

Dynamics of International Law: The Interaction of Normative and Operating Systems

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ABSTRACT:

In order to analyse and comprehend international law, this article provides a conceptual framework by outlining the fundamental elements of the operative and normative systems. The framework that represents an operational and normative system raises a lot of theoretical difficulties. In this essay, we will just quickly touch on one of such, namely operating system updates. By doing this, we want to solve the conundrum of why modifications to the operating system don't necessarily correspond to changes in the normative domain. An overarching theoretical case focuses on four circumstances. We contend that the operating system only reacts to normative changes when doing so is "necessary" resulting from incompatibility, ineffectiveness, or insufficiency for producing the intended effect of the norm, and when the change roughly coincides with a significant shift in the political landscape also known as "political shock". However, we also contend that resistance from powerful governments and domestic political forces may help to thwart or restrict such an operating system shift. As they relate to the prohibition against genocide, these arguments are shown by making three operating system references.

KEYWORDS:

International Law, Legal, Operating System.

I. INTRODUCTION

The framework for political discussion among participants in the international system is provided by international law. Although the framework does not ensure agreement, it does encourage the continual discussion and involvement that are essential for ensuring conceptual clarity when creating and winning support for legal responsibilities. International law serves two distinct purposes in this position [1], [2]. The first is to provide the framework for cross-border contacts, and the second is to direct the values and objectives these relationships pursue. The first collection of operations is referred to as the "operating system" of international law, while the second set is referred to as the "normative system." This article's goal is to provide a conceptual framework for deciphering and comprehending international law by outlining the fundamental elements of the operative and normative systems. In a preliminary manner, we also investigate how these two systems interact, with a focus on the circumstances in which operating system modifications take place in response to normative changes. We provide a variety of theoretical reasons and use the norm against genocide, as well as the subsequent actions nations took to alter international legal norms so that this standard may affect state conduct, to illustrate our points. The majority of research has focused on how norms emerge, with particular focus on the moral nature of the standard and how it gets to be widely accepted by the worldwide community. The manner in which the international community has worked to guarantee that these rules really have an impact on state conduct have not always been taken into account in such study [3], [4].

This was either rejected as a fundamentally separate topic or thought to be a tautology (some contend that behavior change is a necessary component of a norm). Our research aims to determine if certain circumstances are likely to increase or decrease a norm's efficacy. In a broader sense, our approach responds to the request for a synthesis of theories of international relations and international law. Our research has consequences for how regimes are created and what systems are in place to keep them in place, even if it is not specifically focused on international regimes. Effective regime design requires, as Slaughter et al. argue, "a theory of why states cooperate through institutional arrangements and why those arrangements might not succeed." Insights into when governments will create institutional and other mechanisms to make sure that regime norms are not just abstract aspirations are what we seek to provide. Operating system clauses essentially become a requirement of the legal

system in a certain subject area. Thus, a key aspect of comprehending the growth and, ultimately, the efficacy of international regimes is knowing how normative change leads to operating system change.

International law as operating and normative systems

Today, it seems that international law exists as a body of principles, directives, and ambitions guiding state behavior. However, there doesn't appear to be much research being done on the connection between the normative content of international law and its organizational principles and procedures. By moving away from the conventional concepts of origins, hierarchy, or functions of international law in favor of a concern with dynamics or change in international law, our research investigates this. Our strategy is to see international law as a collection of associated actions that serve both structural and directive purposes. Operating (structural) and normative (directive) are the two threads that we distinguish. We used the term "operating" to refer to the operating system of a computer. It serves as the fundamental framework for how a system will function. There is minimal direct user attention given to the computer operating system (for instance, Microsoft Windows) when it serves to enable the usage of certain word processing applications, spreadsheets, or communications software. Comparably, the operating system of international law provides the signals and orders necessary to enable a variety of functions and modes, and when it is in operation, it often does so with little conscious effort [5], [6].

Operating System

Due to the Westphalian history of international law, which places the state in charge of the legislative, judicial, and executive branches of government instead of above them as in domestic legal systems, international law has a dual nature. Therefore, the operating system of international law works somewhat similarly to how a constitution works in a domestic legal system by outlining the agreement of its component actors (mainly nations) on how power and responsibility for governance within the system should be distributed. Legal capacity, which constitutes a significant portion of constitutions, may be articulated and acknowledged in terms of rights and obligations. Constitutions, however, also provide more. Dahl listed numerous things that are typically mentioned in constitutions, some of which are also stated in international law. To mention a few, they include making wise choices, taking responsibility, and guaranteeing stability [7], [8].

The operating system must have a dynamic normative structure that promotes the competition of values, viewpoints, and actors in order to preserve vibrancy, resilience, and the stability required for orderly conduct. It does this by applying the aforementioned constitutional tasks to new actors, problems, institutions, and norms. For instance, who are the legitimate decision-makers in international law? Whose activities have the power to bind not only the participants but also other parties? How can one tell when a decision has been made with authority? When does a conflict or disagreement's settlement result in new legislation? The operating system provides the answers to these queries. Keep in mind that not all operating system components are institutional, even though the operating system may be linked to formal organizations. For instance, the Vienna Convention on Treaties does not mandate institutional processes but does lay out a number of practical guidelines for treaties, which in turn define the boundaries of legislative authority [9], [10].

II. DISCUSSION

The operating system contains a variety of dimensions or components, which are often discussed in texts on international law, but which are mostly unrelated to one another. The following are some of the main elements:

i. Sources of the law:

These include the system rules for establishing the method by which legislation is created, the standards for identifying when duties under the law exist, and the actors who are (or are not) subject to the law. A hierarchy of several legal sources is also specified by this operating system component. The operating system, for instance, specifies whether United Nations (UN) resolutions are legally binding (often not) and what function they serve in the legal system (perhaps providing evidence of customary law).

ii. Actors:

Identifying which actors are deserving of legal rights and duties is a part of this dimension. Additionally, the operating system controls how and to what extent such actors may exercise their rights worldwide. For instance, even though people and multinational businesses may be entitled to some international legal protections, only their home nations may be able to claim such rights in international forums.

iii. Authority:

These regulations specify how individuals and organizations may respond to issues and breaches of the law. Specifying which issues or circumstances will be dealt with by national legal systems as opposed to international forums is a crucial component. For instance, the Convention against Torture (1985) upholds the notion of "universal jurisdiction" by allowing nations to try torturers while they are in their custody, regardless of the location of the incident or the nationality of the victim or offender.

iv. Institutions or courts:

These components provide venues and governing laws for the hearing and enforcement of international legal disputes. For instance, the Statute of the International Court of Justice (ICJ) establishes general guidelines for decision-making, outlines the procedures and circumstances under which cases are heard, specifies the court's makeup, and provides specifics on decision-making processes, to name a few.

Although there is obvious overlap with certain earlier ideas, our notion of an operating system is fundamentally distinct. In line with "regulative norms," which reduce the transaction costs of collective action, regime theory describes decision-making processes as techniques for formulating and putting into practice collective choice. Even if these could fall inside the purview of the operating system of international law, our definition of it is wider. The operating system may deal equally successfully or badly with a variety of difficulties; for example, the ICJ may rule on conflicts affecting airspace as well as war crimes. Also believed to represent norms, standards, and principles with little independent standing are regime decision-making processes. In order to describe the manner in which fundamental rules may be "conclusively ascertained, introduced, eliminated, varied, and the fact of their violation conclusively determined," Hart created the concept of "secondary rules." This fits in many ways with how we see an international legal system functioning. Hart, however, sees auxiliary rules as "parasitic" on the primary ones his use of the word "secondary" is instructive. This implies that secondary rules develop through time in accordance with basic norms, particularly in agrarian legal systems to which international law is sometimes contrasted. The "uncertainty," "stasis," and "inefficiency" inherent to normative rules are thought to be solved by secondary rules, which are also thought to serve normative ones.

Our idea of how the rules of international law operate is quite different. For us, the operating system is often not reliant on any one standard or regime and is therefore bigger than the combination of all its constituent components that come from several norms and regimes. In many instances, the operating system may evolve ahead of some aspects of the normative system rather than only responding to it after its formation. According to this theory, the operating system might actively influence how the normative system develops rather than just acting as the latter's housekeeper. For instance, pre-existing laws about jurisdiction may limit the creation of new normative standards on the sorts of actions that may be classified as international crimes. The operating system is also not as reflective of the normative system as Hart suggests. Some of the operating system's configurations may emerge independently from particular rules, so addressing both political and legal demands for instance, the establishment of an international organization that also carries out monitoring tasks. We contend that this is more plausible in the rather chaotic arena of international relations than in the domestic legal systems, where Hart predominantly anchored his research.

"Stickery" of the operating system is higher than Hart's formulations may suggest. The operating system could be less adaptable and sometimes unresponsive to changes in the normative framework or the fundamental laws. This phrase makes it clear that we are concerned about whether or not operating system change results from normative change. As Hart would argue, it's not just a question of switching from a basic legal system to a more complex one; it's also a matter of taking into account how adaptable the two systems are to one another. Finally, our approach considers the operating system or structural dimension to be a necessary component of successful norm formation. The efficacy of a norm may be hindered or stalled if this dependency is not recognized. Once again, the metaphor of the computer operating system may be helpful as the user's experience of a software program will be slowed down or rendered impossible if the operating system is unable to handle it correctly. In all of the aforementioned areas actor count, decision-making processes, decision-making forums, and modes of implementation the operating system has evolved in a direction toward growth.

A large portion of international law now also regulates the behavior of governments and individuals within states, and it may address issues that call for ongoing transnational cooperation, even though it is still primarily a body of rules and practices to guide state behavior in the conduct of interstate relations. An example of a normative framework governing conduct between nations is human rights law. However, this human rights legislation may set up certain operating system components such that the human rights that are conferred may give people legal personality and enable them to possess or exercise legal rights. More than 190 nations and governments,

international organizations founded by states, and components of the private sector, such as networks of people, NGOs, and multinational enterprises, all participate in the international legal system today.

Additionally, there has been a growth in the types of legislation. Thinking of law as a continuum that "ranges from the traditional international legal forms to soft law instruments" has resulted from this. The UN General Assembly's resolutions, standards established by for-profit organizations like the International Standards Organization, and codes of conduct created by international organizations, such as the pesticide distribution and use code of conduct adopted by the Food and Agriculture Organization in 1985, are all included in this continuum. Because these modes are likely to interact and build upon one another rather than work alone, the continuum notion is helpful.

Additionally, the implementation forums and methods have grown. Although domestic legal and political systems still play an important role in the implementation of international law, the international community has also established new international institutions and acknowledged transnational legal processes that have evolved into reputable forums for deliberation, interpretation, and, more recently, the prosecution of individuals for breaking international law. State representatives continue to gather in order to enact new laws, but they also often convene in international settings to monitor how those laws are being followed for instance, the CSCE follow-up sessions following the Helsinki Accords in 1975.

The Normative Framework

The term "normative" is used to characterize the directive elements of international law since they serve to establish norms out of certain ideals or objectives. Using a different set of analogies, we may think of "normative" procedures as having quasi-legislative qualities since they impose certain values and specify changes in the actions of the state and other actors. In the study of international relations, the word "norms" is often used, although it is not always apparent what a given structure means. In the literature on regimes, norms and principles are more general philosophies about how governments and other players should behave for instance, orthodox vs embedded liberalism in commerce. Regime norms are not often established at the microlevel for instance, exact changes in laws controlling specific human rights breaches, despite the fact that they frequently address particular issues such as commerce or human rights. They are comparable to what Barnett¹⁶ refers to as "constitutive norms" in this regard. On the one hand, our understanding of norms is more specialized and focused. We only pay attention to normative components that are legally binding, similar to the notion of norms in the literature on regimes. We are not concerned with acts of "comity" or with so-called "soft law," which may be relevant topics for a more thorough investigation of international standards, since we are engaged in the international legal system. On the other hand, we have a more detailed understanding of norms that includes details about conduct in addition to broad general concepts. That is, specific prescriptions and proscriptions, such as restrictions on child work, are what our normative system is concerned with.

While Hart defines a normative system as "primary rules that impose duties on actors to perform or abstain from actions," there is a significant difference between our understanding of a normative system and Hart's. Primary rules, according to Hart, are the fundamental building blocks of a legal system, developing logically and naturally before what we refer to as the operating system components. According to Hart, a legal system might be considered primitive if it has established laws but no significant procedures for enforcing or interpreting them. We see a more advanced system of international law where standards may exist without a direct reference to the operating system but are dependent on the operating system's processes to operate. However, the normative system could continue to function somewhat separately from the operating system and potentially fall behind in terms of advancement.

The actors in the international legal process participate in a political and legislative exercise to establish the normative framework, which in turn determines the nature and application of the law. With the development of customary practices, a traditional source of international law, normative change may happen gradually. However, in more recent historical eras, new treaties (such as the Nuclear Non-Proliferation Treaty) or a series of international organization acts (such as the operations of the UN Special Commission in Iraq) have sparked normative shift. * However, compared to domestic legal systems, where formal deliberative organizations pass laws, the creation of international legal standards is still less organized and exact.

The topics of the normative system are issue-specific in contrast to the general terms associated with topics of the operating system (such as jurisdiction or actors), and many components of the system refer to subtopics within issue areas for instance, the status of women within the more general topic area of human rights. Numerous of these topics have long been on the international law agenda. Natural law and early Christian doctrines on fair war have their origins in prohibitions against the use of force. Numerous normative maritime laws, such as the seizure

of commercial ships during hostilities, have a long history of use in customary practice. However, current patterns in the development of the normative system show increases in its breadth and complexity. Most notably with regard to human rights and the environment, several contemporary problem areas of international legal concern have emerged virtually solely within the last fifty years. Legal standards have also tried to control a larger variety of actions within certain issue areas; for instance, environmental issues in international law have expanded beyond basic riparian state concerns to encompass issues with ozone depletion, water pollution, and other issues.

The operating system, the procedures, and the processes that are intended to guarantee orderly processes, conformity with those norms, and to bring about change if issues indicate a need for change all play a significant role in how successful the normative system is. By using "compliance pull," the normative system may make compliance possible without using the operating system. Legitimacy, which is fueled by the standard of the regulation or the institution enforcing it, induces compliance pull. However, "primary rules are just ad hoc reciprocal agreements if they lack adherence to a system of verifying secondary rules. Under such conditions, compliance pull may exist, but it would be much less than if secondary regulations (connected to the operating system) were present. Keep in mind that while discussing norms, we are talking about more than just compliance issues. Regime theory has traditionally believed that the adoption of normative standards is motivated by the desire to increase the effectiveness of interstate contacts (for instance, by lowering transaction costs). In our opinion, normative standards are adopted by nations primarily to advance common values in the global order. Although they are not an essential component or goal of normative change, rule adoption and institution building (mostly modifications to operating systems) may aid in implementation and lower transaction costs.

Correlates of operating system change

We contend that the operating system may not always support the normative system to its full potential. This conceptual approach raises one important question: How is the operating system affected when the normative system changes? In contrast, other aspects effectively serve as limiting requirements or veto points. Our theoretical argument identifies a number of required circumstances for normative change to result in operating system change. Our study below is predicated on a few assumptions and warnings. We begin by concentrating on operating system modifications that follow normative change. This is not to suggest that the process is not recursive or that it cannot be reversed. Both processes undoubtedly take place, but as a first step in comprehending the intricate relationship, we wish to focus on and investigate the "norms cause structural modifications" process. As a result, since norms are assumed, this research does not address how norms develop or how structure impacts norms. Second, we believe there is some "stickiness" to the way the international legal system operates, which makes it resistant to reform. As a result, the operating system is not only a mirror of the normative system and does not always change in tandem with changes to the latter.

The Importance of Need

Only when it is necessary will the international legal system change. That is, one should only expect an operating system upgrade when the current system is unable to meet the demands imposed on it by the adoption of new normative standards. Of course, there is also the presumption that governments truly seek to put normative provisions into practice as opposed to letting them linger with primarily symbolic implications. The contractualist model of international regime creation is similar to some of the reasoning behind the necessity requirement. In this concept, governments work together and create institutions to reduce the "transaction costs" related to agreement negotiation, oversight, and enforcement. In particular, regimes are created to lessen the international sanctions issues that occur when trying to guarantee that governments adhere to specified rules. As a result, these regime building strategies emphasize the effectiveness of novel structural configurations.

However, need underlines that the operating system must alter to implement new requirements and goes beyond simply efficiency reasons. Thus, necessity makes the assumption that certain activities must be carried out (an inherent improvement in efficiency), but it does not assume that the operating system modification will necessarily be the most effective configuration, thus it may not live up to rationalist expectations. The contractualist approach to regimes acknowledges that the development of institutions takes place in the context of earlier efforts and institutional experiences rather than in a vacuum. As a result, the current situation becomes a crucial benchmark for possible regime changes. Existing system arrangements in relation to new rules become crucial in light of our concern with the international law operating system. Accordingly, inadequacy, compatibility, and ineffectiveness seem to be three distinct elements of requirement that may trigger modifications the operating system.

It is conceivable that the legal operating system lacks the necessary capabilities to address wholly novel legal standards, which are different from preexisting norms. Changes may be anticipated to take place in the operating system to comply with the new norms when it becomes inadequate to carry out or control relationships around the new norm. An example of such a shift would be the establishment of a committee to oversee the compliance of a new environmental legislation, much how the UN's Commission for Sustainable Development was established after the 1992 Conference on Environment and Development. The incompatibility of present operational arrangements with changes in legal requirements is related to their inadequacy. It's possible that the current operating system of international law is not only unable to handle new standards, but also at odds with them. There must then be some kind of reconciliation. For instance, the Convention against Torture establishes new standards but is incompatible with the idea of sovereign immunity when it comes to holding national leaders accountable for torture or other crimes.

In order for the operating system to be compliant with these new agreements and the legal standards included within, exceptions to foreign sovereign immunity may need to be made. The third iteration of the necessity defense revolves with inefficiency. The ineffectiveness variant finds operational mechanisms available, but not adequately adapted to face the problems presented by the new or changed standard, in contrast to insufficiency, which implies the full lack of applicable operating arrangements. As a result, certain particular operating system modifications are required to accurately represent the new standard. For instance, systems for compliance based on reciprocity may be essentially ineffective in light of developing standards in areas like human rights. There, the likelihood that other states would breach the law (and therefore impose costs on the initial perpetrator) is not significantly affected by the violation of legal requirements by one state. In fact, as governments tacitly collaborate to avoid sanctioning one another for such transgressions, reciprocity concerns might impede compliance. This is shown by the failure of UN member states to condemn human rights violations committed by their neighbors.

The subject of what suggested modifications are on the world agenda and which players push for those changes are left as exogenous, despite the fact that we contend that some need is necessary for operating system change. At this point, we think that there are always options for change in the market of ideas. This is in line with public policy studies that contend there are always "solutions" to problems, but that they must wait for the correct circumstances before being taken seriously or implemented. A concatenation of participants in the foreign policy process will generate and advance many of those initiatives. States with a direct interest in facilitating operating system change (such as coastal states seeking compliance with pollution regulations), epistemic communities, other policy entrepreneurs (such as international lawyers), as well as international governmental organizations and NGOs, would be among the most prominent of these. The main argument in this section, however, is that until need concerns win out, these actors' attempts to advocate for or propose operating system reform will fail.

The Impetus of Political Shocks

Any political system has some inherent inertia, and international law has been said to change more slowly than other legal systems. Therefore, we propose that before the operating system adapts to the normative shift, there must be a strong impulse. That catalyst must be a significant political shock. Political shocks may take the form of distinct occurrences like international wars, terrorist attacks, or horrifying human rights violations. Shocks may also take the form of long-lasting, major movements like global democratization. All political shocks, however, signify significant changes to the global political landscape, which enables adjustments to the way the world's legal systems function. The kind of political shock that one may anticipate will depend on the particular topic at hand, of course. For instance, international economic law may be impacted by a move away from the gold standard rather than human rights law. This is in contrast to the conventional understanding of international law, which posits gradualist evolution virtually by definition and depicts it as a set of norms that progressively evolves.

The Role of Leading States

Hegemonic stability theory is one of the most well-known theoretical schools in international affairs. The interactions that take place inside the international system are defined and shaped by a system leader and its preferences, according to this concept, which is often used in the study of international economics. In order to increase system stability, the hegemon also finances the supply of public goods. The system's efficient functioning depends on the leading state's ability and willingness to create the resources or infrastructure required. Since 1945, the United States has played that position for the rest of the globe, following, in some interpretations, Great Britain.

Domestic Political Influences

Domestic political issues might intervene and have an impact on the results of operating system transition. On the other hand, certain operating system modifications need a change to domestic legal systems. For instance, standards prohibiting child marriage or political torture need appropriate modifications to the domestic legal systems of treaty signing parties. In fact, every agreement that doesn't automatically take effect needs some kind of domestic political effort to do so. This extends beyond the ratification procedure, which might be crucial to the development of norms. Instead, it entails adapting home legal frameworks to the new international standard. This might include addressing norms within domestic legal systems, amending jurisdictional laws, or altering the ability of people or organizations to file lawsuits.

III. CONCLUSION

This paper offers a fresh view of the international legal order, emphasizing both its functional and normative aspects. Traditional ideas about international law and international relations are significantly challenged by our perspective. We contend that the operating system does not always react to changes in norms, in contrast to earlier research that suggested a symmetry between normative and operational systems, and this may explain for less-than-ideal legal structures. The framework that represents an operational and normative system raises a lot of theoretical difficulties. In this essay, we will just quickly touch on one of such, namely operating system updates. By doing this, we want to solve the conundrum of why modifications to the operating system don't necessarily correspond to changes in the normative domain. A broad theoretical claim focuses on four requirements. We contend that the operating system only reacts to normative changes when doing so is "necessary" resulting from incompatibility, ineffectiveness, or insufficiency to produce the intended effect of the norm, and when the change roughly coincides with a significant shift in the political landscape also known as "political shock". However, we also contend that resistance from powerful governments and domestic political forces may help to thwart or restrict such an operating system shift. Three components of the operating system were used to highlight these points in relation to the prohibition against genocide. It goes without saying that a more comprehensive model might include other elements, such as those unique to the engaged normative problem area.

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