by Secretary-General Boutros Boutros-Ghali in his 1992 report, An Agenda for Peace, peacebuilding is an action to solidify peace and avoid relapse into conflict. The UN strives to maintain international peace and security by adhering to three basic peacekeeping principles: (1) consent of the parties (UN peacekeeping operations are deployed with the consent of the main parties to the conflict); (2) impartiality (UN peacekeepers should be impartial in their dealings with the parties to the conflict), and; (3) Non-use of force except in self-defence and defence of the mandate.

Beyond this, the UN’s Universal Declaration of Human Rights, enacted in 1948, was the first international agreement of the human rights to which all people are inherently entitled. The Declaration, which has become binding on all states via customary international law, promotes peace by ensuring the equal protection and consideration of all human beings. Article 1 states that “all human beings are born free and equal in dignity and rights,” with Article 2 proceeding to expand this provision in declaring that every person is entitled to the rights set forth in the Declaration without distinction of any kind (some examples given include race, religion, political opinion, and jurisdictional or international status of the country or territory to which a person belongs). The UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, enacted in 1970, defines global peace as non-intervention in matters within the domestic jurisdiction of a state; that is, non-aggression and the duty that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not

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8 Ibid.
Refraining from armed conflict and from interference with the acts of sovereign nations within their own land is therefore at the crux of the UN’s definition of peace. Further UN instruments, such as the UN Charter, while not explicitly providing for international peacekeeping, are often utilized as tools for promotion of peace in the international community.

While the UN covers the entire international community and all states, different regional systems also provide for different definitions of peace. The Council of Europe (CoE) was established in 1949 and is Europe’s leading human rights organization, predominantly focusing on the promotion of human rights, democracy and the rule of law in the region. It was specifically created based on the pursuit of peace, and recognizes peace not only as a means by which all members of society can achieve or accomplish their human rights, but also as a human right in itself.

“A culture of peace will be achieved when citizens of the world understand global problems, have the skills to resolve conflicts and struggle for justice non-violently, live by international standards of human rights and equity, appreciate cultural diversity, and respect the Earth and each other.”

This is based on the notion that an absence of peace can lead to many violations of human rights; that is, war or international conflict is both the cause and consequence of human rights abuses. “Sustainable, lasting peace and security can only be attained when all human rights are fulfilled.” The European Convention on Human Rights (ECHR) – and later the European Court of Human Rights (ECtHR) - was established by the CoE, and similarly promotes peace and diplomacy through the protection of inalienable and fundamental human rights. Following the creation of the CoE, the European Union (EU) was established in 1993. While the EU deals with a myriad of different issues – with its predominant focus being the single market (“free movement of trade”) and free movement of people – its
objective is similar to the CoE’s, namely to promote and secure lasting peace and security, and to promote political stability. The African Charter on Human and Peoples’ Rights, created in 1986 under the auspices of the Organization of African Unity, is the instrument responsible for the promotion and protection of human rights and freedoms in the African regional system. Although the Charter does not provide a specific definition of “peace,” Article 23 provides for the right of all peoples to national and international peace and security, referencing the “principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations.” These principles are reaffirmed by the Organisation of African Unity as the governing principles regarding peaceful relations between States. In the Americas, several instruments of the Organization of American States (OAS) have stated that “Liberty, justice, and peace are based on the equal and inalienable rights of the human person.” The Inter-American Commission on Human Rights, established by the OAS, has pointed out that “A lasting peace is based on the non-repetition of crimes under international law, violations of human rights and serious infringements of international humanitarian.” In Asia, Article 4 of the Asian Human Rights Charter establishes the “right to peace,” holding that “the duty of the state to maintain law and order should be conducted under strict restraint on the use of force in accordance with standards established by the international community, including humanitarian law.” According to the Charter, all persons are entitled to protection against all forms of state violence, including violence perpetrated by its police and military forces. The Santiago Declaration on the Human Right to Peace, adopted by The International Congress on the Human Right to Peace, defines peace in numerous ways, and recognises individuals, groups, peoples and all humankind as holders of the "inalienable right to a just, sustainable and lasting peace.”

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21 The Organization of African Unity has since been replaced by the African Union.
26 Ibid.
27 Peace is a universal value and a prerequisite for and a consequence of the enjoyment of human rights by all.
This concept of peaceful coexistence, that is, mutual toleration between states, respect for differences in culture or politics, and non-violent dispute resolution, is at the centre of the definition of peace under international law.\(^\text{29}\) Differences in religious beliefs, culture clashes, and general ignorance and misunderstanding in the global community are often the cause of wars and the international disruption of peace which follows.\(^\text{30}\) As such, international laws prohibiting violent armed force, the use of weapons of mass destruction, and discrimination or measures exacerbating inequality, are themselves defining peace as the opposite of those prohibited acts. Thus, under international law, peace is ultimately defined as the opposite of violence and conflict, whether explicitly stated or inferred from international instruments and their purpose.

\(^{29}\) Cecilia M Bailliet & Kjetil Mujezinović Larsen, Promoting Peace Through International Law (1 ed. 2015).

HOW CAN IL WORK TOWARDS DEVELOPING PEACE?

International law has emerged from an effort to deal with conflict among states, since rules provide order and help to mitigate destructive conflict. Today, international law promotes active cooperation among nation states. International law prescribes a set of fundamental norms within which nation states are to conduct their internal behaviour and their external relations. In regard to internal behaviour, international standards regulate such things as the environment, health, industry, postal services, transportation, and occupational safety standards. Dozens of international human rights treaties also set forth political, civil, social, economic, and cultural rights to be respected within national legal systems. In relation to external behaviour such as the use of force, the peaceful resolution of disputes, conciliation, arbitration, negotiation, mediation, and judicial settlement, all nations must abide by standards laid down in the United Nations (UN) Charter and other international instruments.

Peace is a multifaceted concept that lacks clear definition and boundaries. The first component of peace is that of negative peace, which may be characterised as the absence of war or armed conflict. The second component of peace is a broader conception, namely positive peace. While negative peace refers to the absence of war, positive peace refers to the ‘presence of something.’ It calls for the presence of cooperation between states and people, and the integration of human society, incorporating social justice, respect for human rights, and the elimination of ‘structural violence’ which causes poverty, inequality, exclusion, death or disability through inequitable distribution of resources addressing basic human needs (such as food, medicine, housing), or denial of equal protection when addressing domestic violence, hate crimes, etc. 31

The maintenance or restoration of peace and the quest for sustainable peace have been part of international legal thought for a long time. Lauterpacht considered the idea of peace as an important aspect of the Grotian tradition, reflected in Grotius’s work, De Jure Belli ac Pacis. Constraining effects of war and working towards sustainable peace have been important features of the activity of the international community for many decades, if not centuries. The

31https://books.google.co.in/books?id=yVDCBwAAQBAJ&pg=PA1&lpg=PA1&dq=peace+through+international+law&source=bl&ots=_7qSJ4c2P8&sig=aA4o2y39CCrLm5X9ZUmKKCgKBGA&hl=en&sa=X&ved=0ahUKEwi03KC9ksfQAhlUGu48KHXE0Az04ChDoAQg6MAU#v=onepage&q=peace%20through%20international%20law&f=false.
result of these efforts is a complex normative and institutional framework for monitoring and enforcing human rights and for the peaceful resolution of disputes.32

International courts and tribunals are an important component of that ever-evolving system of global governance. Lauterpacht had pointed out that the primary purpose of the International Courts lies in their function as one of the instruments for securing peace in so far as this aim can be achieved by law.

A marked humanization of international law has been expressed in the recent past through the impressive development of human rights and humanitarian law, as branches of international law.

**UN’s Role**33

War has been outlawed by the UN Charter except in the limited situation of self-defence and that too is regulated under strict limitations. The Security Council is also authorized by the UN Charter to direct the use of force to maintain or restore international peace and security.

Under Article 1(1) of the UN Charter, the maintenance of international peace and security is considered to be one of the main purposes of UN. Under Article 2(4) of the UN Charter, the UNSC has the primary responsibility in this regard, with the UNGA retaining substantial responsibility, should the UNSC be stuck in a deadlock. The same article imposes on States, the duty to refrain from unlawful use of force and military intervention in conducting international affairs.

The UN works to maintain international peace and security in a world where security threats have become more complex. The mounting complexity and growing costs of addressing crisis situations, the imperative of conflict prevention is higher than ever. In its conflict prevention and mediation work, the United Nations continues to face challenges regarding how best to engage with sometimes amorphous movements or fractured armed groups and how to ensure inclusivity.

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32 https://books.google.co.in/books?id=LbPlBgAAQBAJ&pg=PT347&lpg=PT347&dq=How+can+International+Law+work+towards+developing+Peace&source=bl&ots=kngh1BnrKJ&sig=TevRfHEKYDpqE06nV5T17ndVPx&hl=en&sa=X&ved=0ahUKEwiiqufCl63QAhlWH4hKHe_YDucQ6AEIYTAJ#v=onepage&q=How%20can%20International%20Law%20work%20towards%20developing%20Peace&f=false.

UN has strengthened its relationships with regional and sub-regional organisations, which play a significant role in fostering conflict prevention and mediation partnerships, in addition to rapid responses to regional crises.

Member States have continued to see the value of UN’s support to electoral processes, with requests for assistance – which include technical assistance, the engagement of good offices and support to regional organisations – remaining high. There is a continued political will to prevent the scourge of conflict-related sexual violence, exemplified but the Declaration of Commitment to End Sexual Violence in Conflict, and the Global Summit to End Sexual Violence in Conflict, in 2014. The Security Council has also called for sustained monitoring and reporting on violations affecting children in armed conflict and for perpetrators to be brought to account.

Member States have demonstrated their continued interest in using peacekeeping and continue to recognize it as an effective and cost-effective toll, without which the human and material costs of conflict and relapse into conflict would be unquestionably higher. Peacekeeping operations are being increasingly deployed earlier in the conflict continuum, before any peace or ceasefire agreement. Creating the political and security space necessary for successful negotiations is crucial. Ensuring that UN troops are properly supported and equipped is a high priority. The complexity of contemporary peacekeeping environments requires strengthened partnerships with all stakeholders, including regional and sub-regional organisations. Only through such collaboration can the international peace and security challenges be addressed effectively, now, and in the future.

The general basis of the role of international courts and tribunals with regard to maintenance of peace is laid out in Article 33 of the UN Charter, which requires the parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security to seek a solution by negotiation, enquiry, mediation, conciliation arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their choice. While the UN does not impose any preference of hierarchical order among the various means of international dispute settlement, it provides a clear link between judicial
settlement and protection of an important community interest embedded in the UN Charter, namely, the maintenance or restoration of peace.\textsuperscript{34}

The International Court of Justice (ICJ) has managed to play a constructive role within the institutional framework of the UN with regard to the maintenance of peace by firstly, recognising UN’s international legal personality; secondly, by laying the legal basis for peace-keeping and other quasi-military operations of the UN; and thirdly, by interpreting the concurrent functions of the UNGA and the UNSC in matters related to the maintenance of international peace and security. The judicial function of international criminal justice mechanisms, such as the ICTY, ICTR, and the ICC involves the investigation and prosecution of alleged perpetrators of mass atrocity crimes. By emphasizing individual criminal accountability for mass atrocities these judicial mechanisms can play a preventive and deterrent role, which is potentially important for purposes of maintaining or restoring peace. At the same time, by exposing the truth, and providing broad narratives, these international judicial organs can contribute to the restoration of peace between different ethnic or religious groups within a state. Thus, the work of these courts naturally includes and permeates both national and international dimensions of peace.

While most of this international judicial activity takes place ex post facto, that is, in the aftermath of human rights violations, both, the ICJ and the ICC can potentially play a preventive role in terms of maintaining or restoring peace. The ICJ can do so mainly through its ability to indicate provisional measures to the parties to a dispute. The ICC can do so through its ability to receive information on gross human rights violations, its preliminary investigations, and the statements of its Chief Prosecutor.

An important development for peace has been the adoption of the overarching doctrine of responsibility to protect in 2005 by the UNGA, as a clear expression of community interests of the highest importance. According to this doctrine, well established under treaty law and customary law, States are charged with an important role to ensure that populations are protected from mass atrocity crimes, namely genocide, war crimes and crimes against humanity.

\textsuperscript{34}https://books.google.co.in/books?id=LbPlBgAAQBAJ&pg=PT347&lpg=PT347&dq=How+can+International+Law+work+towards+developing+Peace&source=bl&ots=kngh1BnrKJ&sig=TevR-fHEKYDpqE06nV5T17ndVPs&hl=en&sa=X&ved=0ahUKEwiqufCl63QAhWIK48KHe_YDucQ6AEIYTAJ#v=onepage&q=How%20can%20International%20Law%20work%20towards%20developing%20Peace&f=false.
Critiques of International Law

Although much of this discussion has portrayed international law as a potential means of conflict management or resolution, it should be remembered that law is itself a source of significant conflict. The shape and content of law often favours particular groups or countries. Not only is international law often most influential when it favours the strongest, but the powerful are also typically the source of law. For example, because much of international law is formed by the UN, the Security Council has a disproportionate influence in shaping it.

One prominent example of might makes right in international law is in the realm of laws related to trade and investment. Enforcement comes largely through power, which means that the developed world often controls the agenda. They have the market power to punish and entice smaller states to comply. The creation of the World Trade Organization (WTO) in 1995 marked a dramatic advancement in the development of trade law and enforcement mechanisms over what existed under the General Agreement on Tariffs and Trade (GATT). The WTO has been widely criticized for "green room" agenda-setting by the global North, and other actions that put the South at a disadvantage. New laws also create significant administrative burden for poor states, which is perhaps not bad for the long run, but makes for costly compliance.

At base, though, law is only as effective as the means of enforcement and developing countries lack the power to retaliate effectively. Trade law is branching out into new areas as well, which will potentially put the South at an even greater disadvantage. Efforts are in various stages to link trade law to a range of issues from intellectual property regulations (TRIPs) to the environment to labour standards. TRIPs appear to favour Northern multinational corporations, while not protecting indigenous knowledge. It also promises to make the cost of drugs to fight deadly illnesses such as AIDS a severe burden for poor countries. In terms of environmental law, it is often seen by the South as cutting off the path to development that the North took long ago, leaving the South in permanent dependency.

At the same time, the WTO's Dispute Settlement Understanding does take many steps to help developing countries operate on equal footing, compared to the GATT. Each case must have a representative from the South as one of the three hearing the case. Voting is more explicit

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than under the GATT. Provisions have also been made to provide expertise to delegations from the South, but they are still left unable to shape the agenda. In sum, the WTO Dispute Settlement System does provide better opportunity for developing countries to bring complaints, but they often lack the technical expertise to take advantage of it.

International law has also been criticized as fundamentally Western. Certainly, most international law is based on Western notions. One sign of this might be that the Western Countries are more compliant with the international laws on human rights. Others argue, however, that the widespread acceptance of international law is evidence that the principles on which it is based are not strictly Western. Still, it is not clear that many developing countries are entirely free to accede to these rules, as the WTO example above suggests. Western countries are able to provide incentives for less powerful countries to accede to their wishes. Either way, however, it means that international law has at least some force behind it, though not nearly as much as domestic legal systems.