

## **Institution on Institution Crime**

International law is not an old, junker car. It was not mysteriously but understandably afflicted with a wheezing engine and warning lights across the dash, causing it to slowly lose its reliability and eventually cough its way to a slower and slower pace because of the pre-ordained condition of time that we are all powerless against. International law is a brand new, shiny Porsche that was supposed to go really, really fast but instead, some Extremely Powerful People decided that they didn't *want* the car to go really, really fast so they beat it to death with a Louisville Slugger and a handful of nine inch nails until it was basically useless.

This is a metaphor, by the way. So maybe international law in its current condition is not terribly effective at achieving the justice we were promised (aka the really, really fast that we wanted to go). It's not an accident that it worked out this way. There is no unfortunate but unavoidable reason that we can't have a working international legal system. Our international legal system isn't effective because there are powerful domestic leaders that don't want it to be and intentionally work to undermine its capabilities. The only unfortunate but unavoidable condition we're afflicted with is the unfortunate but unavoidable scourge of a handful of really annoying, powerful people.

I refer to this paradox as institution-on-institution crime. So many of the charges levied against international law could be responded to with a hearty "and who's fault is that???"

For instance, you may be upset with the fact that over fifty years after the United States intervened with military and paramilitary forces in Nicaragua, there has still been no accountability for this clear violation of state sovereignty. That is not because the International Court of Justice is incompetent or incapable of hearing this case. This case was heard. It was fully litigated in a beautiful exercise of functional international law called *Nicaragua v. United*

*States (1986)*. Everything went exactly right: The proceedings were instituted, public hearings were held, and judgements were issued. However, in true toddler-throwing-a-tantrum fashion, the United States told the court that “intends not to participate in any further proceedings in connection with this case” the minute a judgement was issued that was not in their favor.

It was truly a moment of “I’m not winning anymore, I would like to quit.” So, no, International Law was not terribly effective in restoring the sovereignty of Nicaragua. But we really have to ask: “And whose fault was that??”

Another fan favorite is the American Service Members’ Protection Act, otherwise known as the Hague Invasion Act. This act, which remains in effect today, allows the U.S. president the power to use “any means necessary” to prevent the prosecution of a U.S. citizen by the International Criminal Court (ICC). So you can rest easy if you’re an American committing war crimes. The U.S. would rather invade a sovereign nation than allow the international legal system to operate.

For all of our lofty ideals of a global community and fancy summits where leaders shake hands for an uncomfortably long period of time in front of a row of flags, we live in a global anarchy. No, it’s not exactly a constant war, but there is no global government. The international status quo is currently dog eat dog, and the very big dogs are not looking to establish a system of equality.

The problem is we haven’t been pointing fingers at the big dogs. Instead, we insist on lamenting the failures of international law like it’s the law’s own mechanical issues that are producing war and crimes against humanity. That’s not completely our fault. It’s reinforced by the assertions of global actors like the U.S. and Russia that the courts are illegitimate or

otherwise flawed. Funnily enough, these *are* the governments who actually are producing war and crimes against humanity.

You can think of it as high-stakes gaslighting. Nations or other global actors who wish to operate with relative impunity know that they technically have the ability to do so because they are militarily powerful. However, there's this really annoying thing called international law and morals that might not be able to stop them, but can certainly hinder their operations. In response, these actors choose the ever-mature route of attacking the system itself as a way of justifying their own (illegal) actions. Some of my favorite examples include the Russian justification for the invasion of Ukraine, 'Western nations break international law all the time!', and the U.S. assertion that the ICC was designed to "constrain" the United States. Dear reader, please keep in mind that the U.S. was one of the main contributors to the creation of the ICC.

As ridiculous as these assertions sound (and they do sound incredibly ridiculous), they have gained considerable traction among scholars and media that shape how we conceptualize the efficacy of the international legal system. Deviations from the law are analyzed through a lens in which the law is failing, instead from the perspective that the deviant states are failing.

Why does this matter? Because every time we write an article that implies, even unintentionally, that recent acts of violence are proof positive that the international legal system is eroding away, we are doing the equivalent of taking a swing at that poor Porsche. The international legal system does not *produce* war. Its errors do not result in violence. States produce war. Governments enact violence. By allowing ourselves to be swayed by the bold claims of the perpetrators of these atrocities, we're robbing ourselves of what could be an incredibly well-functioning international legal system.

It's high time we, as a global community, got a little pettier. Point fingers! Name, blame, and shame perpetrators of violence! Save the world by gaslighting, gatekeeping, and girlbossing right back! We might not have the same power as the shadowy Extremely Powerful People in shaping the global order, but we're much too smart to believe their hollow mistruths regarding the continued utility of international law. It is my professional opinion that we resist the effects of institution on institution crime by acknowledging the ways in which powerful institutions are failing us. Loudly. And as often as possible. We might just be global citizens in a world characterized by military-industrial complexes and capitalism and other really scary sounding words, but we deserve the protections offered by international regulations. And when those protections are denied to us, then we damn well deserve to place our blame on the actual responsible parties.