

**Committee:** Legal Committee (GA6)

**Issue:** The impact of globalization on law-making authorities and international customary law

**Student Officer:** Anna Stathopoulou

**Position:** Co-Chair

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## PERSONAL INTRODUCTION

Esteemed delegates,

My name is Anna Stathopoulou, and I am an 11<sup>th</sup> Grade student at Hellenic American Educational Foundation, Athens College. It is with great pleasure that I will be serving as a Co-chair in the Legal Committee (GA6) of the 5<sup>th</sup> ACGMUN. I would like to start by saying that I am interested in helping you create great resolutions, creating alliances, answering any questions you might have on the issues, and meeting you even if that is online. I promise that with my fellow co-Chairs we will try to make this experience an unforgettable one, regardless of the circumstances. My MUN experience started in 2019 when I first joined the MUN Club of my school and since then I had the opportunity to be a delegate, an ambassador, and a chair in multiple conferences, whilst meeting new people and broadening my horizons in different committees of the “MUN world”. Joining MUNs has allowed me to develop my linguistic skills, my appreciation for the English language, and educate myself on how I can be part of the bigger picture, globalization.

In the following study guide, you will find important information on the topic of the impact of globalization on law-making authorities and international customary law. I would like to ensure that every delegate understands that this is a serious topic and like every topic that is to be debated and discussed needs individual research. Thus, with this topic, I will mainly be highlighting the overall importance of the issue and not policy-specific items. I highly encourage you to use reliable sources that respect the countries you are representing but in addition, create resolutions that are creative and can be easily adapted by all member states of the United Nations. With that in mind, I would encourage you if you have any questions on the topics to contact me via email without hesitation ([astathopoulou@athenscollege.edu.gr](mailto:astathopoulou@athenscollege.edu.gr)).

I wish you dear luck with your preparation and I am looking forward to meeting you at the conference!

Best Regards,

Anna Stathopoulou

## TOPIC INTRODUCTION

In recent years, globalization has been the center of attention for the international community. Globalization can be viewed from many perspectives like it can be viewed differently in the eyes of the law. As such, globalization is the way with which all governments set out to follow the same pattern of laws and essentially the same standards all countries must follow when making laws. Thus, law-making authorities are responsible for establishing those standards and ensuring that regardless of countries' policies all governments follow more or less the legal framework.

When it comes to international customary law, its main goal is to guide states towards having common ground on certain legal matters, according to the standards that lawmaking suggests. It is fairly important to realize that international customary law is differentiated from treaties and conventions that may be signed by member states of the United Nations to make certain all have a compelling lawful interest in such legal matters. In the case of a treaty, countries have the option not to necessitate the signing and ratification of it, while on the other hand, when abiding by guidelines which international customary law proclaims as non-negotiable, they do not.

Customary law provides legal frameworks countries must follow to avoid conflicts, hence agreeing and cooperating when doing so in practice. It is an ongoing cycle between the importance of following the same path and illustrating it in practice when handling affairs. Hence, the basis of international customary law lies on the relations of member states when it comes to handling and following these proposed standards.

For example, during the Covid-19 pandemic governments worked on forming common frameworks and standards which would be compelling for all governments. All countries had a common goal; sharing knowledge amongst all Member States and understanding of the issues that arose because of the pandemic. One country started adapting to the new policies on the issue and the rest followed. Similarly, law-making authorities act on such upcoming issues, by creating a chain reaction of solutions and suggesting how all countries one-by-one should implement them.

Keeping in mind all the aforementioned points on globalization, ensuring all shared cooperation and maintaining a compelling interest in finding solutions are interconnected and essential to maintaining peace. States must realize that law-making authorities and the international customary law coincide and the effects of a strong and cooperative society of governments may affect their future equally. Any complications and problems that arise must be given immediate attention.

## DEFINITION OF KEY TERMS

### Globalization

“The ensured global interdependence of all countries, markets, and societies for the benefit of the establishment of “healthy” relations amongst people and governments.”

### Law-making authorities

The people and governments that have the unconditional right and power to make laws that are in accordance with the universal principles of international law.

### International Customary Law

A set of rules that all countries must follow when law-making and viewing as examples of how to handle certain cases unanimously, such as torture. It is a guide that sets grounds on the universal protection of humanity.

### International Court of Justice (ICJ)

The principal judicial organ of the United Nations (UN) since its establishment in 1945, which focuses on making certain all member states of the UN consider and establish the same practice of international customary law when dealing with international affairs.

### International Court of Justice Statute

The guide by which the International Court of Justice functions when handling international affairs that sets the standards with which it is organized.

### International cooperation

Universal communication between all member states of the United Nations (UN) ensures all have the same views when law-making and imposing international law standards.

### Sovereignty

Is the right of a country to handle its internal affairs with actions they deem necessary without an outsider’s influence. Regardless of its perception of the affair, a country should always follow the International Law standards that respect not only a country’s right to sovereignty but the protection of all of humanity.

### Unfair advantages

The “advantages” certain governments have because of their financial statuses in the international community in law-making and the power and influence they may have

on setting customary standards. Of course, unfair advantages should not be tolerated when handling universal affairs that respect all governments and their capabilities.

## **BACKGROUND INFORMATION**

### **What does the ICJ statute suggest for governments on International Law?**

It is an uncontested fact that the International Court of Justice statute functions with the help of the Intern law and the United Nations in a way that allows all governments to work unanimously on external affairs that may put governments and humanity in danger. In the same manner, the statute is ultimately a guide which ensures that all member states of the United Nations have the same views on how International, customary and treaty laws work in the International Court of Justice cases. This “guideline” helps to organize and guide all member states, in order to bring cases in the Court that will be viewed with the proper respect of humanity. The International Court of Justice praises international cooperation in peacekeeping and suggests that all governments are to bring and handle cases of affairs in the Court when they follow the international standards with the help of its Articles.

Article 38.1 of the International Court of Justice Statute is the primary article of the statute that must guide the Court and all member states when considering judicial affairs under international cooperation standards. The Article states: " The Court, whose function is to decide following international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, [.e. that only the parties bound by the decision in any particular case,] judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

### **Responsibilities of law-making authorities**

Although establishing laws requires a lot of expertise, implementing laws, an inseparable part of international law, is a much more complex and demanding procedure. Governments in the 21<sup>st</sup> must be aware of the crises that the planet is facing and how their laws can help not only to protect their citizens but how a country is viewed by the international community.

The USSR is a great example of a country not necessarily adhering to the regulations of customary international law. Before it's dissolution in 1991, it acted only based on its own domestic laws. International law and its customs were not implemented in

the Soviet Union's legal system, and the government failed to participate successfully in most treaties and establish great diplomatic relations with most countries. Their responsibility as a law-making authority on establishing globalization was not achieved. Thus, their laws provided great solutions for their domestic system, but not the international cooperation system.

Governmental law-making authorities ensure the efficient and mutually beneficial communication between all governments. Some parts of national legislation should be altered under international law principles simply because each country exists in the bigger picture of the UN, not just as a private entity. Similarly, intergovernmental organizations that act as law-making authorities that provide us with the principles of international law, whether that is a treaty, humanitarian, and customary law, through multilateral and bilateral agreements should always be concerned with ensuring all countries can agree with what is proposed.

### **The International Court of Justice's role**

The International Court of Justice (ICJ) is the primary judicial organ of the United Nations (UN) and since its establishment, it has focused on bringing together member states of the UN on handling affairs and cooperating. The 59<sup>th</sup> Article of the ICJ Statute suggests that the ICJ's decisions are legally binding for all the member states that are to be concerned with the case presented in the Court, thus the Court believes in governments respecting cooperation and that their decisions are binding. Because its decisions are legally binding, meaning there are repercussions if the member states do not abide by their action plan, they must cooperate when dealing with affairs of crucial importance. Considering the ICJ rules and verdicts, one side would be "favored", yet without entailing that peace would not be brought for both parties. Regardless of the verdict, cooperation is a crucial component in preserving justice and avoiding armed conflict. Once again, it is important to note the fact that the ICJ as a judicial organ suggests legally binding actions, without forfeiting the fact that all member states have to cooperate.

### **The function of international customary law in cases of armed affairs**

In general, the "unwritten rules" that the customary international humanitarian law suggests aim to protect all individuals and populations during times of war and armed affairs from inhumane conditions, such as torture and human trafficking. International Humanitarian Law reduces the aftermath of war on the international community, and it was established firstly with the Geneva Convention of 1949. International Humanitarian Law functions only in cases of international armed affairs between member states of the United Nations (UN) and it does not have a say in the internal affairs of a country. Still, for the time being, it is an uncontested set of rules during

armed affairs. Undeniably, its basic principles, which are in accordance with the Universal Declaration of Human Rights, set out to help preserve justice, although not necessarily interfering directly with how a country uses force in affairs, but with the effects of that “force” on humanity. It is the basic tool that helps countries deal with the aftermath of war and its impact on the citizens. According to the Advisory Service on International Humanitarian Law of the International Committee of the Red Cross in Geneva the International Humanitarian Law covers two areas: “the protection of those who are not, or no longer, taking part in fighting; restrictions on the means of warfare – in particular weapons – and the methods of warfare, such as military tactics.”<sup>1</sup>

### **Jus cogens**

Jus cogens is, by definition, the law that compels all governments, judicial systems, and law-making authorities to respect certain indisputable norms of the International Law. In theory, those peremptory norms should be respected by all governments and in any possible scenario help to preserve justice and peace, since no government is to refute their liability. On the other hand, the conditions are not always in favor of governments to protest jus cogens and oversee those norms, while trying to preserve justice, as seen through multiple historical examples. Although that may be a reality, the international community believes it is a given for all member states of the UN to abide by International Law for the reason that those norms protect a country’s right to sovereignty, without harming humanity and devaluing international cooperation in the process. Historical events such as genocides, with the most recent being the Rwanda Genocide of 1994, disregarded international law standards and jus cogens and as a result, they destroyed populations, and individuals were led to being victims of cruel practices. Jus Cogens set out to protect all from inhumane conditions and want all governments to be “on the same page” on internal and external affairs that concern all universally.

### **How can violations of international customary law principles affect globalization?**

When States act on what they believe is right regarding governing their country, the influence on internal affairs is something not to be overlooked. While that may be true, the views of the international community need to be taken under consideration. Still, the question that arises is whether the aforementioned is directly affected by a government’s choices. A prime example can be the break out of war in a country. During the past years, Syria and its people have suffered immensely due to the civil war, which began with protests of citizens in March of 2011. This humanitarian crisis according to World Vision has displaced about 13.5 million Syrians that seek asylum

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<sup>1</sup>Advisory Service on International Humanitarian Law of the International Committee of the Red Cross  
<https://www.slideshare.net/aung3/international-humanitarian-law-englishburmese-version>

as refugees in different countries and new areas within Syria to settle . Once refugee status was granted to Syrians and once all the civilians wanted to change their residency and find places to live, a great percentage opted for Greece and Germany. These two countries were essentially left with all the “damage” from the civil war of Syria. Syria violated international humanitarian law, its customs, and the general indisputable principle of protecting humanity which resulted in harm in the international relations between countries. The EU had to decide whether its Member States could handle the immigrant crisis and whether Syria should be regarded as an international threat. The crisis is still ongoing, while globalization and how governments cooperate on handling humanitarian crises should be a concern for the international community

## **MAJOR COUNTRIES AND ORGANIZATIONS INVOLVED**

### **United States of America (USA)**

The United States of America is one of the most important lawmakers regarding national legislation which takes under consideration the principles of international customary law. This is due to their immense participation in many relevant treaties that preserve cooperation amongst member states of the UN, their financial stability in ensuring globalization at a national and international level and their ability to positively influence Less Economically Developed Countries (LEDCs) and their lawmakers to create similar laws that allow for cooperation among States. The US house of representatives is responsible for making and passing laws in the US legal system. It is their responsibility to weave international law principles and preserve an international character in the law through treaties and agreements. It is fairly important to realize that big lawmakers, like the USA, have the power to excel in allowing globalization so their laws should “mention” international law principles. Moreover, The USA took part in the Vienna Convention on the Law of Treaties to signify its participation in achieving globalization.

### **Russia**

Since the USSR’s dissolvment in 1991, Russia has evolved into a more than highly developed economy. The transformation of the country’s economy and financial stability has played a major role in how the Russian Federation handles its global affairs, essentially treaty and convention involvement. International Law was highly disregarded before 1991 by the law system of the USSR. From 1991 though, international law and its implementation of it has been a major factor in how Russia views its people and its Declaration.

As mentioned in paragraph 4 of Article 15 of the Russian Constitution of 1993: “universally accepted principles and rules of international law and integrational

treaties of the Russian Federation shall be an integral part of its legal system. If an international treaty of the Russian Federation establishes rules, other than provided for by the law, the rules of the international treaty shall be applied". Moreover, Russia concerning international humanitarian and customary law has signed and ratified conventions, like the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

### **Japan**

Since the establishment of the rule of law in the country of Japan, the country has invested great efforts in making agreements and treaties that help globalization and healthy relations prevail. Japan has evidently helped in the non-UN Permanent Court of Arbitration (PCA) that helps in making certain disputes are solved between countries peacefully, thus achieving a greater globalized community that respects the "unwritten rules" of the international law regarding affairs and disputes.

### **Democratic Republic of Congo (DR Congo)**

DR Congo is presently facing a humanitarian crisis that has led to multiple violations of the United Nations Universal Declaration of Human Rights and the principles of the international humanitarian and customary law on respecting individuals and their dignity. The conflicts that arose during the last century are not in accordance with the laws that DR Congo has established and sworn to follow. The Security Council (SC) condemned such behaviors. Such a crisis led to one of the most severe and widespread displacements of people in the 21<sup>st</sup> century and that had an ultimate effect on how the country handled agreements and treaties that concerned human rights violations. Still, there were efforts to ameliorate the situation through the help of other countries and UN organizations, like the World Bank, the international law and the implementation of it still are very much needed.

### **European Union (EU) and European Court for Justice**

The European Union is regarded as bound to international law standards due to its high priority in ensuring the establishment of human rights across the entire union of countries. Article 307 of the ECT, explains how closely the participation of countries in the Union correlates with the efforts of the entire Union in practicing international law to ensure humanity's suffering. Essentially, all countries wanting to take part in the Union must follow international customary law adherence. The Court of Justice of the European Union (CJEU) of the European Union focuses on applying the EU law that is based on international standards and sanctioning EU nations if deemed necessary.



### International Law Commission (ILC)

Since the establishment of the International Law Commission (ILC) in 1947, which focuses on creating and establishing international law, multiple countries have followed its indications on how to cooperate with the help of multilateral agreements. It was established by the General Assembly in efforts to focus on paragraph 1 of Article 13 of the Charter of the United Nations which states, “the initiation of studies and the making of recommendations by the General Assembly concerning international co-operation”. The International Law Commission provides member states of the United Nations with the proper development and codification of international laws and customs that take into consideration human dignity regardless of political regimes and financial “powers” of members of the UN.

### TIMELINE OF EVENTS

Date	Description of event
1899	Establishment of the Permanent Court of Arbitration
26 <sup>th</sup> June 1945	The founding of the International Court of Justice (ICJ)
21 <sup>st</sup> November 1947	Establishment of International Law Commission(ILC) by the General Assembly
12 <sup>th</sup> August 1949	Geneva Convention and its Additional Protocols
1952	Establishment of the Court of Justice of the European Union (CJEU)
22 <sup>nd</sup> May 1969	Vienna Convention on the Law of Treaties
26 <sup>th</sup> December 1991	Official USSR Dissolvment
1 <sup>st</sup> November 1991	European Union (EU) creation
12 <sup>th</sup> December 1993	Establishment of the Russian Constitution
7 <sup>th</sup> April- 15 <sup>th</sup> July 1994	Rwanda Genocide
1996	Humanitarian Crisis in DR Congo
March 2011	Syrian Civil War

## RELEVANT UN RESOLUTIONS, TREATIES, AND EVENTS

### The 1969 Vienna Convention on the Law of Treaties<sup>2</sup>

The 1969 Vienna Convention on the Law of Treaties focused on establishing a set of rules all member states of the United Nations (UN) and governments should follow when making bilateral and multilateral agreements. Peaceful agreements should be prioritized over war-relevant treaties on establishing war alliances. The 1986 convention focused on preserving peace, allowing the existence of international law principles while helping UN and non-UN organizations to collaborate with governments on making treaties. The convention is yet to be ratified by all UN member states.

### Geneva Convention of 1949<sup>3</sup>

The Geneva Convention of 1949 and its Additional Protocols is an example of an international law agreement that focuses on the collaboration of countries regarding how to handle the effects of war humanitarily and under the international customary law. The Convention was signed and ratified by most of the United Nations member states in the following years. This convention showed the complementary efforts global cooperation can have, as was much needed after the end of World War II.

## POSSIBLE SOLUTIONS

This issue involves members of the international community when wanting to achieve globalization, through the implementation of the international law and the responsibilities of law-making authorities that must take international law principles into consideration.

The steps governments take nationally and intergovernmental organizations internationally when making laws, have to be assessed by the United Nations and its subsidiary bodies in order to ensure that each government creates laws that respect the international community, the need for peace and the prevention of disagreements among governments. This assessment can be executed by experts and trained specialists of the UN and its organs so as to make certain that all laws that take into consideration the international customary law are not actually heavily influenced by a country's views and are not biased, but rather respectful towards all of humanity and cannot be misinterpreted by the international community and characterized as

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<sup>2</sup> Vienna Convention on the Law of Treaties,  
[https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

<sup>3</sup> Geneva Conventions of 1949, International Committee of the Red Cross.  
<https://www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm>

“unprofessional” when collaborating with other countries for the achievement of globalization.

The aforementioned assessment could conclude reports that will have examined the situation at hand and will either deem the laws as effective for the member state and the international community that respect customary law and could be easily implemented by other member states or as inappropriate that seek immediate change and action. The assessment can be done under certain criteria that would make the separation.

In any case the mass media should view the assessment as opportunities to publicly project the benefits of national laws that a country adopts that follow international law guidelines in order for the general public and other governments to appreciate such a country and its law making system. In the same manner, the media should take on the challenge of protecting international law principles and international customary law and make certain that no country is withholding treaties and agreements that do not respect peace from the public eye. Essentially all should have a shared ground and shared knowledge so the media are able to uncover breaches of international customary law guides. Regardless of the above, the mass media are the means of providing every government and the public with all the appropriate information.

It is definite that the international community and non-governmental organizations should prioritize the act of condemning laws, which are not in accordance with international law standards and make them if deemed possible. In cases of armed affairs, for instance, international customary law should be followed indefinitely, so presenting laws that do not abide by it, is at the least disrespectful for the international community. The appropriate representatives should handle such laws that do not preserve peace and ameliorate them with immediate action. Thus, there should exist organizations and agreements that protect the collaboration of governments/ law-makers and representatives.

Finally, in achieving globalization the ratification of international law documents and agreements concerning the principles of international law, such as of course customary law and humanitarian law, is a step of immense importance. Such agreements would help exchange the views of countries and governments on laws and law-making and sharing key knowledge that unites all in different sectors of the society, such as trading and other commerce activities but also in armed affairs that should be prevented.

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