International Law and Double Standards: A Symposium

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Double standards are a pervasive and contentious theme in international law, often surfacing in debates about justice, selectivity, and the legitimacy of global governance systems and multilateral institutions. These contradictions—where rules or norms are applied inconsistently to similar situations—challenge the fairness and universality that international law aspires to uphold. While these critiques are perhaps as old as international law itself, ongoing global events have elevated perceptions of double standards to new levels. In a recent United Nations (UN) General Assembly address, King Abdullah of Jordan decried that "trust in the UN's cornerstone and ideals is crumbling" because of the broad belief that "some nations are above international law, that global justice does bend to the will of power, that human rights are selective, a privilege to be granted or denied at will."

The resulting double standards that drive these debates can be observed in how international law is enforced, within its doctrine and lawmaking practices,

through its argumentative patterns, in the issues that receive international legal attention, and in the ones that go unconsidered. There can be no doubt that double standards are now a ubiquitous and poignant feature of international law, so much so, that they drive genuine perceptions of unfairness that delegitimize law's normative value.

The identification of such double standards can serve as a rallying call for increased consistency and a more faithful adherence to legal standards. Alternatively, recourse to double standards can provide a shield to deflect criticism. The weaponization of double standards has consistently featured in the rhetoric of both states whose officials are the subject of international censure and states that wish to exacerbate international schisms while attempting to recast the system of global rules and norms that have developed since the end of the Second World War. Regardless of how double standards manifest or are utilized within the international realm, they cannot be ignored.

To reflect on the relationship between double standards and international law, the Free University of Berlin in Germany hosted a workshop on this theme in July 2024. Co-organized by the *Berlin Potsdam Group on the International Rule of Law* and the *Harvard Law School Program on International Law in Armed Conflict*, the workshop was the first step in a project on how double standards impact international law's credibility, legitimacy, and efficacy. In total, 33 experts from different disciplinary backgrounds attended from universities in 13 countries, with each speaker examining the issue of double standards in international law across multiple dimensions. This symposium features a series of blog posts that explore several of the resulting questions.

Themes and Contributions

Each post, based on papers presented at the workshop, grapples with the practical and theoretical implications of various manifestations of international legal inconsistencies. The first post in this symposium looks backward. In Victors' Justice, Double Standards, and the Civil Society Tribunals of the Late Cold War, Peter Brett turns to international criminal law to explore the enduring critique of victor's justice. There is likely no area of international law where accusations of double standards are more pronounced. Brett's exploration of these questions reflects ongoing archival work to study the leftist civil society

tribunals during the late Cold War era to reveal how ideological and geopolitical dynamics shape the discourse on double standards. Brett's analysis challenges the assumption that liberal critiques of double standards in international justice are inherently idealistic, showing how similar arguments were weaponized by critics of Western hegemony to demand greater accountability. This historical lens highlights the fluidity of how double standards are perceived and resisted over time.

In the second contribution, Double Standards in UN Political Bodies: Is Impartiality Possible?, Steven Ratner delves into the Human Rights Council's enforcement mechanisms, contrasting their selectivity with their aspiration for impartiality. Drawing from his experience serving on the UN's International Commission of Human Rights Experts on Ethiopia, Ratner critiques the Council's reliance on political discretion, which often undermines the gravity-based prioritization necessary for meaningful action. His contribution underscores the tension between selectivity and double standards, offering a procedural framework—based on inclusiveness, transparency, and accountability—to mitigate the perception of double standards.

The third contribution by Pedro José Martínez Esponda, On Formalism and Non-Formalism in International Law: Double Standards, Argumentation, and Legal Change, explores how states alter their rhetorical strategies to align with their preferred international legal outcomes. In international legal argumentation, Esponda suggests, states present formalist arguments to resist innovative legal interpretations or lawmaking and employ non-formalist arguments to advocate for legal change or justify expansive interpretations of existing legal provisions. This contribution poses questions about what precisely constitutes a double standard, while arguing that double standards arise not only from political self-interest but also from the structural and conceptual limitations of international law itself.

Moving from how states argue through international law to how certain actors attempt to limit certain arguments, Otto Spijkers brings the discussion of double standards into the realm of academic and institutional responses to global conflicts. In Speaking out in China Against Russian Aggression in Ukraine and Speaking out in the Netherlands Against Atrocities in Gaza, Spijkers explores Chinese and Dutch academic reactions to the post-2022 Russia-

Ukraine and post-2023 Israel-Palestine conflicts. Spijkers' post explores how institutional silence or selective condemnation reflects broader geopolitical biases and begins to consider the ripple effects of double standards in academic freedom and discourse, suggesting that these inconsistencies limit the ability to apply international legal principles equitably and transparently.

In the symposium's fifth contribution, The Hypocrisy of Special Economic Zones as a Vehicle for Foreign Direct Investment, Olabisi D. Akinkugbe argues that while SEZs are promoted as tools to attract foreign direct investment and stimulate economic development, they often serve as vehicles of exploitation. The discrepancy between the promise of economic growth, job creation, and investment associated with SEZs and the reality of their impact which create legal vulnerabilities, tax revenue losses, social injustices, and environmental concerns positions these spaces as what Akinkugbe describes as "sites of hypocrisy." Drawing on case studies from Honduras and Nigeria, the post applies the lens of hypocrisy to illustrate the dissonance between the stated objectives of SEZs and their actual impacts. Examining these impacts through the lens of hypocrisy reveals how the legal frameworks behind SEZs are not just flawed but actively perpetuate systemic inequalities under the guise of development.

In the sixth and last contribution, Some Reflections on Recent Developments on Double Standards and Selectivity in International Criminal Law, Andreas Schüller returns to the framework of international criminal law. Echoing Ratner's distinction between selectivity and double standards in the human rights field, Schüller draws important distinctions between selectivity, which can arise from practical constraints (e.g., lack of evidence), and double standards, where inconsistency stems from political motivations. Offering a practitioner's perspective, Schüller's analysis emphasizes the need to distinguish between necessary selectivity in ICL and politically motivated double standards that erode the legitimacy of justice systems.

Situating the Symposium

While each post focuses on distinct contexts and frameworks, several overarching themes emerge. First, the posts reveal divergent conceptualizations and applications of the concepts of double standards in

international legal practice, which in turn raises further questions about how best to examine the role of double standards in fields as disparate as international economic and criminal law. Second, the posts underscore the tension between the ideals of universality and the realities of power in international law: whether in the Human Rights Council, international criminal tribunals, or through state practice, double standards reveal the gap between abstract normative aspirations and political constraints that undermine consistent and principled action in specific cases. Third, the posts begin to identify the rhetorical and practical tools used to navigate or exploit this tension. From Esponda's exploration of argumentative strategies to Schüller's critique of procedural openings, the posts show how states and institutions justify selective actions while striving to maintain legitimacy. Fourth, some posts broach the question to what extent double standards are a remediable aspect of practice or, alternatively, an unavoidable feature of the international legal system.

Ultimately, and collectively, the posts in this symposium exemplify the rich, interdisciplinary discussions that took place at the Double Standards and International Law workshop in Berlin. By engaging with the concept of double standards from historical, doctrinal, and institutional perspectives, these discussions seek to contribute to a deeper understanding of how inconsistencies shape international law and global governance.

We hope these contributions spark further discussion and inspire new approaches to the challenges posed by double standards in international law. For more information about an upcoming workshop in Geneva on these themes and its broader objectives, please visit the event page here.

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