

13.3: Sources and Practice of International Law

International law is primarily governed by customs, treaties, and organizations that influence how laws are understood, interpreted, and enforced around the world. Since there is not a central court to enforce international law, each country utilizes its own courts to settle disputes. Collective action, reciprocity, and shaming are three examples of non-legislative methods that influence trade when enacted against nations that violate international law.



Figure 13.3.1: International laws are enforced through positive and punitive measures that seek to uphold the global integrity of trade and commerce among all nations. (Credit: qimono/ pixabay/ CC0)

Sources of International Law

The sources of international law are customs, treaties, and organizations, as discussed in the previous section. These three components work synergistically to influence how the international community facilitates business trade and commerce. More importantly, international law is enforced when a country violates the principles set forth by globally shared customs, treaties, and organizations.

One of the most important governing documents for international law is the **United Nations Convention on Contracts for the International Sale of Goods (CISG)**, which was established in 1980. This law governs contracts of countries that have ratified it as the priority contract for trade. By January 2018, 84 countries had adopted CISG, including the countries that account for more than two-thirds of all global trade. Those countries include the United States, Canada, China, Japan, Mexico, Argentina, Brazil, and most European countries. The CISG is enforced whenever international transactions occur without the presence of written contracts to govern those transactions. There are limits to the CISG, however, as the CISG does not apply to consumer sales or contracts for services (Clarkson, Miller, & Cross, 2018, p. 376).

International Principles and Doctrines

There are three significant principles that help establish and enforce international law: the Principle of Comity, the Act of State Doctrine, and the Doctrine of Sovereign Immunity.

The **Principle of Comity** states that nations will defer to the laws and decrees of other nations when those laws are consistent with their own, essentially upholding reciprocity between nations with similar laws. For example, a U.S. court will most likely uphold a business contract as valid even if it was drafted in England, since the United Kingdom's legal procedures are consistent with U.S. procedures (Cross & Miller, 2018, p. 216).

The **Act of State Doctrine** is a law applicable in England and the United States. It states that these two nations will not pass legal judgement on public acts committed by a recognized government if those acts occur within that government's own territory (Cross & Miller, 2018, p. 216). For example, the United States will not file a lawsuit against Petrobras, a Brazilian oil company, alleging price fixing, since the act of pricing oil occurs in Brazil, which is a nation that holds control over its own natural resources.

The **Doctrine of Sovereign Immunity**, which was introduced in the previous section, states that foreign nations are immune from U.S. jurisdiction when certain circumstances are applied. However, there are exceptions to this law. If a foreign country conducts commercial business activity in the United States and an entity in the United States files a lawsuit against the foreign business, then the foreign state is not immune from U.S. jurisdiction (Cross & Miller, 2018, p. 216).

International Law Enforcement

One of the most important considerations for international business is understanding that companies operating in foreign nations are subject to the laws of those nations (Cross & Miller, 2018, p. 212). When international laws are violated, disputes are often resolved through the legal systems within individual nations. Most countries have either common law or civil law systems. **Common law systems** operate independently by developing their own rules that govern areas of business law, such as torts and contracts. The United States has a common law system. One-third of all people in the world live in nations in which common law is practiced. **Civil law systems** base their legislation on Roman civil law, which utilizes statutory codes as the primary source of law (p. 212).

Table 13.3.1: Common Law Civil Law

Australia	Malaysia	Argentina	Indonesia
Bangladesh	New Zealand	Austria	Iran
Canada	Nigeria	Brazil	Italy
Ghana	Singapore	Chile	Japan
India	United Kingdom	China	Mexico
Israel	United States	Egypt	Poland
Jamaica	Zambia	Finland	South Korea
Kenya		France	Sweden
		Germany	Tunisia
		Greece	Venezuela

Impact on International Trade

There are three international law enforcement methods that can radically impact trade: collective action, reciprocity, and shaming.

Collective action occurs when businesses work collectively to strengthen their resources and achieve a shared goal. In February 2018, the UN Conference on Trade and Development Secretary-General argued that collective action can be one of the most effective methods for protecting international trade in the current global climate. Due to recent trade restructuring from the United States and the United Kingdom (pending its withdrawal from the EU), collective action was promoted as a way to “harness energy that will not fragment the [international trade] system” (UNCTAD, 2018). By leveraging nations to defend “rules-based multilateral trading systems as a force for creating inclusive prosperity,” the Secretary-General promoted collective action as the primary way to assure continued international peace and economic viability for generations to come.

Reciprocity is central to international trade and at the core of CIL. It happens most commonly in international business exchanges as countries lower import duties, or other trade barriers, in exchange for mutual arrangements extended by the other country. Reciprocity can be beneficial to the nations involved, or it can be punitive. In 2016, presidential candidate Donald Trump campaigned for an international trade climate that would produce fairer options for the United States. Since his inauguration, he has increasingly pressured the global community by imposing taxes on imports from Canada, China, the EU, and Mexico, each of which has retaliated in reciprocity. In 2018, China accused the United States of launching the “largest trade war in economic history,” of which the final global impacts remain largely unknown (BBC, 2018).

Shaming is a deliberate attempt to negatively impact a state, regime, or governmental leader’s reputation by publicizing and targeting violations of international laws, including customary norms, treaty breaches, and violations of organizational expectations (Gopalan & Fuller, 2014, p. 75). However, shaming is not viewed as particularly effective without more concrete measures to accompany it (Klymak, 2017). A recent research study conducted by the Department of Economics in Dublin, Ireland, found that there is no evidence to suggest that there has been a decrease in the imports of goods to the United States from countries where

foreign goods are likely produced by child and forced labor. Despite media coverage and the International Labour Organization's coverage that routinely shames certain nations for producing goods by child or forced labor, those goods are nonetheless regularly imported for international sale.

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