

13.2: Introduction to International Law

In 1945, President Harry Truman stated, “When Kansas and Colorado have a quarrel over the water in the Arkansas River they don’t call out the National Guard in each state and go to war over it. They bring a suit in the Supreme Court of the United States and abide by the decision. There isn’t a reason in the world why we cannot do that internationally” (Cheeseman, 2016, p. 903). Customs, which vary among global communities and international organizations, are a primary reason why the world cannot pursue such an answer to trade and commerce dealings. The priorities and aims for Chinese businesses differ from those of Brazil. Each of those two countries have radically different business perspectives from the United States. For this reason, international law utilizes customs, treaties, and organizations to guide relationships among nations, with the goal of allowing each country as much leverage as possible over its own business dealings.



Figure 13.2.1: International laws are based on customs, treaties, and organizations that guide partnerships among nations. (Credit: GDJ/ pixabay/ License: CC0)

International Law

International law relates to the policies and procedures that govern relationships among nations (Clarkson, Miller, & Cross, 2018). These are crucial for businesses for multiple reasons. First, there is not a single authoritative legislative source for global business affairs, nor a single world court responsible for interpreting international law (Cheeseman, 2016, p. 903). There is also not a global executive branch that enforces international law, which leaves global business affairs particularly vulnerable.

Secondly, if a nation violates an international law and persuasive tactics fail, then the countries that were violated, or international organizations tasked with overseeing global trade, may act. Often these actions use force to correct the offenses and may include economic sanctions, severance of diplomatic relations, boycotts, or even war against the offending nation (Clarkson, Miller, & Cross, 2018, p. 439).

The purpose of international laws is to permit countries as much authority as possible over their own international business affairs, while maximizing economic benefits of trade and working relationships with other nations. Since many countries have historically allowed governance by international agreements when conducting global business, there exists an evolving body of international laws that facilitate global trade and commerce.

U.S. Constitutional Clauses

There are two important clauses in the U.S. Constitution related to international law. First, the **Foreign Commerce Clause** enables Congress to “regulate commerce with foreign nations” (Cheeseman, 2016, p. 904). This clause permits U.S. businesses to actively negotiate and implement taxes or other regulations as they relate to international commerce. However, businesses cannot unduly burden foreign commerce. For example, General Motors, which is based in Michigan, cannot suggest that the state impose a 50 percent tax on foreign-made automobiles sold in the state, while not imposing the same tax on U.S.-made vehicles. Michigan can, however, impose a 10 percent tax on all automobile sales in the state to offset the costs of foreign trade and commerce.

The second important clause related to international law is the **Treaty Clause**, which states that the president has the power “by and with the advice and consent of the senate” to create treaties with other nations (Clarkson, Miller, & Cross, 2018, p. 440). This clause restricts treaties to federal authority, meaning that states do not have the power to enter a treaty with another nation. For example, the United States and Mexico can sign a treaty to reduce trade barriers between both nations, but the state of Texas cannot sign a treaty with Mexico to reduce trade barriers between Texas businesses and Mexico. Additionally, any treaties established with other countries become U.S. law, and any conflicting law is null and void.

Primary Sources of International Law

International customs, treaties, and organizations are the primary sources of international law (Clarkson, Miller, & Cross, 2018, p. 439).



Figure 13.2.2: Three distinct components are sources for how international law is understood, defined, and interpreted around the world. (Modification of art by BNED Credit: CC BY NC SA)

These three components work together to guide how nations understand, define, and interpret international laws that govern global business affairs.

International Customs

Customs are general practices between nations that guide their business relationships. According to the Statute of the International Court of Justice, international customs are “accepted as law” (Clarkson, Miller, & Cross, 2018, p. 439). While customary international law (CIL) is not written, nor does it require ratification to become binding, CIL nonetheless provides guidelines for how nations conduct business affairs (Bradley & Gulati, 2010, p. 204). One example of a custom is the international protection of ambassadors. For thousands of years, ambassadors have been protected while serving diplomatic missions. For this reason,

countries protect foreign ambassadors with the understanding that any harm caused to ambassadors would be a violation of international law.

International Treaties

Treaties and other agreements between nations are authorized and ratified by the countries that acknowledge their legality. There are two different types of agreements: bilateral, which is formed by two nations; and multilateral, which is formed by several nations. The Peru-United States Trade Promotion Agreement is an example of a bilateral agreement. It was signed in 2006, ratified by Peru the same year, and ratified by the United States in 2007. This bilateral agreement is considered beneficial to the United States because it improves access to Peruvian goods, while promoting security and democracy in the South American country. The North American Free Trade Agreement, or NAFTA, is an example of a multilateral agreement. It was ratified in 1994, when Mexico joined the previous trade agreement between the United States and Canada. In September 2018, the Trump administration successfully completed re-negotiations with Mexico and Canada that lasted over one year. Among other aims, these negotiations worked to increase auto industry wages for workers in Mexico and modify pharmaceutical regulations with Canada.

International Organizations

International organizations are comprised of officials who represent member nations that have established a treaty to oversee shared interests, including trade and commerce. The U.S. participates in more than 120 bilateral and multilateral organizations around the world. International organizations adopt resolutions that standardize behavior and create uniform rules related to trade and commerce. Two of the most significant international organizations established in the twentieth century that significantly impact U.S. trade and commerce are the United Nations and the European Union.

United Nations

The United Nations (UN) was created as a multilateral treaty in 1945. The UN's organizational goals include maintaining global peace and security, promoting economic and social cooperation, and protecting human rights, especially related to women and children (Cheeseman, 2016, p. 905). The UN **General Assembly** includes representatives from each member nation. As of 2018, the UN acknowledges 195 sovereign states, with all but two participating as full members. These two, Palestine and the Vatican City, are classified as "observer states." Six additional countries are not UN members, but are recognized as a country by at least one UN member country: Abkhazia, Kosovo, Northern Cypress, South Ossetia, Taiwan, and Western Sahara.

The **UN Security Council** includes five permanent members and 10 countries selected by the General Assembly to serve two-year terms. The five countries that hold permanent membership are China, France, Russia, the United Kingdom, and the United States (Cheeseman, 2016, p. 558). This Council is primarily responsible for overseeing global peace and security measures. The World Bank is a UN organization, financed by contributions from developed countries and headquartered in Washington, D.C. Its primary functions include providing money to developing countries to fund projects that relieve suffering, including building roads and dams, establishing hospitals, developing agriculture, and other humanitarian efforts. The World Bank provides both grants and long-term low interest rate loans to countries, often granting debt relief for outstanding loans (Cheeseman, 2016, p. 559).

The United Nations Commission International Trade Law is one of the most important international organizations to date, establishing the 1980 Convention on Contracts for the International Sale of Goods (CISG), which will be discussed further in the next section.

European Union

The **European Union (EU)** is a regional international organization that includes many countries in Europe. It was established to create peace across the region and promote economic, social, and cultural development (Cheeseman, 2016, p. 561). As of 2018, there are 28 countries affiliated with the EU, although the United Kingdom has begun steps to withdraw its membership. Additionally, Macedonia is actively seeking a path toward EU membership, although as of September 2018, the country's citizens remain divided. The EU organization has established a treaty for its members that creates open borders for trade among member nations, especially for capital, labor, goods, and services. The impact on U.S. commerce is significant, as the EU represents more than 500 million people and a gross community product that exceeds that of the United States, Canada, and Mexico combined (Cheeseman, 2016, p. 561).

Sovereignty

National **sovereignty** defines a nation. While clearly defined borders and independent governments also set parameters for a nation, sovereignty is an important legal principle that allows nations to enter negotiated treaties with other countries and honor territorial boundaries. It is among the most important international law principles, thus greatly impacting international trade and commerce.

Since the 1800s, most established nations allowed for absolute sovereignty among the global community. However, by the 1940s, that allowance was significantly reduced, as countries revisited sovereignty in light of globalization, transportation, and communication advances, and the rise of international organizations (Goldsmith, 2000, p. 959). Consequentially, doctrines of limited immunity were created that established guidelines for how countries may prosecute, or hold foreign nationals accountable, during international trade and commerce dealings.

A **doctrine of sovereign immunity** states that countries are granted immunity from lawsuits in courts of other countries (p. 569). Although the United States initially granted absolute immunity to foreign governments from lawsuits in U.S. courts, in 1952, the United States adapted federal law to qualified immunity, which is the immunity regulation adopted in most Western nations. This law led to the **Foreign Sovereign Immunities Act of 1976**, allowing U.S. governance over lawsuits against other nations in the United States in either federal- or state-level courts. Simply stated, a foreign country is not immune to lawsuits in the United States when the country has waived its immunity, or if the commercial activity against which the lawsuit is intended causes a direct effect in the United States.

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