



Good Governance in International Law

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I. Definition of international law

The body of law that governs the legal relations between or among states or International Organizations (IOs)
In theory, the individual is not a subject of international law, only states and organizations.

القانون الدولي هو مجموعة القواعد التي تنظم العلاقات بين الدول

II. Sources of international law

Sources of international law include treaties, international customs, general principles of law as recognized by civilized nations, the decisions of national and lower courts, and scholarly writings.

According to the Article 38 of the statute of the International court of justice, the court shall apply, **in order of importance**:

- 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. 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.

III. Subjects of International law

Historically and traditionally, the main subjects of International law are governments and state systems in addition to intergovernmental organisations (such as the EU) International organizations and multinational companies are also subject to international law under certain cases.

However, the most important question is to know whether or not the individual can be considered as a direct subject of international law. This question is important because, if we consider the individual as subject of IL, then the individual can be entitled to rights and obligations under the IL, one of the most important right is the ability to sue the state before the International Court of Justice (ICJ) or any other international court.

However, since the target of the rights guaranteed by the conventions analyzed in this report is "every citizen" it can be interpreted that the applicability of the articles protecting the aspects of good governance covers cities, and individuals in cities. This is important since the conventions create individual rights and provide legal instruments "to all individuals" if their rights are violated.

Precedents where individuals could sue their government using international treaties and conventions are common at the regional level in the European court of human rights.

Even though the international law can consider the individual as a main concern of the international community; if we consider the International Humanitarian Law, or the Law of War where the international community seeks to protect the civilians. However, we cannot say in a firm way that the individual is considered today as a subject of IL, therefore, an individual cannot consider a violation of Good Governance as an argument to sue the state in an international court like the ICJ in our days.

IV. Good governance with regards to International law

How is International law relevant to good governance?

Experts in good governance might argue that poverty, corruption, discrimination, violation of human rights are the main reason for wars and military conflicts; even for terrorism. Therefore, International law is closely tied to good governance.

Here are two quotes related to Good Governance as per the OHCHR and the World Bank, two inter-governmental agencies of high caliber.

“Good governance is the process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law.”
- Office of the United Nations High Commissioner for Human Rights (OHCHR)

“Poorly functioning public sector institutions and weak governments are major constraints to growth and equitable development in many developing countries”
- In a 2000 Publication for the World Bank

Does International law interfere with countries sovereignty?

The concept of governance is closely linked to the working of the Nation state or its governing capacity. Here the question of whether the interference of international law in regulating, controlling governance is considered a violation of the sovereignty of independent states. This question can only be answered case by case, especially when it comes to enforcement. (refer to the enforcement section for more details)

V. International legal instruments

In this section we will go through several tools that can be used in applying good governance through international law, these instruments take the shape of international treaties, conventions and international guidance.

Customary international law is international law that develops through a general and consistent practice of states, followed because of a sense of legal obligation. If, over a period of time, states perform in a certain way because they all believe that they are required to do so, that behavior comes to be recognized as a principle of international law, binding on states, even if not written in a particular agreement. For example, while the Universal Declaration on Human Rights is not, in itself, a binding treaty, certain provisions of the Declaration are considered to have the character of customary international law.

Other types of instruments such as declarations, recommendations, bodies of principles, codes of conduct, guidelines and standard rules such as the Declaration on the Right to Development (“soft law”) have a role in addressing good governance issues. These instruments have mainly moral force and are not legally binding but might provide good policy guidelines to states. They may become legally binding if recognized by a large number of states.

Good Governance characteristics according to International Law

A **UN inter-agency meeting** to discuss the principles of good urban governance, was held on the occasion of the Istanbul+5 meeting in **June 2001** in New York, agreed on five core principles of good urban governance: equity, effectiveness, accountability, participation and security.

The UN-HABITAT Executive Director presented the results of this meeting to the member governments during the World Urban Forum held in Nairobi from 2 April-3 May 2002.

This report analyzes different aspects of good governance in legally binding international human rights conventions based on the principles advocated by the Global Campaign on Urban Governance. From a human rights point of view, **equity, civic engagement, transparency and accountability** can be considered as basic principles of good governance

1. Equity

Equity is defined by the Global Campaign on Urban Governance as equal access to decision-making processes and the basic necessities of urban life:

The sharing of power leads to equity in the access to and use of resources. Women and men must participate as equals in all urban decision-making, priority-setting and resource allocation processes. **Inclusive cities provide everyone with equitable access to nutrition, education, employment and livelihood, health care, shelter, safe drinking water, sanitation and other basic services** – be it the poor, the young or older persons, religious or ethnic minorities or the handicaps.

Practical means of realizing this norm include:

- ✓ Ensuring that **women and men have equal access** to decision-making processes, resources and basic services and that this access is measured through gender disaggregated data; which can include but is not limited to establishing quotas for women representatives in local authorities and encouraging their promotion to higher management positions within municipalities;
- ✓ Ensure bye-laws and economic development policies support the informal sector;
- ✓ Promote equal inheritance rights for land and property;
- ✓ Establishing equitable principles for prioritizing infrastructure development and pricing urban services;
- ✓ Removing unnecessary barriers to secure tenure and to the supply of finance;
- ✓ Creating fair and predictable regulatory frameworks.

2. Civic engagement

People are the principal wealth of cities; they are both the object and the means of sustainable human development. Civic engagement implies that living together is not a passive exercise: in cities, people must actively contribute to the common good. Citizens, especially women, must be empowered to participate effectively in decision-making processes. The civic capital of the poor must be recognized and supported.

Practical means of realizing this norm includes promoting strong local democracies through free and fair municipal elections and participatory decision-making processes;

3. Transparency

Transparency, as one of the basic principles of good governance, implies the public insight in the work of Public Administration Bodies. Citizens should be enabled to inspect the work of the public administration as well as the availability of instruments for monitoring the decision-making process. Also, citizens should be familiar with the regulations applied in the procedure for exercising their rights, in a clear and understandable way.

4. Accountability

The strongest legal backing against corruption can be found from **the United Nations Convention against Transnational Organized Crime**. This convention includes provisions regarding the sanctioning of acts of corruption involving public officials (Criminalization of Corruption) and several provisions related to the phenomenon of corruption. The Convention is not yet in force and is still open to signature. Articles 8 and 9 of the Convention will provide, when in force and as a part of national legislation, strong support in the fight against corruption and this will also give local authorities the responsibility to take more efficient measures against corruption.

The United Nations Millennium Declaration /ACC/2000/POQ/INF.7

The millennium declaration clearly states that “We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected.” It also highlights the commitment to making the right to development a reality for everyone, and the intention to freeing the entire human race from need.

The declaration also admits that success in meeting its objectives **depends on good governance within each country**. This measure is **binding** upon all members of **United Nations**.

Treaty law

Treaty law includes the law of human rights as set out in many international agreements (treaties, covenants, conventions and protocols) collectively (either bilaterally or multilaterally) developed, signed and ratified by states.

These instruments are legally binding for the states which are party to them and due to that, the rights stated in these instruments are judicially enforceable. Some treaties:

- The Covenant on Civil and Political Rights (ICCPR) (1966)
- The Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)

United Nations Convention against Corruption

The UN convention against corruption states clearly in Art 8, that each State shall **adopt legislature and measures that prohibit corruption by public officials**, or individuals and entities that promise or offer public officials anything in return to exercising or refraining from exercising an official duty. Art 9 also requests from every state to adopt laws and measures and **bodies that are effective and independent, to promote integrity and make sure that corruption is punished.**

Wolfsberg anti-corruption guidance

The Wolfsberg Group is a non-governmental association of thirteen global banks, founded in 2000 in Switzerland. Its goal has been to develop financial industry standards for Anti-money laundering (AML), Know Your Customer (KYC) and Counter Terrorist Financing (CTF) policies.

As of 2015 the Wolfsberg Group has issued 14 documents they call The Wolfsberg Standards: The first document published in October 2000 was the Wolfsberg Anti-Money Laundering Principles for Private Banking.

FATF guidance on transparency and beneficial ownership

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of the proliferation of weapons of mass destruction.

The FATF Recommendations set out a comprehensive international framework of measures which countries should implement in order to combat money laundering and terrorist financing, as well as the financing of the proliferation of weapons of mass destruction.

The FATF Recommendations 24 and 25 cover transparency and beneficial ownership of legal persons and arrangements. Previously the FATF has noted that the implementation of these particular recommendations has proved to be challenging. Consequently, the FATF has now published a guidance paper to assist countries in their implementation of Recommendations 24 and 25 (and also Recommendation 1 as it relates to understanding the money laundering / financing of terrorism risks of legal persons and legal arrangements).

The purpose of the guidance paper is to help policy makers and practitioners in national authorities to identify, design and implement appropriate measures to prevent the misuse of corporate vehicles in line with the FATF Recommendations. The guidance paper also explains the connection between customer due diligence measures and specific transparency measures, and it may be useful to financial institutions and designated non-financial businesses and professions in their implementation of anti-money laundering / countering the financing of terrorism preventative measures.

The guidance paper is structured as follows:

- ✓ overview of how corporate vehicles can be misused and the challenges for countries in implementing measures to prevent such abuse;
- ✓ the definition of beneficial owner;
- ✓ guidance to countries on effective mechanisms to combat the misuse of legal persons and legal arrangements;
- ✓ guidance to countries on implementing measures to enhance the transparency of legal persons;
- ✓ guidance to countries on implementing measures to enhance the transparency of legal arrangements;
- ✓ the relationship between standards on transparency and beneficial ownership and other Recommendations;
- ✓ access to information by competent authorities; and
- ✓ guidance on international cooperation involving beneficial ownership information.

The guidance is non-binding and does not override the purview of national authorities.

View [FATF guidance on transparency and beneficial ownership](#), 27 October 2014.

Due Diligence required for legal entities:

- Duly authenticated legal document.
- Identification of the Beneficial Owners.
- Identification of business activity and source of funds.

Due Diligence required for PEP (Politically exposed people)

- The PEP is the natural person who has a prominent public function.
- PEPs are more vulnerable to corruption and bribery.
- Business Identification and Source of Funds verification are highly required for PEPs.

Additional Due Diligence is required for Charities

- Charities can also be subject of money laundering
- List of donors.
- Program of aids and expenses

Banque Du Liban circular No 134

A circular entitled “The Principles of Banking and Financial Operations with Customers “ was issued by the BDL on 12/02/2015, in hope to promulgation of the transparency culture, which included the Ethic code’s rules in the governance, and provided clients with a clear and accurate information about banking and financial operations, **this circular is an example of applying International guidance on the local level, as it is closely influenced by the FATF guidance.**

For the circulary, you can check it on this link: <http://www.bdl.gov.lb/circulars/download/543/en>

VI. Enforcement of international engagements

Do we have means of enforcement of IL? This remains a problematic. In the evolution of the international legal system, we are in a point where we consider that we have an international juridical authority competent in case of violation, which is the International Court of Justice (ICJ). However, the competent entity to sue is the state. Therefore, we cannot sue the state if we are individuals witnessing violations. In the case of the International Criminal Court (ICC), its specialties are limited to war crimes, genocide, crimes against humanity, aggression... and there is no mention of good governance or transparency. Also the ICC is limited to states that have signed the Roma convention.

There are two branches that form the means of enforcements of IL, the extrajudicial means (economy, culture, finance, political like isolation of the state...) and legal remedies such as the specialized international courts.

There is a big discussion happening about a remedy at the international level. We have different proposals that are being studied, such as an International Public Right as a reason to sue in case of violations of the principles.

The Alternative Dispute Resolution is also a effective measure of enforcement of IL through arbitration, mediation or conciliation. These methods are efficient because through negotiations can prevent further damages, without imposing sanctions.

There are several legal remedies through the international community to pressure states to respect their international engagements. While we are still in the process of the evolution of IL, therefore, enforcement of IL happens case by case, depending on the nature of the legal system of each state, for example: in the European Union we have remedies that are different from the Arab League.

While enforcement remains lax, and varies depending on the nature of the legal system. Civil society organizations have a big role in pressuring governments to reach transparency and good governance. Soft power remains one the strongest means of reaching good governance, through propaganda, campaigning, and mobilization of the public opinion.

Recommendations for Lebanon

While the Lebanese crisis might seem apparently local, but it has many international and regional roots, therefore addressing International Law in the Lebanese context is very evident.

The Lebanese constitution clearly mentions the respect of the Universal Declaration of Human Rights, in addition to all the conventions that Lebanon signed and ratified. As opposed to other states that apply dualism, Lebanon's system applies the principle of monism when it comes to International declarations and treaties, meaning that **international engagements are applicable the moment they are signed**, and have the same weight as the constitution, without the need to change the nature of IL and contextualize them and turn them into national policy in order to apply them.

Given the above, and since until today, we still need the collaboration of the state at all levels, national remedies have a big role in reaching good governance in Lebanon. **The national juridical system in Lebanon has a big responsibility**, since judges can use and apply sources of IL, without needing to refer to international legal courts, and while avoiding any conflict of sovereignty. There is a great role for the local legal system, through judges and lawyers to reach national remedies, knowing that laws are flexible, and there is a role in mediation to reach the needed goals with minimal harm, and through avoiding unnecessary distress.

Since applying international law is easy in Lebanon, this gives **civil society tools to advocate and to spread awareness to the general public**. It is important to activate and enhance the essential role that NGOs can take to spread legal awareness not only for the general public, but even within the juridical field, where awareness and information about issues related to transparency, good governance are still weak and limited, mainly due to the lack of emphasis on these topics in Law schools.

In the process of advocacy, NGOs can refer to IL tools, especially the UN convention against corruption, and the FATF in order to advocate and push for implementation of Good Governance and empowerment activation of monitoring bodies such as the Audit Burea (ديوان المحاسبة), and the Central Inspection (التفتيش المركزي). Not to mention the administrative courts' role and the importance to advocate for its political independence, and to activate it through creating multi-level courts and not limit its role to the State Council (مجلس شورى الدولة) and fast track courts (القضاء العجلي).

While bearing in mind that applying International Conventions such as the UN convention against corruption are not optional, but are obligations, but states might be able to manipulate the flexibility of laws to try avoid sanctions. Therefore, peaceful means of settlements are recommended to enforce legal remedies in Lebanon, while reducing the harms that can be caused if sanctions and social distress. We need **creative means of enforcement of IL through mediation**, especially that laws are flexible, and sometimes imposing sanctions does not always reach the desired aims. Cloning remedies that are not adapted the national society does not always work, might even lead to damages that outweigh effective remedies.