

Enforcing International Law for Radical Change

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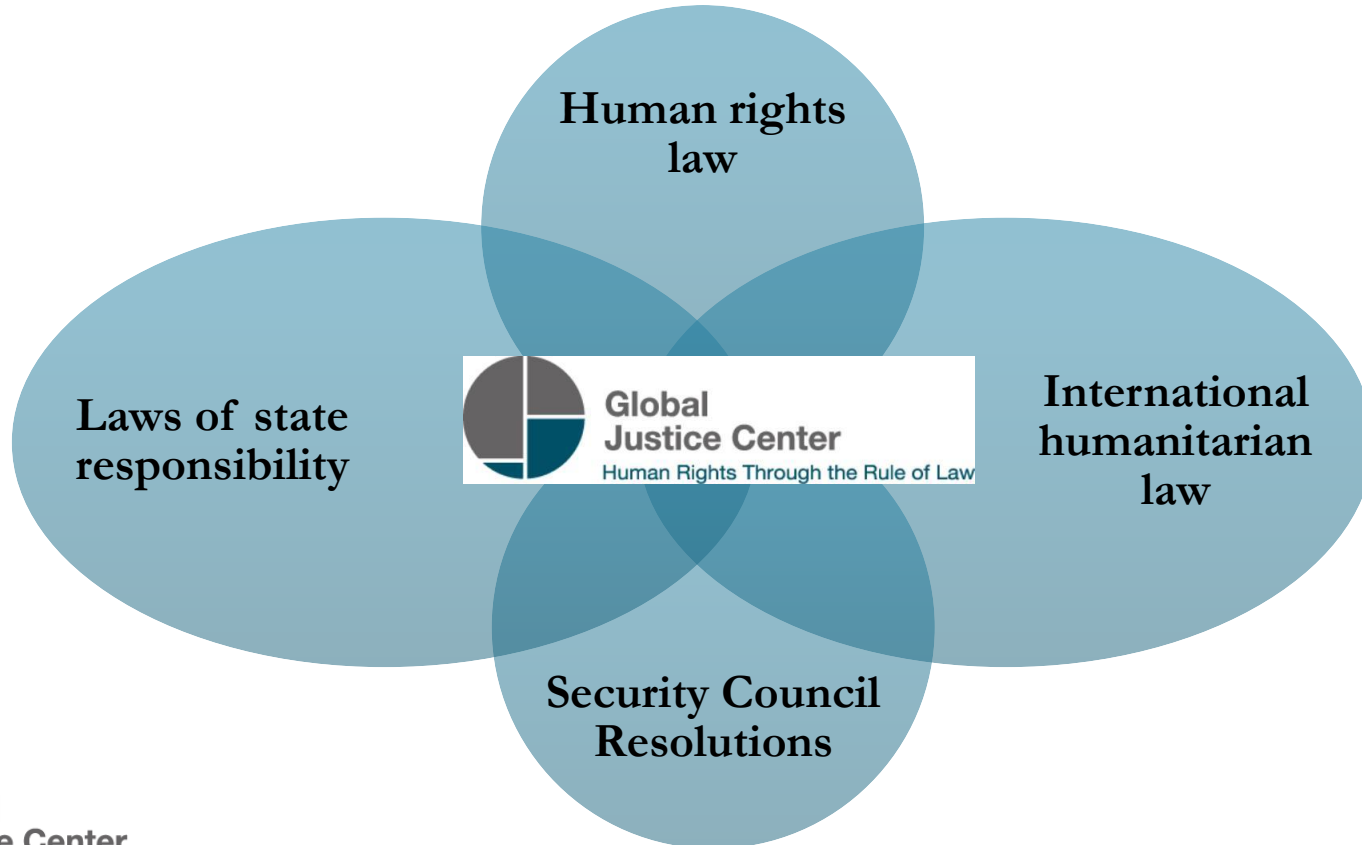


**Global
Justice Center**
Human Rights Through the Rule of Law

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About the Global Justice Center

Enforcing International Law for Radical Change



Vision

- ❖ **A global rule of law**
- ❖ **Enforceable by all people**
- ❖ **Based on human rights principles**
- ❖ **Gender equality in power is central to the definition of democracy**



Strategy

Aggressive enforcement of international law

- ❖ **change power structures**
- ❖ **open up access to justice**



The Increasing Importance of International Law

- ❖ **Globalization**
- ❖ **Technology and economic interdependence**
- ❖ **Acceptance of human rights norms as a baseline**
- ❖ **Prohibition on impunity for crimes in war**
- ❖ **Powerful global civil society/ women's rights movement**
- ❖ **New venues to enforce international law**



Why International Law?

- ❖ Justice must not depend on geography
- ❖ Provides better protections than domestic laws
- ❖ Provides international legitimacy to efforts
- ❖ Provides a "neutral" source for investigating human rights abuses/war crimes
- ❖ Provides new venues for enforcing human rights



UN Actions between 1945 and 1952 as Sources of International Law

- ❖ 1945 UN Charter - “world constitution”
- ❖ 1948 Universal Declaration of Human Rights
- ❖ 1949 Geneva Conventions
- ❖ 1949 Creation of the International Law Commission
- ❖ 1951 Genocide Convention
- ❖ Security Council Resolutions



New Mechanisms for Enforcement under International Law

- ❖ **International Criminal Court and Special Tribunals**
- ❖ **International Court of Justice**
- ❖ **Regional/Domestic Courts**
- ❖ **UN Oversight bodies**
- ❖ **U.N. Security Council**



Advances in International Law Change the Definition of “Democracy”

- ❖ **Democracy in the United States in 1776**
 - Free speech and only white men with property could vote
- ❖ **Is a country a democracy if those who are in power are unrepresentative of the population?** (Example: 50.8% of the U.S. population is female; only 17% of U.S. members of congress are women.)
- ❖ Are **affirmative quotas for women and ethnic people** in all branches of government required by international law?
- ❖ Are political parties, including ethnic parties, required to put up **half women candidates for elections?**

The Security Council: The Most Powerful Body in the World

❖ Have power to take any actions necessary to maintain “international peace and security” including:

- Mandate states take domestic action on issues integral to maintaining global peace & security - SCR 1540,1612,1820
- Establish international tribunals to try war criminals (ex. ICTY or ICTR) or since 2002 - send “situations” to the International Criminal Court
- Sanction violator states for illegal acts, including through collective non-recognition
 - ✓ Examples: North Korea, South Africa’s Apartheid Constitution, invasion of Kuwait by Iraq



Security Council Resolutions

- ❖ **Chapter VII Resolutions:** Threats to the Peace, Breaches of the Peace and Acts of Aggression – i.e. Threats to Global Peace & Security
- ❖ **Article 25 of UN Charter** – All member states must be willing and legally able to comply with mandates of Security Council
- ❖ **The Security Council & Burma**
 - The 2008 constitution renders the “Union of the Republic of Myanmar” unable to comply with Chapter VII resolutions of the Security Council
 - The UN Charter is based on the idea of “equal sovereignty of all countries-is Myanmar's sovereignty “equal”?



Who sits on the Security Council?

❖ 15 members total

- Five permanent members: United States, France, China, Russia and Great Britain
- Ten non-permanent members with two-year terms. In 2012 they are:
 - ❖ Azerbaijan, Colombia, Germany, Guatemala, India, Morocco, Pakistan, Portugal, South Africa, Togo

What Laws Bind the Actions of the Security Council

- ❖ **UN Charter** - progressive interpretations of the Charter
 - Gross violations of IHL threaten global peace & security
- ❖ **Security Council Rules**
- ❖ ***Jus Cogens*** principles of international law

What is the International Court of Justice – “World Court”

- ❖ Main judicial organ of the United Nations to decide disputes between states and Acts as ‘**legal advisor**’ to the UN organs
- ❖ **Does not prosecute criminal cases** but may decide on issues relating to international criminal law (ex. Issues arising under the Geneva or Genocide Conventions)
- ❖ Most influential world body **advances principles of international law**
- ❖ **Looks to all sources of international law**
 - Customary international law
 - Treaties such as the Geneva and Genocide Conventions
 - General principles of law recognized by states
 - *Opinio juris* – judicial decisions & teachings



International Laws Binding on Myanmar/Burma

- ❖ **Treaty Law** - human rights and humanitarian law
- ❖ **Customary International law**
 - law on states responsibilities
- ❖ **International criminal law**
- ❖ **Security Council Resolutions**

Treaty Obligations

- ❖ Burma incurs obligations under international law by ratifying a treaty
 - Must comply with treaty in good faith
 - Domestic law cannot excuse failure to comply
- ❖ Key Treaties Ratified by Myanmar/Burma
 - UN Charter/Human Rights Treaties
 - Geneva Conventions of 1949
 - Genocide Convention
 - Treaty on the Non-Proliferation of Nuclear Weapons



Binding International Law regardless of Treaty Ratification

- ❖ **Customary International law**, also called “Law of Nations” is binding law arising from “general practice accepted as law.”
- ❖ Example: Myanmar/Burma has not signed Additional Protocols to the Geneva Conventions, **BUT** it is still bound the parts of the treaty are customary international law
- ❖ **Laws of State Responsibility are customary international law**
 - Articles 40-42 “serious breaches of peremptory norms”
 - ❖ Violator state is obligated to take actions to end the breach
 - ❖ All states have obligations to act
 - ✓ Collective action to end breach including Non-recognition
 - ✓ No aid or assistance