

Consistency in international law

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Propositions

- (1) There is a difference between the consistency of sets of statements (S-consistency) and the consistency of rulesets (R-consistency). A set of statements is S-consistent if all of its statements can be true at the same time. A ruleset is R-consistent if it cannot lead to conflicts.
- (2) Two or more rules conflict if they are applicable to a case, but if applied, would lead to incompatible outcomes.
- (3) More rules do not always lead to a ruleset's R-inconsistency. Adding the right rules can sometimes help avoid conflicts and make an R-inconsistent ruleset R-consistent.
- (4) Even if a ruleset is R-inconsistent, subjects can still make sense of it by extracting an S-consistent set of statements about their legal positions. They can do so by reasoning with and about rules to figure out what rules apply and what outcomes they lead to. These outcomes are the legal positions of subjects.
- (5) The theory developed by this research could be used or adapted by the stakeholders of international law to develop an overarching set of rules about rules. This set of rules could help avoid conflicts by defining the applicability of other rules, and it could also include rules that help deal with conflicts by setting up priority relationships between rules, which would help subjects figure out the rules that apply and the outcomes they lead to.
- (6) International law is a discipline of crisis as it is the legal field that deals with emergencies such as nuclear threats and global pandemics. International law is also facing a crisis of discipline as its reactive agenda constantly shifts from one global crisis to the next. While the reactiveness of international law can be justified because it is a discipline of crisis, such reactiveness risks hindering researchers from deepening their understanding of what is at the core of these issues.
- (7) International law has always been accused of 'not really being law' because it lacks some elements of domestic law, such as the existence of centralised institutions dedicated to legislating, judging cases, and enforcing their rulings. It is unclear why some lawyers take these elements of domestic law as the incontestable standards of what gets to count as law.
- (8) It is not so controversial that rules constitute social practices such as law and language. It would be more controversial to say that rules play a similar role in matters commonly considered non-social (or non-dependent on humans), such as mathematics and the natural sciences. But we can begin to see that rules also have their place in such matters if we consider that concepts depend on rules. Whether or not the number 2 is a prime number or marine corals are animals depends on conceptual rules about prime numbers and animals that apply to the number 2 and marine corals. It is not evident that these conceptual rules differ fundamentally from legal ones.
- (9) The dichotomy between prescription and description in science is more complicated than some might assume. All description is prescriptive due to the normativity of meaning, and all meaning is subjectively tainted by the observer's theoretical bias. But meaning depends on use; prescription can only have any meaning as a result of shared linguistic practices and under the collective standards set by the participants of such practices.
- (10) Complicated words and bloated text often hide underdeveloped ideas. We should portray ideas in terms that are as simple as possible but no simpler, and with as few words as clarity allows, but not fewer.

Henrique Jerônimo Bezerra Marcos (2023) *Consistency in International Law: How to Make Sense of a Decentralised and Expansive Rule-Based World*. Doctoral Thesis in Law. Maastricht University; University of São Paulo.