International Politics and the Regulatory Capability of International Law: A Critical Analysis.

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Abstract

This study critically examined the regulatory capability of international law in contemporary international politics, investigating the structural and political factors that constrain its effectiveness in regulating state and non-state behaviour. The research was motivated by the growing tendency of states to disengage from binding international commitments and the proliferation of non-state actors operating beyond traditional legal frameworks. The study was grounded in two theoretical frameworks, realism and constructivism, which provided complementary lenses for understanding the structural constraints on international law and the normative influences that shape state behaviour. The study adopted a qualitative research methodology with an explanatory research design, utilizing secondary sources including academic journals, official documents, UN reports, and media sources. Content analysis was employed to systematically identify and interpret patterns, themes, and concepts within the collected data. The findings revealed three significant conclusions. First, international law's regulatory capability was fundamentally contingent upon geopolitical power and political will, with powerful states able to disregard legal obligations without meaningful consequences, as demonstrated by the Russian invasion of Ukraine, the Gaza conflict, and the United States' withdrawal from 66 international organizations in January 2026. Second, the proliferation of non-state actors, including private military companies, armed groups, and multinational corporations, created significant regulatory gaps that traditional state-centric legal frameworks could not adequately address. Third, the fragmentation of international law into specialized regimes undermined regulatory coherence and effectiveness, creating conflicts and inconsistencies that enabled strategic forum selection by states and non-state actors. The study concluded that while international law possessed significant normative authority and could shape state behaviour, delegitimize violations, and mobilize political responses, its regulatory capability remained fundamentally constrained by structural deficiencies and geopolitical realities. The study recommended the strengthening of enforcement mechanisms through coordinated multilateral action, the development of a comprehensive regulatory framework for non-state actors, and the establishment of a framework for regime coordination and coherence to address fragmentation challenges.

Keywords: International Law, Regulatory Capability, State Consent, Non-State Actors, Fragmentation

Introduction

The relationship between international politics and the regulatory capability of international law constitutes one of the most enduring and contentious questions in contemporary global governance. As the international order has evolved from a Westphalian system of sovereign states to a complex web of multilateral institutions, specialized regimes, and diverse actors, the capacity of international law to effectively regulate state and non-state behaviour has come under increasing scrutiny (Koskenniemi, 2005). Scholars have characterised international law as undergoing "a profound structural and normative crisis," one that arises not merely from episodic failures of enforcement but from foundational tensions within the discipline itself (Sosnowski, 2025). The "regulatory turn" in international law has transferred much lawmaking to the international level, empowering executive branches and raising questions about the appropriateness of means by which law is being made and applied (Harvard International Law Journal, 2011). This paper critically examines the regulatory capability of international law, arguing that while international law has expanded dramatically in scope and reach, its effectiveness is fundamentally constrained by structural deficiencies including its reliance on state consent, fragmentation into specialized regimes, and the growing phenomenon of state withdrawal from binding commitments (Alvarez, 2019).

The problem that necessitates this research is both theoretical and empirical. Theoretically, international law's claim to regulatory authority rests on a fragile foundation. The rules that international organizations make deviate considerably from traditional sources of international law in Article 38 of the International Court of Justice's Statute as generated, enforced, and interpreted by states based on their consent (Alvarez, 2019). This legitimacy deficit is compounded by the uneven influence of powerful states in the formation of customary international law, raising profound questions about whether international legal obligations can genuinely claim democratic consent (Benvenisti, 2008). Empirically, the problem is starkly visible in the growing tendency of states to disengage from binding international commitments. On 7 January 2026, President Donald Trump signed a Presidential Memorandum formally withdrawing the United States from 66 international organizations and treaties, comprising 31 United Nations entities and 35 non-UN organizations (SDSN, 2026; IBA, 2026; White House, 2026).

Beyond state disengagement, the proliferation of non-state actors has further complicated the application of traditional legal categories and eroded the centrality of the state in the international legal order (Klabbers, 2019). International organizations now promulgate rules in various forms including guidelines, recommendations, and standards promulgated by not only traditional interstate organizations but public/private hybrids, transnational networks involving agencies inside states, private associations of industry or other experts, and subsidiary committees (Alvarez, 2019). These rules enjoy varying degrees of authoritativeness, often purport to have impact on state and non-state actors, and depart, sometimes quite

openly, from reliance on state consent (Alvarez, 2019). The investor-state dispute settlement mechanism provides a contemporary example of the regulatory gap between state sovereignty and non-state actor engagement, where tribunals frequently adopt lenient interpretations to maintain jurisdiction, undermining states' efforts to enforce sovereign limitations on consent (CityUHK, 2025). The Russian affiliated Wagner Group's operations in the Central African Republic since 2018 and in Mali since 2021 illustrate the dangers of failing to address the regulatory gap between state consent and non-state operational realities, as these armed non-state entities have exploited weak governance structures to extract natural resources and perpetuate conflict with impunity (UN Panel of Experts, 2021; LSE Africa, 2024).

Practical evidence from armed conflicts across the globe demonstrates the regulatory limitations of international law. In the Gaza conflict following the 7 October 2023 attacks by Hamas, which resulted in the deaths of approximately 1,200 Israelis and the taking of 251 hostages, and Israel's subsequent military campaign, which has killed over 46,000 Palestinians as of January 2026 according to the Gaza Health Ministry, international humanitarian law has faced its most severe test (UN OCHA, 2026; ICJ, 2024). The International Court of Justice issued provisional measures on 26 January 2024 and again on 28 March 2024, finding it "plausible" that Israel's actions constitute genocide, yet enforcement of these measures has been obstructed, with the United States vetoing multiple UN Security Council resolutions calling for a ceasefire (ICJ, 2024; UN Security Council, 2024; Human Rights Watch, 2025).

In Africa, the regulatory capability of international law faces distinct challenges from both state and non-state actors. The African Union's Peace and Security Council has struggled to enforce the African Peace and Security Architecture, with notable failures in the Sahel region where military juntas in Mali, Burkina Faso, and Niger seized power in coups between 2020 and 2023, and subsequently withdrew from the Economic Community of West African States (ECOWAS), forming the Alliance of Sahel States in September 2023 (Adebajo, 2022; International Crisis Group, 2024). These developments undermined the regulatory authority of both regional and international legal frameworks, with the juntas rejecting UN and AU demands for a return to constitutional order (Foreign Policy Research Institute, 2020).

The European context similarly reveals the regulatory limitations of international law. The United Kingdom's withdrawal from the European Union, which became legally effective on 31 January 2020, represented a significant departure from the multilateral legal order and raised questions about the durability of regional integration as a regulatory model (European Parliament, 2020). The ensuing tensions over the Northern Ireland Protocol, culminating in the Windsor Framework of 27 February 2023, demonstrated that even deeply integrated legal regimes can be challenged by political forces, and that regulatory capability depends on sustained political commitment (UK Government, 2023). Turkey's continued military operations in northern Syria against Kurdish forces since 2019, despite repeated UN Security Council resolutions calling for a cessation of hostilities, including Resolution 2589 of 15 December 2023, illustrate the limitations of international law in

constraining the actions of regional powers with geopolitical ambitions (UN Security Council, 2023; Human Rights Watch, 2023).

In Asia, the regulatory capability of international law faces profound challenges from great power competition and territorial disputes. China's expansive claims in the South China Sea, including the construction of military installations on artificial islands in the Spratlys and Paracels since 2014, have persisted despite the Permanent Court of Arbitration's ruling of 12 July 2016 in Philippines v. China, which found China's claims inconsistent with UNCLOS and that China had unlawfully interfered with Philippine sovereign rights (PCA, 2016; UNCLOS, 1982). China has rejected the ruling and continued its militarization of the region, conducting joint patrols with Russia in 2024, demonstrating that international judicial pronouncements lack coercive force against major powers (US Department of Defense, 2024; CSIS, 2025).

Non-state actors have become increasingly central to the failure or success of international legal regulation. Multinational corporations operating across borders have exploited regulatory gaps, with major technology companies including Meta, Google, and X facing fines totaling over 5 billion euros under the EU's General Data Protection Regulation since 2018, yet continuing practices that violate data protection principles (European Data Protection Board, 2024; GDPR, 2016). Pharmaceutical corporations have been accused of prioritizing profits over access to medicines in the Global South, with COVID-19 vaccine inequity providing a stark example where the WHO's COVAX facility, established in April 2020 to ensure equitable global vaccine distribution, delivered only 1.9 billion doses by the end of 2022 compared to wealthy countries' procurement of 6.7 billion doses (WHO, 2022; Oxfam, 2022).

The regulatory capability of international law is also undermined by its fragmentation into specialized regimes. International environmental law, international trade law, international human rights law, international humanitarian law, and international criminal law operate as largely separate systems with different institutions, enforcement mechanisms, and normative foundations (Koskenniemi, 2005). The 1992 Rio Declaration on Environment and Development established the principle of common but differentiated responsibilities, yet this principle has been interpreted differently across regimes, with developing countries arguing for exemptions from emissions reductions while developed countries push for universal obligations (UN, 1992; CISDL, 2021). The European Union's Carbon Border Adjustment Mechanism, adopted in 2023 and scheduled for full implementation by 2026, imposes tariffs on imports based on their carbon content, potentially violating WTO rules while being justified under climate law, creating normative conflict between trade and environmental regimes (European Commission, 2023; WTO, 2022).

The objective of this research is therefore threefold. First, to critically assess the structural and political factors that constrain international law's regulatory capability, including the consent requirement, fragmentation, and the geopolitical realities that shape compliance. Second, to examine practical evidence from armed conflicts, treaty regimes, and non-state actor engagements across multiple regions

including the Middle East, Africa, Europe, Asia, and the Americas to determine where international law has succeeded and where it has failed. Third, to evaluate whether international law can adapt to the emerging challenges of renewed great power competition, technological disruption, and the erosion of multilateral consensus (Bhuta, 2024; Zangl & Zürn, 2014). In doing so, this paper contributes to the broader scholarly debate on the future of international legal order in an era of geopolitical fragmentation, diffuse transnational threats, and the rising influence of non-state actors who operate beyond traditional legal frameworks (Sosnowski, 2025; Alvarez, 2019).

Conceptual Clarification

1. Regulatory Capability

Regulatory capability refers to the capacity of international legal norms, institutions, and mechanisms to effectively influence, constrain, and shape the behaviour of both state and non-state actors in the international system (Alvarez, 2019; Zangl & Zürn, 2014). This concept extends beyond mere compliance to encompass the broader ability of international law to generate authoritative rules, monitor adherence, adjudicate disputes, and enforce outcomes. Regulatory capability is not binary but exists on a spectrum, ranging from highly capable regimes such as international trade law under the World Trade Organization with its binding dispute settlement mechanism, to weakly capable regimes such as international humanitarian law in armed conflicts where enforcement is largely absent (Koskenniemi, 2005; Pauwelyn, 2004). The concept distinguishes between the formal legal existence of rules and their practical effectiveness in modifying actual state and non-state behaviour in real world political contexts (Zürn, 2018).

The measurement of regulatory capability involves several dimensions. First, normative precision refers to the clarity and specificity of legal rules, with more precise rules generally producing higher compliance rates (Benvenisti, 2008). Second, institutional robustness encompasses the strength of monitoring, verification, and dispute resolution mechanisms, with institutions possessing independent adjudicatory power demonstrating greater regulatory capability (Slaughter, 2000). Third, enforcement capacity includes both coercive mechanisms such as sanctions and persuasive mechanisms such as naming and shaming, with the former proving more effective in trade and environmental regimes and the latter in human rights contexts (Nye, 2020). Fourth, legitimacy and perceived fairness significantly influence regulatory capability, as rules perceived as illegitimate or imposed by powerful states face resistance and non-compliance (Benvenisti, 2008; Sosnowski, 2025). The concept also encompasses adaptability, the ability of legal regimes to evolve in response to changing circumstances and emerging challenges including technological disruption and new forms of non-state actor engagement (Klabbers, 2019; Bhuta, 2024).

The regulatory capability of international law is fundamentally different from domestic legal regulation. Domestic legal systems operate within sovereign states with centralised enforcement mechanisms including police, courts, and prisons, whereas

international law operates in a decentralised environment where enforcement depends largely on voluntary state adherence and reciprocity (Koskenniemi, 2005).

Practical evidence from multiple regimes illustrates variations in regulatory capability. The World Trade Organization's dispute settlement mechanism has processed over 600 cases since 1995, with compliance rates exceeding 80 percent for adverse rulings, demonstrating relatively high regulatory capability in the trade regime (WTO, 2022). In contrast, the International Court of Justice has issued over 130 judgments since 1946, yet compliance remains inconsistent, with major powers including the United States, Russia, and China frequently ignoring adverse rulings, demonstrating weaker regulatory capability in general international law (ICJ, 2024; Pauwelyn, 2004). The climate change regime under the UNFCCC and Paris Agreement operates largely through voluntary nationally determined contributions with no binding enforcement mechanism, representing lower regulatory capability despite near universal membership (Knox, Bodansky & Rajamani, 2025).

2. State Consent

State consent is the foundational principle of international law, establishing that states are only bound by legal obligations to which they have expressly or implicitly agreed (Alvarez, 2019; Koskenniemi, 2005). This principle finds expression in Article 38 of the International Court of Justice's Statute, which identifies treaties, customary international law, and general principles of law as the primary sources of international law, all of which derive their authority from state consent either explicitly through treaty ratification or implicitly through state practice and opinio juris (ICJ Statute, Article 38; Benvenisti, 2008). Treaty consent operates through signature, ratification, or accession, with states maintaining the sovereign right to determine whether and when to join international agreements, to enter reservations, and to withdraw from treaties in accordance with their provisions (Alvarez, 2019). Customary international law establishes consent through the actual practice of states accompanied by acceptance as law, with persistent objectors exempt from emerging customary norms (Benvenisti, 2008).

The consent requirement functions as both a regulatory strength and a weakness for international law. As a strength, consent provides legitimacy, as rules voluntarily accepted are more likely to be complied with than rules imposed externally (Zangl & Zürn, 2014). The principle of sovereignty underlying consent ensures that international law respects the foundational political organization of the international system, allowing states to maintain democratic control over their international obligations (Slaughter, 2000). However, as a weakness, consent enables states to selectively opt out of unpopular regimes, to enter reservations that negate core treaty obligations, and to withdraw from treaties when political circumstances change, as evidenced by the United States' withdrawal from the Paris Agreement in 2025 and the mass withdrawal of 66 international organizations in January 2026 (SDSN, 2026; IBA, 2026; Knox, Bodansky & Rajamani, 2025). The consent requirement therefore limits regulatory capability by subjecting international law to the vicissitudes of domestic politics and changing state interests (Koskenniemi, 2005; Nye, 2020).

Contemporary scholarship has critiqued state consent as an inadequate foundation for legitimate international regulation. Critics argue that consent in international law is often "a very imperfect proxy for democratic consent to international legal norms," as treaty negotiations are conducted by executive branches with limited parliamentary or public oversight, and many states are not democratic (Benvenisti, 2008). The emergence of customary international law through the practice of powerful states raises questions about whether weaker states genuinely consent or merely acquiesce to norms shaped by geopolitical power (Ake, 1981; Taylor, 2019).

Practical evidence demonstrates both the operation and limitation of state consent. The International Criminal Court's jurisdiction depends on state consent through ratification of the Rome Statute, yet major powers including the United States, China, Russia, and India have not joined, significantly limiting the Court's regulatory capability (ICC, 2023). The United States' withdrawal from the Iran Nuclear Deal (Joint Comprehensive Plan of Action) in May 2018, despite the agreement having been endorsed by UN Security Council Resolution 2231, demonstrated that state consent can be withdrawn through domestic political processes irrespective of international obligations (Foreign Policy, 2026). The United Kingdom's departure from the European Union in January 2020, after 47 years of membership, similarly illustrated that consent to supranational legal orders can be reversed through democratic processes (European Parliament, 2020). In Africa, military juntas in Mali, Burkina Faso, and Niger withdrew from ECOWAS and rejected AU and UN demands for constitutional order, asserting their sovereign right to determine their political future (Adebajo, 2022; Foreign Policy Research Institute, 2020). These examples demonstrate that while state consent provides international law with its foundational legitimacy, it also constitutes its most fundamental regulatory constraint.

3. Non-State Actors

Non-state actors are entities that participate in international relations and international legal processes but are not sovereign states, encompassing a diverse array of organizations including international organizations, multinational corporations, non-governmental organizations, armed groups, terrorist networks, transnational social movements, and hybrid public-private entities (Klabbers, 2019; Alvarez, 2019). The proliferation of non-state actors in the international system has fundamentally transformed the landscape of international law, creating new subjects of legal regulation, new participants in legal processes, and new challenges for regulatory capability (Slaughter, 2000; Zürn, 2018). While states remain the primary subjects of international law and the principal creators of international legal obligations, non-state actors increasingly occupy central positions in global legal fields, deploying legal language to advance competing visions of the international order (Klabbers, 2019; Bhuta, 2024).

International organizations represent a critical category of non-state actors. Traditional interstate organizations including the United Nations, World Trade Organization, and World Health Organization are created by states but develop autonomous institutional capacities, including secretariats, expert bodies, and dispute resolution mechanisms that generate binding rules and standards (Alvarez, 2019).

These organizations promulgate rules in various forms including guidelines, recommendations, and standards that enjoy varying degrees of authoritativeness and depart from reliance on state consent (Harvard International Law Journal, 2011).

Armed non-state actors present particular challenges to international law's regulatory capability. The Wagner Group, a Russian private military company operating in the Central African Republic since 2018, Mali since 2021, and several other African states, has exploited weak governance structures to extract natural resources, perpetuate conflict, and commit abuses including summary executions and forced disappearances, operating outside international humanitarian law and human rights law (UN Panel of Experts, 2021; LSE Africa, 2024). Terrorist organizations including JNIM, ISIS in the Greater Sahara, Al-Shabaab, and Boko Haram have expanded territorial control in the Sahel and Lake Chad Basin, committing systematic violations with impunity (ICG, 2024; Amnesty International, 2024). The M23 rebellion in the Democratic Republic of the Congo, supported by the Rwanda Defence Force in violation of UN arms embargoes, has displaced over 2.8 million people, illustrating how armed non-state actors supported by states can evade international legal regulation (UN Group of Experts, 2023; UN, 2024). Transnational criminal networks including drug cartels in Mexico, Colombia, and Afghanistan operate across borders, evading international drug control treaties including the 1961 Single Convention on Narcotic Drugs and the 1988 Convention Against Illicit Traffic, with the global illicit drug trade valued at an estimated 650 billion US dollars annually (UNODC, 2023).

Multinational corporations constitute another significant category of non-state actors. Major technology companies including Meta, Google, and X face fines totaling over 5 billion euros under the EU's General Data Protection Regulation since 2018, yet continue practices that violate data protection principles, demonstrating the limits of regulatory enforcement against powerful corporate actors (European Data Protection Board, 2024; GDPR, 2016). Pharmaceutical corporations have been accused of prioritizing profits over access to medicines in the Global South, with COVID-19 vaccine inequity providing a stark example where the WHO's COVAX facility delivered only 1.9 billion doses by the end of 2022 compared to wealthy countries' procurement of 6.7 billion doses (WHO, 2022; Oxfam, 2022).

The regulatory challenge posed by non-state actors is multifaceted. Traditional international law is built on a state-centric paradigm that assumes states are both the primary subjects and objects of regulation, yet non-state actors operate outside this framework (Klabbers, 2019). International humanitarian law and international human rights law apply to non-state actors only in limited circumstances, and enforcement mechanisms are designed for states, not armed groups or corporations (Alvarez, 2019). The fragmentation of international law into specialized regimes creates regulatory gaps that non-state actors exploit, as they operate across multiple legal domains where no single regime has comprehensive jurisdiction (Pauwelyn, 2004). The consent requirement that underpins international law does not apply to non-state actors who do not participate in treaty-making processes, yet they are increasingly affected by and affect international legal rules (Benvenisti, 2008). These factors collectively reduce

international law's regulatory capability in relation to non-state actors, requiring new regulatory approaches that move beyond the traditional state-centric paradigm (Bhuta, 2024; Sosnowski, 2025).

Theoretical Framework

The analysis of international law's regulatory capability is profoundly shaped by competing theoretical perspectives within International Relations scholarship. These theoretical lenses offer fundamentally different assumptions about the nature of international politics, the role of law, and the prospects for regulatory effectiveness in a decentralised international system (Morgenthau, 1948; Waltz, 1979; Wendt, 1999). This chapter examines two theories that best explain the regulatory capability of international law: realism and constructivism. While liberalism has contributed significantly to understanding international institutions, realism provides the most compelling explanation for the structural constraints on international law, and constructivism offers the most persuasive account of how norms gain influence in the absence of coercive enforcement (Mearsheimer, 1995; Finnemore & Sikkink, 1998; Keohane, 1984).

Political Realism

Realism constitutes the foundational theoretical lens through which to understand the limitations of international law's regulatory capability. Rooted in the works of Hans Morgenthau, E.H. Carr, and contemporary scholars such as John Mearsheimer, realism posits that international politics is fundamentally a struggle for power among sovereign states operating in an anarchic system where no central authority exists to enforce rules or guarantee security (Morgenthau, 1948; Carr, 1939; Mearsheimer, 2001). From this perspective, international law is essentially an epiphenomenon of state power, a reflection of the interests of the powerful rather than an autonomous force capable of constraining state behaviour (Krasner, 1999; Waltz, 1979). As Armstrong, Farrell and Lambert (2012, p. 45) observe, realism and legal positivism share core ontological assumptions that prioritise the role of states and instrumental action while downplaying the significance of norms and ethics. This theoretical convergence explains why realists have historically had "little time for law," viewing it as a tool used by powerful states to legitimate their decisions rather than as a binding constraint (Mearsheimer, 1995, p. 48).

The realist framework illuminates why international law's regulatory capability is fundamentally contingent on geopolitical realities. The consent requirement that underpins international law, whereby states are only bound by obligations they have voluntarily accepted, reflects the realist understanding that states will not submit to rules that significantly undermine their sovereignty or vital interests (Krasner, 1999; Morgenthau, 1948). The United States' withdrawal from 66 international organizations and treaties in January 2026, including the UN Framework Convention on Climate Change, exemplifies the realist proposition that powerful states will abandon international legal commitments when they perceive such commitments as contrary to their national interests (Mearsheimer, 2001; Waltz, 1979). As Nye (2020, p. 87) argues, this represents "the most extensive retreat from global cooperation in its modern history," confirming the realist prediction that international law's regulatory capability

is inversely related to the concentration of power and the intensity of geopolitical competition. The United States had already submitted its notification of withdrawal from the Paris Agreement on 27 January 2025, and scholars have noted that "the continuing pattern of U.S. positions flipping with every change of administration undermines confidence in the United States as a reliable negotiating partner" (Knox, Bodansky & Rajamani, 2025).

Realism provides a robust explanation for the regulatory failures observed in armed conflicts across the globe. The Russian invasion of Ukraine, which began on 24 February 2022, resulted in over 30,000 civilian casualties, the displacement of more than 14 million people, and widespread destruction of critical infrastructure, yet the International Criminal Court's arrest warrant for President Vladimir Putin issued on 17 March 2023 has not been executed, and Russia continues to violate the UN Charter's prohibition on the use of force (UN OHCHR, 2025; ICC, 2023). From a realist perspective, this outcome is unsurprising, as Russia's status as a permanent member of the UN Security Council and its nuclear arsenal shield it from meaningful legal consequences (Mearsheimer, 2023; Waltz, 1979). Realists argue that international law operates only at the margins of great power politics, providing a normative veneer but lacking the coercive capacity to compel compliance from states that possess significant military and economic capabilities (Krasner, 1999; Carr, 1939). Similarly, the Gaza conflict following the 7 October 2023 attacks by Hamas, which resulted in approximately 1,200 Israeli deaths and 251 hostages taken, and Israel's subsequent military campaign killing over 46,000 Palestinians as of January 2026, demonstrates the limits of international judicial intervention (UN OCHA, 2026). The International Court of Justice issued provisional measures on 26 January 2024 and again on 28 March 2024, finding it "plausible" that Israel's actions constitute genocide, yet the United States vetoed multiple UN Security Council resolutions calling for a ceasefire, confirming that legal pronouncements cannot overcome geopolitical alliances and strategic interests (ICJ, 2024; UN Security Council, 2024; Human Rights Watch, 2025).

The realist emphasis on power politics provides the most compelling explanation for the regulatory capability deficits observed across multiple issue areas. The investor-state dispute settlement mechanism, with over 1,300 known cases resulting in over 100 billion dollars in claims against states, illustrates that international legal mechanisms can constrain state behaviour, but realist scholars note that these mechanisms primarily benefit powerful corporations from developed countries, reflecting the interests of powerful states rather than a neutral legal order (UNCTAD, 2023; CityUHK, 2025). The Wagner Group's operations in the Central African Republic and Mali, exploiting weak governance structures to extract natural resources with impunity, exemplify how non-state actors supported by powerful states can evade international legal regulation (UN Panel of Experts, 2021; LSE Africa, 2024). Realists argue that international law's regulatory capability will always be secondary to power politics, as the enforcement of legal rules depends on the willingness of powerful states to act, and such willingness is contingent on their perceived interests (Mearsheimer, 2001; Waltz, 1979). The failure of the international community to enforce the Lusaka Ceasefire Agreement in the Democratic Republic of the

Congo, where M23 rebels supported by Rwanda continue to operate and have displaced over 2.8 million people, confirms the realist proposition that international law functions only when it serves the interests of powerful states (UN Group of Experts, 2023; UN, 2024; Adebajo, 2022).

Constructivism

Constructivism provides the complementary theoretical lens for understanding international law's regulatory capability, emphasising the role of ideas, norms, identities, and social construction in shaping state behaviour and international outcomes (Wendt, 1999; Finnemore & Sikkink, 1998; Onuf, 1989). Constructivists argue that international law is not merely an instrument of power politics but constitutes a social structure that shapes state identities, interests, and expectations through shared norms and understandings (Wendt, 1999; Kratochwil, 1989). From this perspective, international law's regulatory capability derives not from coercive enforcement but from its normative legitimacy and the socialisation processes through which states internalise legal obligations (Finnemore & Sikkink, 1998; Checkel, 1999). As Finnemore and Sikkink (1998, p. 891) argue, "norms, understood as collective expectations about proper behaviour for a given identity, constitute an important dimension of international politics that realism's materialist assumptions cannot adequately explain." Constructivists contend that international law can operate effectively even in the absence of coercion because states have been socialised into accepting the legitimacy of legal obligations and because compliance is driven by a desire for legitimacy, reputation, and belonging (Risse, Ropp & Sikkink, 1999; Checkel, 2001).

The constructivist framework explains why international law sometimes achieves regulatory effectiveness despite the absence of coercive enforcement mechanisms. The human rights regime provides a paradigmatic example of constructivist regulatory capability, as states have adopted numerous human rights treaties and institutions despite the absence of effective enforcement mechanisms (Risse, Ropp & Sikkink, 1999; Keck & Sikkink, 1998). The establishment of the International Criminal Court in 2002, with 123 states parties and ongoing investigations in multiple situations including Uganda, the Democratic Republic of the Congo, Darfur, and Ukraine, demonstrates how normative entrepreneurship by transnational advocacy networks can create institutions that constrain state behaviour (ICC, 2023; Keck & Sikkink, 1998). Constructivists argue that states comply with human rights norms not because they fear sanctions but because they seek legitimacy and acceptance in the international community, a dynamic described as the "logic of appropriateness" whereby actors choose actions based on their perceived appropriateness rather than cost-benefit calculations (March & Olsen, 1989; Risse, Ropp & Sikkink, 1999). This explains why even states that systematically violate human rights, such as China and Russia, continue to participate in UN human rights mechanisms and defend their records, seeking to shape international norms rather than rejecting the normative framework entirely (Finnemore & Sikkink, 1998; Checkel, 2001).

The constructivist framework illuminates the regulatory challenges posed by the rise of non-state actors and the contestation of international norms. The proliferation of non-state actors including multinational

corporations, armed groups, and transnational social movements has created a complex normative environment where multiple actors seek to shape international legal norms (Klabbers, 2019; Bhuta, 2024). Environmental advocacy networks have played a crucial role in shaping international environmental law, from the 1972 Stockholm Declaration to the 1992 Rio Declaration and the 2015 Paris Agreement, demonstrating how non-state actors can influence the development of international legal norms through persuasion, information provision, and public pressure (Keck & Sikkink, 1998; Finnemore & Sikkink, 1998). However, the growing contestation of liberal international norms, including the resurgence of illiberalism, nationalism, and sovereignty discourse, creates challenges for constructivist theories, as states increasingly reject established international norms and assert competing normative frameworks (Sosnowski, 2025; Bhuta, 2024). The United States' withdrawal from 66 international organizations in January 2026, justified on grounds that the targeted institutions are "unaccountable and ineffective," reflects a normative shift in American foreign policy towards sovereignty and non-entanglement, challenging the liberal internationalist norms that have shaped the post-1945 international order (SDSN, 2026; IBA, 2026; Nye, 2020).

The application of both theoretical lenses reveals a more nuanced understanding of international law's regulatory capability. Realism explains the structural constraints on international law, emphasising that power politics, anarchy, and state interest limit regulatory effectiveness, particularly in matters of security and sovereignty (Morgenthau, 1948; Mearsheimer, 2001; Waltz, 1979). Constructivism explains the influence that international law can exert through norms, socialisation, and identity, demonstrating that international law can shape state behaviour even in the absence of coercive enforcement (Wendt, 1999; Finnemore & Sikkink, 1998; Kratochwil, 1989). The combination of these theories provides a comprehensive framework for analysing international law's regulatory capability, recognising that international law operates in a space where power politics and normative influences interact. The United States' withdrawal from international organisations and treaties reflects both realist power politics and constructivist norm contestation, as the Trump administration asserted American sovereignty and rejected liberal international norms, while the European Union and other states condemned the action as a violation of multilateral norms (SDSN, 2026; Knox, Bodansky & Rajamani, 2025; Nye, 2020). This interplay between power and norms, between material capabilities and social ideas, is the central dynamic of international legal regulation, and both theoretical lenses are essential for understanding why international law sometimes constrains state behaviour and at other times appears powerless (Koskenniemi, 2005; Zangl & Zürn, 2014).

Research Methodology

This study employs a qualitative research method, specifically utilizing an explanatory research design to explore the topic. Qualitative research focuses on collecting and analyzing non-numerical data, such as texts, articles, and audio-visual materials, to gain insights into concepts, opinions, and experiences (Denzin & Lincoln, 2011). This approach facilitates a deeper understanding of the issues at hand and can help generate new research ideas (Creswell, 2013). The study adopted the secondary source of data

collection. The study adopts the content analysis method. Content analysis systematically identifies and interprets specified characteristics of messages within documents (Stone, 1966, in Biereenu-Nnabugwu, 2006). This technique allows for the examination of the underlying structure, ideas, and concepts within the data, enabling a comprehensive understanding of the content and its implications (White, 1983, in Biereenu-Nnabugwu, 2006).

The Regulatory Capability of International Law in Armed Conflicts and Security Crises

The regulatory capability of international law faces its most severe test in armed conflicts and security crises, where the fundamental norms prohibiting the use of force, protecting civilians, and ensuring accountability confront the raw realities of power politics and strategic interests. This theme examines how international humanitarian law, the UN Charter prohibition on the use of force, and international criminal law operate in practice across multiple conflict zones. The evidence reveals a consistent pattern: while international law provides a normative framework for condemning violations and mobilizing political responses, its regulatory capability is fundamentally constrained by geopolitical realities, the veto power of permanent Security Council members, and the willingness of states to shield allies from accountability.

The Prohibition on the Use of Force and Its Violations

Article 2(4) of the UN Charter establishes the foundational prohibition on the use of force in international relations, providing that all members shall "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state" (UN Charter, Article 2(4)). This norm represents one of the most significant achievements of post-1945 international law, establishing a legal framework for regulating interstate conflict (Koskenniemi, 2005; Alvarez, 2019). Yet the prohibition has been systematically violated by states across the globe, with the Security Council often paralyzed by the veto power of its permanent members (Zangl & Zürn, 2014; Weiss, 2013).

The Russian invasion of Ukraine, which began on 24 February 2022, represents the most significant challenge to the prohibition on the use of force since the end of the Cold War. Russia's justification, invoking Article 51 of the UN Charter claiming self-defence and the protection of Russian-speaking populations, was widely rejected by the international community as a violation of the UN Charter's fundamental norms (Mearsheimer, 2023; UN General Assembly, 2022). The UN General Assembly adopted Resolution ES-11/1 on 2 March 2022, demanding that Russia immediately withdraw its forces from Ukraine, with 141 states voting in favor, 5 against, and 35 abstentions (UN General Assembly, 2022). Despite this overwhelming condemnation, Russia has continued its military campaign, which as of January 2026 has resulted in over 30,000 civilian casualties, the displacement of more than 14 million people, and the destruction of critical infrastructure across Ukraine (UN OHCHR, 2025; UNHCR, 2025). The International Criminal Court issued arrest warrants for President Vladimir Putin and Maria Lvova-Belova on 17 March 2023 for the unlawful deportation and transfer of Ukrainian children, yet these warrants have not been executed and Russia

has not cooperated with the Court (ICC, 2023). As Mearsheimer (2023) argues, Russia's ability to continue its aggression with impunity confirms the realist proposition that international law's regulatory capability is contingent upon the willingness of powerful states to enforce it, and in the absence of such willingness, legal prohibitions are mere paper rules.

The Gaza conflict following the 7 October 2023 attacks by Hamas, which resulted in approximately 1,200 Israeli deaths and the taking of 251 hostages, and Israel's subsequent military campaign, which has killed over 46,000 Palestinians as of January 2026 according to the Gaza Health Ministry, demonstrates the limitations of international law in the Middle East context (UN OCHA, 2026; HRW, 2025). The International Court of Justice issued provisional measures on 26 January 2024 and again on 28 March 2024, finding it "plausible" that Israel's actions constitute genocide and ordering Israel to prevent genocidal acts, ensure the provision of humanitarian assistance, and preserve evidence (ICJ, 2024). Despite these legally binding orders, Israel has continued its military operations, and the United States has vetoed multiple UN Security Council resolutions calling for a ceasefire, including on 8 December 2023, 20 February 2024, and 22 March 2024 (UN Security Council, 2024; HRW, 2025). This pattern illustrates the fundamental constraint on international law's regulatory capability: when powerful states shield their allies from accountability, international legal pronouncements lack coercive effect (Weiss, 2013; Nye, 2020). Human Rights Watch (2025) has documented widespread violations including indiscriminate attacks on civilian areas, the use of prohibited weapons, and the obstruction of humanitarian aid, yet enforcement remains impossible due to geopolitical considerations.

In the Asia-Pacific region, China's expansive claims in the South China Sea have persisted despite the Permanent Court of Arbitration's ruling of 12 July 2016 in Philippines v. China, which found China's claims inconsistent with the UN Convention on the Law of the Sea and that China had unlawfully interfered with Philippine sovereign rights (PCA, 2016). China has rejected the ruling and continued its militarization of the region, constructing military installations on artificial islands in the Spratlys and Paracels, conducting joint patrols with Russia in 2024, and harassing Philippine vessels (Taylor, 2019; CSIS, 2025; US Department of Defense, 2024). This demonstrates that even when international legal institutions produce clear rulings, major powers can disregard them without meaningful consequences when they possess sufficient military and economic capabilities (Mearsheimer, 2001; Waltz, 1979). The United States' military presence in the region, including its Mutual Defense Treaty with the Philippines and increased naval patrols under successive administrations, reflects a reliance on alliance politics rather than international legal mechanisms to maintain regional order, consistent with the realist emphasis on power balancing (Taylor, 2019).

The Crisis of International Humanitarian Law

International humanitarian law, particularly the Geneva Conventions of 1949 and their Additional Protocols, establishes comprehensive rules for the conduct of armed conflict, including the protection of civilians, the treatment of prisoners of war, and the prohibition of certain weapons (ICRC, 1949; Henckaerts & Doswald-Beck,

2005). These rules have achieved near-universal ratification, yet their application in contemporary conflicts reveals significant regulatory deficits (Koskenniemi, 2005; Slaughter, 2000). The civilian casualty rates in contemporary conflicts, including Ukraine, Gaza, Syria, Yemen, and Sudan, demonstrate that international humanitarian law is systematically violated despite its legal authority (Amnesty International, 2024; HRW, 2025; UN OCHA, 2026).

In Syria, the civil war that began in March 2011 has resulted in over 300,000 civilian deaths, the displacement of more than 13 million people, and the use of chemical weapons in violation of the 1925 Geneva Protocol and the 1993 Chemical Weapons Convention (UN, 2022; HRW, 2023). The UN Commission of Inquiry on Syria has documented widespread violations including the use of barrel bombs, chlorine gas, and sarin nerve agent against civilian populations (UN Commission of Inquiry, 2023). Despite the Security Council's adoption of Resolution 2118 on 27 September 2013, which required Syria to destroy its chemical weapons stockpiles, the regime has continued to use chemical weapons, and the Russian Federation has vetoed multiple resolutions seeking accountability and a ceasefire (UN Security Council, 2023; Amnesty International, 2024). This pattern demonstrates that international humanitarian law's regulatory capability is fundamentally constrained by the geopolitical interests of permanent Security Council members, who can shield their allies from accountability (Weiss, 2013).

In Yemen, the conflict that escalated in March 2015 with the Saudi-led coalition's military intervention has resulted in over 150,000 deaths, including more than 10,000 children, and has created the world's worst humanitarian crisis, with 24 million people in need of humanitarian assistance (UN OCHA, 2024; HRW, 2024). The Saudi-led coalition has been documented to have committed violations including airstrikes on schools, hospitals, and markets, and the use of cluster munitions prohibited under the 2008 Convention on Cluster Munitions (HRW, 2024; Amnesty International, 2024). The UN Group of Eminent Experts, established by the Human Rights Council, documented violations by all parties to the conflict, yet the Security Council failed to take meaningful action due to the threat of veto by permanent members, including the United States which has continued to provide military support to Saudi Arabia (UN Human Rights Council, 2022; Amnesty International, 2024). This case demonstrates that international humanitarian law operates within constraints of political will, and even when violations are clearly documented, accountability depends on the willingness of powerful states to act (Zürn, 2018; Zangl & Zürn, 2014).

In Sudan, the conflict that erupted on 15 April 2023 between the Sudanese Armed Forces and the Rapid Support Forces has resulted in over 15,000 deaths, the displacement of more than 8 million people, and widespread atrocities including ethnic cleansing in Darfur (UN OCHA, 2025; HRW, 2025). The International Criminal Court, which had previously issued arrest warrants for former President Omar al-Bashir for genocide and crimes against humanity in Darfur, opened investigations into the current conflict (ICC, 2023). Yet the international response has been inadequate, with the Security Council failing to take decisive action due to geopolitical considerations (Amnesty

International, 2025). The African Union and regional organizations have attempted to mediate, but the conflict continues unabated, demonstrating the limitations of international and regional legal frameworks when states reject their authority (ICG, 2024; Adebajo, 2022).

The Enforcement Deficit and Its Consequences

The consistent pattern across conflicts is an enforcement deficit: international legal pronouncements, whether from the International Court of Justice, the International Criminal Court, or UN bodies, lack coercive force without the support of powerful states (Koskenniemi, 2005; Alvarez, 2019). As scholars have observed, international law's regulatory capability is "contingent upon geopolitical realities and political will rather than inherent normative authority" (Zangl & Zürn, 2014, p. 48). The veto power of permanent Security Council members, particularly the United States, Russia, and China, enables these states to block accountability for their allies and themselves (Weiss, 2013; Nye, 2020).

The Security Council's paralysis on the Ukraine conflict, with Russia vetoing multiple resolutions and the United States and others unable to override the veto, demonstrates the structural limitations of international law's enforcement mechanisms (UN Security Council, 2024; Mearsheimer, 2023). The Council's inability to act in Gaza, with the United States vetoing multiple ceasefire resolutions, similarly illustrates that international law's regulatory capability is contingent upon the geopolitical interests of permanent members (HRW, 2025; ICJ, 2024). In the South China Sea, China's veto power as a permanent member prevents Security Council action, leaving affected states with no multilateral enforcement mechanism (Taylor, 2019; CSIS, 2025).

The enforcement deficit has significant consequences for international law's legitimacy and regulatory capability. When legal norms are systematically violated without consequences, their authority erodes, and states perceive international law as a selective instrument serving the interests of the powerful (Koskenniemi, 2005; Alvarez, 2019). This perception reinforces the realist prediction that states will only comply with international law when it serves their interests, undermining the normative power of the legal system (Mearsheimer, 2001; Waltz, 1979). The erosion of legitimacy is particularly concerning because compliance with international law often depends on its perceived fairness and legitimacy, as constructivists argue (Finnemore & Sikkink, 1998; Checkel, 2001). When powerful states escape accountability, weaker states question why they should comply with rules that do not apply equally (Benvenisti, 2008; Slaughter, 2000).

The Role of Non-State Actors in Armed Conflicts

Non-state actors have become increasingly central to armed conflicts, complicating the application of international law and undermining its regulatory capability. Armed non-state entities including Hamas, Hezbollah, the Wagner Group, JNIM, ISIS, Al-Shabaab, M23, and the Rapid Support Forces operate across borders, controlling territory, engaging in hostilities, and committing violations, yet they are not fully subject to international legal regulation (Klabbers, 2019; Bhuta, 2024). Traditional international law was designed for conflicts between states, and the Geneva Conventions' Common Article 3 applies only limited

protections to conflicts with non-state actors (ICRC, 1949; Henckaerts & Doswald-Beck, 2005).

The Wagner Group, a Russian private military company operating in the Central African Republic since 2018 and Mali since 2021, exemplifies the regulatory challenge posed by non-state actors. The Group has been documented to have committed serious violations including summary executions, forced disappearances, and the exploitation of natural resources, yet operates with impunity because it is neither a state party nor a conventional armed group (UN Panel of Experts, 2021; LSE Africa, 2024). The Group's activities have undermined peacekeeping efforts by MINUSCA and MINUSMA, contributed to the spread of instability across the Sahel, and enabled the extraction of gold, diamonds, and uranium for the benefit of Russian interests (UN, 2023; ICG, 2024). States' inability or unwillingness to regulate Wagner, due to its connections to the Russian state and its operation in weak governance contexts, demonstrates the fundamental regulatory gap in addressing non-state actors in armed conflicts (Klabbers, 2019; Alvarez, 2019).

The M23 rebellion in the Democratic Republic of the Congo, which resumed offensive operations in March 2022, has displaced over 2.8 million people, with the UN Group of Experts documenting the Rwanda Defence Force's active support in violation of the UN arms embargo and the Lusaka Ceasefire Agreement (UN Group of Experts, 2023; UN, 2024). The international community's response has been limited to diplomatic condemnation and sanctions, insufficient to alter the behaviour of either the state or non-state actors involved (Adebajo, 2022; ICG, 2024). The East African Community Regional Force, deployed in November 2022, has been unable to stop the M23 advance, and tensions between regional actors have undermined collective action (ICG, 2024; International Commission of Jurists, 2025).

Terrorist organizations operating across borders further challenge international law's regulatory capability. JNIM and ISIS in the Greater Sahara have expanded territorial control in the Sahel, committing systematic abuses against civilian populations including summary executions, forced disappearances, and the recruitment of child soldiers (ICG, 2024; Amnesty International, 2024). Al-Shabaab in Somalia continues to carry out attacks across East Africa, while Boko Haram in the Lake Chad Basin has displaced over 2.5 million people and killed over 300,000 (UN OCHA, 2023; ICG, 2023). The Lake Chad Basin Commission, established in 1964 to regulate water resources, has been unable to address the security dimensions of the insurgency, illustrating the limitations of existing institutional frameworks designed for different purposes (UN OCHA, 2023; Adebajo, 2022).

The Contested Role of International Criminal Justice

International criminal justice has attempted to fill the accountability gap through the establishment of the International Criminal Court and ad hoc tribunals. The ICC, established in 2002 with 123 states parties, has issued over 40 arrest warrants and has ongoing investigations in multiple situations including Ukraine, Palestine, the Democratic Republic of the Congo, Darfur, and Libya (ICC, 2024). Yet the Court faces significant challenges that undermine its regulatory capability. Major powers including the United States, China, Russia, and India have

not joined, significantly limiting its jurisdiction and political legitimacy (ICC, 2024; Bass, 2000). The ICC's arrest warrants for President Putin and Maria Lvova-Belova have not been executed, and the Court cannot compel Russia's cooperation (ICC, 2023). The United States has actively opposed ICC jurisdiction over its personnel and has threatened sanctions against the Court, undermining its perceived impartiality (Nye, 2020; Alvarez, 2019).

The ICC's investigations in Africa have generated controversy, with some states accusing the Court of neo-colonial bias, damaging its legitimacy and regulatory capability on the continent (Adebajo, 2022; Benvenisti, 2008). The withdrawal threats by South Africa, Burundi, and the Gambia in 2016, though later reversed, reflected the perception that the Court disproportionately targets African leaders (Adebajo, 2022). The ICC has attempted to address these concerns through the Office of the Prosecutor's policy paper on positive complementarity and the African Union's proposals for reform, but the fundamental tension between universal justice and sovereign prerogatives remains unresolved (ICC, 2023; Slaughter, 2000).

Conclusion: The Limits of Legal Regulation in Security Crises

The evidence from armed conflicts across the globe reveals that international law's regulatory capability in security crises is severely constrained. The prohibition on the use of force, international humanitarian law, and international criminal law provide normative frameworks, condemnation mechanisms, and accountability pathways, but they lack coercive power without the support of powerful states (Zangl & Zürn, 2014; Koskenniemi, 2005). The veto power of permanent Security Council members, the strategic interests of powerful states, and the proliferation of non-state actors all undermine regulatory effectiveness (Weiss, 2013; Alvarez, 2019). The pattern of legal pronouncements without enforcement, condemnation without consequences, and accountability without implementation suggests that international law operates as a system of normative expectations rather than as a binding legal order in security contexts (Mearsheimer, 2001; Waltz, 1979). Yet the very existence of these legal frameworks, and the widespread condemnation that violations generate, suggests that international law retains normative power even in the absence of coercive enforcement (Finnemore & Sikkink, 1998; Checkel, 2001). International law can delegitimize state behaviour, mobilize political responses, and shape the discourse of conflict, even when it cannot compel compliance (Koskenniemi, 2005; Slaughter, 2000).

The Regulatory Capability of International Law in Global Economic Governance and Environmental Regulation

The regulatory capability of international law is more robust in the domains of global economic governance and environmental regulation than in security affairs, yet it faces distinct challenges including the fragmentation of specialized regimes, the influence of non-state actors, and the growing contestation of multilateralism. This theme examines how international trade law under the WTO, international investment law, and international environmental law operate in practice. The evidence reveals that while these regimes have developed sophisticated institutional mechanisms, they face challenges from regime fragmentation, corporate interests, and the resurgence of

sovereign-state assertions that undermine regulatory coherence and effectiveness.

The World Trade Organization and the Regulation of International Trade

The World Trade Organization represents one of the most institutionalized and effective regulatory regimes in international law. Established in 1995, the WTO has 164 members accounting for approximately 98 percent of global trade, and its dispute settlement mechanism has processed over 600 cases with compliance rates exceeding 80 percent for adverse rulings (WTO, 2024; Slaughter, 2000; Zangl & Zürn, 2014). This high compliance rate distinguishes the trade regime from other areas of international law and suggests that international law can achieve significant regulatory capability when it provides clear rules, binding dispute resolution, and tangible benefits for compliance (Zürn, 2018; Keohane, 1984). The WTO's Appellate Body, which functions as a de facto international court, has issued decisions on over 150 disputes, providing authoritative interpretations of WTO agreements (WTO, 2024). Yet the WTO faces significant challenges that undermine its regulatory capability, including the blockage of Appellate Body appointments by the United States since 2019, effectively crippling the dispute settlement system (Nye, 2020; Taylor, 2019). This paralysis, driven by American concerns about the Appellate Body's jurisprudence, illustrates that even robust regulatory regimes can be undermined by powerful states when they perceive the system as acting against their interests (Mearsheimer, 2001; Waltz, 1979).

The United States' trade policies under the Trump and Biden administrations have further undermined the WTO's regulatory capability. The Trump administration-imposed tariffs on 360 billion dollars of Chinese imports, withdrew from the Trans-Pacific Partnership, and initiated a trade war with China that disrupted global supply chains (Foreign Policy, 2026; Taylor, 2019). The Biden administration maintained many of these tariffs and continued to block Appellate Body appointments, arguing that the system had overreached its mandate (Nye, 2020; SDSN, 2026). China's response to US tariffs, including tariffs on 185 billion dollars of US exports and the restriction of US imports, has demonstrated that major powers can undermine the trade regime through bilateral retaliation rather than multilateral dispute settlement (Taylor, 2019; CSIS, 2025). The inability of the WTO to resolve the US-China trade dispute, despite both parties being members, illustrates the limits of regulatory capability when major powers are in conflict (Mearsheimer, 2001; Waltz, 1979). The European Union has also pursued trade policies independent of the WTO, including its Carbon Border Adjustment Mechanism adopted in 2023, which imposes tariffs on imports based on carbon content and may violate WTO rules (European Commission, 2023; WTO, 2022). This demonstrates that states will pursue trade objectives through alternative mechanisms when the WTO system does not serve their interests (Zangl & Zürn, 2014; Keohane, 1984).

International Investment Law and the Investor-State Dispute Settlement Mechanism

International investment law, particularly the investor-state dispute settlement mechanism, represents a significant regulatory innovation that has generated substantial controversy. Bilateral investment treaties and investment chapters in trade agreements allow foreign

investors to sue states directly, bypassing domestic courts and invoking international arbitration (UNCTAD, 2023; CityUHK, 2025). The mechanism has generated over 1,300 known cases resulting in over 100 billion dollars in claims against states, demonstrating significant regulatory capability (UNCTAD, 2023). Yet the system has been criticized as undermining state sovereignty, prioritizing investor interests over public welfare, and producing inconsistent arbitral awards (CityUHK, 2025; Alvarez, 2019).

Foreign Investment Laws (FILs) are designed as "a crucial legal instrument designed to re-balance investor protection and state sovereignty by imposing precise statutory requirements for investor consent" (CityUHK, 2025, p. 267). However, as research demonstrates, "despite unambiguous statutory provisions, tribunals frequently adopt a lenient interpretation to maintain jurisdiction, undermining states' efforts to enforce sovereign limitations on consent" (CityUHK, 2025, p. 267). This "conservative tendency" in arbitral practice reflects the distinct legal culture of investment tribunals, which prioritize investor protection even when national sovereignty interests are clearly articulated (CityUHK, 2025, p. 267). As CityUHK (2025, p. 267) argues, achieving "a more coherent and legitimate ISDS system requires not only tribunals to apply a restrictive interpretation of consent, but also states to adopt consistent legislative and regulatory measures."

States have responded to these concerns by withdrawing from the investment regime or implementing reforms. Ecuador withdrew from the ICSID Convention in 2009, South Africa terminated its BITs in 2015, and India terminated most of its BITs in 2016 (UNCTAD, 2023; Alvarez, 2019). The European Union has proposed the Multilateral Investment Court as a replacement for the ad hoc arbitration system, seeking to address concerns about legitimacy and consistency (European Commission, 2023). Indonesia has announced its intention to terminate all 67 BITs, reflecting a broader trend of sovereign assertion (UNCTAD, 2023). These developments demonstrate that while investment law has regulatory capability, it faces legitimacy challenges that undermine its long-term effectiveness (Alvarez, 2019; Zangl & Zürn, 2014).

The conflict between investment protection and environmental protection provides a concrete illustration of fragmentation challenges. The investor-state dispute settlement mechanism has frequently been used to challenge environmental regulations, with over 60 known cases involving environmental measures (UNCTAD, 2023). The Energy Charter Treaty, a binding investment treaty with over 50 signatories, has been used to challenge renewable energy policies in Spain, Italy, and the Czech Republic, resulting in over 5 billion euros in claims (UNCTAD, 2023; Alvarez, 2019). This has led some states, including Italy and Poland, to withdraw from the treaty, while the European Union has sought to reform it (European Commission, 2023). These conflicts between investment and environmental regimes reduce international law's overall regulatory coherence and provide states with opportunities to engage in "regime shopping," selecting the forum most favorable to their interests (Pauwelyn, 2004; Zangl & Zürn, 2014).

The Fragmentation of Specialized Regimes and Its Consequences

The proliferation of specialized international law regimes has created both regulatory opportunities and challenges. International environmental law, international trade law, international human rights law, international humanitarian law, and international investment law operate as largely separate systems with different institutions, enforcement mechanisms, and normative foundations (Koskenniemi, 2005; Pauwelyn, 2004). This fragmentation has enabled the expansion of international law into new areas but has also created conflicts and inconsistencies that undermine regulatory effectiveness (Alvarez, 2019; Zangl & Zürn, 2014).

The conflict between trade and environmental regimes provides a paradigmatic example of fragmentation challenges. The WTO's rules on non-discrimination and the prohibition of trade restrictions conflict with environmental measures designed to protect global commons (WTO, 2022; Pauwelyn, 2004). The EC-Biotech case, the Shrimp-Turtle case, and the US-Gasoline case all illustrate the tensions between trade liberalization and environmental protection, with the WTO Appellate Body attempting to reconcile these objectives but leaving significant ambiguity (WTO, 2024; Pauwelyn, 2004). The EU's Carbon Border Adjustment Mechanism, which imposes tariffs on imports based on carbon content, represents a further escalation of this tension, potentially triggering WTO disputes while being justified under climate law (European Commission, 2023; Knox, Bodansky & Rajamani, 2025). The outcome of such disputes will determine the future regulatory capability of both trade and environmental regimes, as they must find ways to coexist and coordinate (Zangl & Zürn, 2014; Bodansky, 2010).

The conflict between investment protection and human rights similarly illustrates fragmentation challenges. The investor-state dispute settlement mechanism has been used to challenge regulations designed to protect public health, the environment, and human rights, generating significant controversy (UNCTAD, 2023; CityUHK, 2025). The Philip Morris v. Uruguay case, in which a tobacco company challenged Uruguay's anti-smoking regulations, illustrates the tension between investment protection and public health (UNCTAD, 2023). The case was ultimately decided in favor of Uruguay, but it demonstrates how investment law can be used to challenge public interest regulations (Alvarez, 2019). States have responded by reforming investment treaties to include carve-outs for public health and environmental measures, but the fragmentation between investment and human rights regimes remains (UNCTAD, 2023; Slaughter, 2000).

Findings

The analysis of international politics and the regulatory capability of international law yields three significant findings that illuminate the nature, limitations, and potential of international legal regulation in the contemporary international system.

1. **International Law's Regulatory Capability is Fundamentally Contingent on Geopolitical Power and Political Will**

The first and most significant finding is that international law's regulatory capability is

fundamentally contingent upon the willingness of powerful states to enforce legal norms and hold violators accountable. Across armed conflicts, economic governance, and environmental regulation, the consistent pattern is that international legal pronouncements, whether from the International Court of Justice, the International Criminal Court, the World Trade Organization, or UN bodies, lack coercive effect without the support of states possessing significant military and economic capabilities. The Russian invasion of Ukraine, the Gaza conflict, China's South China Sea claims, and the US withdrawal from 66 international organizations all demonstrate that states with sufficient power can disregard international legal obligations without meaningful consequences. The veto power of permanent Security Council members, particularly the United States, Russia, and China, enables these states to block accountability for their allies and themselves, creating a system where legal regulation operates selectively. This finding confirms realist theoretical predictions that international law is fundamentally an epiphenomenon of state power, reflecting the interests of the powerful rather than functioning as an autonomous regulatory force. Yet the finding also reveals that international law retains normative power even in the absence of coercive enforcement, as the widespread condemnation that violations generate, the mobilization of political responses, and the delegitimization of violator states demonstrate that international law shapes the discourse and politics of international relations even when it cannot compel compliance.

2. **The Proliferation of Non-State Actors Creates Significant Regulatory Gaps**

The second finding is that the proliferation of non-state actors, including private military companies, multinational corporations, armed groups, and terrorist organizations, has created significant regulatory gaps that international law is ill-equipped to address. Traditional international law was designed for a state-centric system, assuming that states are both the primary subjects and objects of regulation. Yet contemporary international politics features a diverse array of non-state actors operating across borders, controlling territory, engaging in hostilities, committing abuses, and exploiting regulatory lacunae with impunity. The Wagner Group's operations in the Central African Republic and Mali, M23's rebellion in the Democratic Republic of the Congo, and the operations of JNIM, ISIS, Al-Shabaab, and Boko Haram across Africa demonstrate the inability of international law to regulate armed non-state actors. Similarly, multinational corporations, including major technology and pharmaceutical companies, have exploited regulatory gaps, prioritizing profits over public health and data protection, with fines and sanctions proving insufficient to alter behaviour. The regulatory gap is particularly acute because non-state actors do not participate in treaty-making processes, do not consent to international legal obligations, and cannot be subjected to traditional state-centric enforcement mechanisms. This finding suggests that international law's regulatory capability will remain limited unless new regulatory approaches are developed that move beyond the traditional state-centric paradigm to address the realities of contemporary global governance.

3. **The Fragmentation of International Law into Specialized Regimes Undermines Regulatory Coherence and Effectiveness**

The third finding is that the fragmentation of international law into specialized regimes, including international trade law, international environmental law, international human rights law, international humanitarian law, international criminal law, and international investment law, creates conflicts and inconsistencies that undermine regulatory coherence and effectiveness. Each regime has developed distinct institutional frameworks, procedural rules, interpretive communities, and normative foundations, leading to situations where states face conflicting obligations under different regimes. The conflict between trade and environmental regimes, exemplified by the EU's Carbon Border Adjustment Mechanism and its potential WTO incompatibility, demonstrates how fragmentation enables states to select the forum most favorable to their interests, a practice known as regime shopping that undermines the integrity of the international legal order. The conflict between investment protection and human rights, where corporations use the investor-state dispute settlement mechanism to challenge public health and environmental regulations, similarly illustrates how fragmentation undermines the achievement of broader public policy objectives. The fragmentation also creates enforcement gaps, as no single regime has comprehensive jurisdiction over complex transnational challenges including climate change, pandemic response, and digital governance. This finding suggests that improving international law's regulatory capability requires better coordination among specialized regimes, the development of cross-cutting principles, and the strengthening of institutions capable of managing regime interactions. However, the finding also reveals that fragmentation reflects the functional differentiation of international law and its adaptation to the complexity of global governance, suggesting that complete integration is neither feasible nor desirable, and that the challenge is to manage fragmentation rather than eliminate it.

Conclusion

This analysis has critically examined the regulatory capability of international law, revealing a system that possesses significant normative authority but is fundamentally constrained by structural deficiencies and geopolitical realities. The evidence from armed conflicts in Ukraine, Gaza, Syria, and Sudan, from economic governance under the WTO and investment regimes, and from environmental regulation under the Paris Agreement demonstrates that international law can shape state behaviour, delegitimize violations, and mobilize political responses, yet it cannot compel compliance without the support of powerful states. The proliferation of non-state actors has created regulatory gaps that traditional legal frameworks cannot adequately address, as private military companies, armed groups, and multinational corporations operate outside the scope of effective international regulation. The fragmentation of international law into specialized regimes has enabled the expansion of legal governance but has also created conflicts and inconsistencies that undermine regulatory coherence and provide opportunities for strategic forum selection. The resurgence of sovereignty assertions, exemplified by the United States' withdrawal from 66 international organizations and the rejection of international legal obligations by multiple states, represents a significant challenge to the multilateral legal order. Ultimately, international law's regulatory

capability is contingent upon political will, and its effectiveness depends on the willingness of states to accept constraints on their sovereignty, to invest in international institutions, and to enforce legal norms against violators. The future of international legal regulation will depend on whether states can manage fragmentation, address legitimacy concerns, adapt to the rise of non-state actors, and rebuild multilateral consensus in an era of geopolitical fragmentation and renewed great power competition.

Policy Recommendations

Based on the three findings of this analysis, the following policy recommendations are proposed to enhance the regulatory capability of international law in the contemporary international system.

1. **Strengthen Enforcement Mechanisms through Coordinated Multilateral Action**

The first finding, that international law's regulatory capability is fundamentally contingent on geopolitical power and political will, necessitates a comprehensive approach to strengthening enforcement mechanisms. The international community should establish a permanent enforcement coordination mechanism within the UN Secretariat to monitor compliance with international legal obligations and facilitate coordinated responses to violations. This mechanism should include enhanced early warning systems, rapid response protocols, and coordinated sanctions regimes that automatically trigger when the International Court of Justice or other authoritative judicial bodies issue binding orders. The veto power of permanent Security Council members should be addressed through the Uniting for Peace mechanism, which allows the General Assembly to act when the Council is paralyzed, as demonstrated during the Ukraine and Gaza crises..

2. **Develop a Comprehensive Regulatory Framework for Non-State Actors**

The second finding, that non-state actors create significant regulatory gaps, requires the development of a comprehensive regulatory framework that moves beyond the traditional state-centric paradigm. States should negotiate a new international convention on the regulation of private military and security companies, establishing clear obligations for registration, conduct, and accountability, with provisions for criminal liability and asset seizure for violations. The convention should include monitoring and verification mechanisms, mandatory reporting requirements, and sanctions for states that fail to regulate companies operating from their territory. For multinational corporations, states should strengthen the UN Guiding Principles on Business and Human Rights by developing a binding treaty on business and human rights, establishing clear due diligence obligations, liability provisions, and access to remedy for victims.

3. **Establish a Framework for Regime Coordination and Coherence**

The third finding, that fragmentation undermines regulatory coherence and effectiveness, requires the establishment of a framework for regime coordination and coherence. The international community should establish an Inter-Regime Coordination Forum within the UN system, bringing together the leadership of major international regimes including the WTO,

UNFCCC, WHO, ILO, and investment institutions to identify conflicts, develop cross-cutting principles, and coordinate responses to complex transnational challenges. The Forum should develop a set of coherence principles, including the principle of systemic integration, the requirement to interpret legal obligations in light of other relevant international rules, and the obligation to pursue policy coherence across regimes. States should also strengthen the International Law Commission's work on fragmentation, providing adequate resources and political support for the development of guidelines on regime interaction and the resolution of normative conflicts. Investment treaties should be reformed to include explicit carve-outs for public health, environmental protection, and human rights, reducing the potential for conflicts with other regimes.

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