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# *Community Interest and International Legal Order*

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***Abstract:*** Traditional notions about the private nature of the international legal order are increasingly being forced to contend with developments in the elements of public international law. The concept of international social interest is key to understanding these developments and has consequently transformed our understanding of international law. Beginning with an explication of public and private international law and a comparison of the two, this article further examines and classifies the various approaches to the public/private divide in domestic legal theory, arriving at four key elements of publicness common to all approaches: the existence of a community or public; the universality of public institutions with their own boundaries; the hierarchy of norms and institutions and the objectivity of obligations and responsibilities. The social interest and the development of relevant norms in international law can be seen as introducing and strengthening all these elements of publicness within the international legal system. Thus, the social interest is becoming an international public legal order. It is important for our understanding of international law and the future development of the international legal order.

## 1. Introduction

The concept of the interests of the international community has changed our understanding of international law. Whereas international law was once understood to protect the interests of individual states by merely mirroring bilateral relations, there are now rules that protect "global public goods. Examples include the global environment, and "universal values" including human dignity. There are even public law-style restrictions on the contractual freedom of states to enter into international agreements, as well as a form of public interest litigation by invoking liability for breaches of obligations erga omnes [1].

International law refers to the legally binding principles, rules and systems formed in international exchanges and recognized as the main adjustment of the relations between states. It was originally translated as "public law of nations" and is now translated as "public international law" to distinguish it from private international law. From global constitutionalists, to global governance, to global administrative law, the literature is replete with attempts to recast public international law (in all its aspects) as a form of "public international law." While there has been much academic discussion and analysis of this shift, relatively little has been written about the role of community interests themselves in this evolution. Although Simma comments that the incorporation of community interests into international law means that international law "is beginning to show more and more features that do not conform to the “civilist”, bilateralist structure of traditional law. It is moving towards a truly public international law, but the impact of community interests at the conceptual level

has not been fully explored. This article places the community interest at the center of this analysis and argues that it is the key to understanding the transformation of international law to publicness [2].

## 2. Definition of International Law

International law is the binding principles and norms that regulate the relations between subjects of international law (states and intergovernmental international organizations), the legal norms that govern the rights and obligations of subjects of international law and the rights and obligations of states in general at the international level. International law in a narrow sense refers to public international law, but in a broader sense it also includes private international law [3]. For example, the United Nations International Law Commission and the Hague Academy of International Law are concerned with both public and private international law. International law generally refers to public international law, sometimes referred to as public international law to distinguish it from private international law.

### 2.1 The difference between public international law and private international law

Private International Law (PIL) is a legal department that regulates foreign-related civil and commercial legal relations between equal subjects and resolves foreign-related civil and commercial legal conflicts by a combination of direct and indirect regulation. The main differences between public international law and private international law are: (1) The objects of regulation are different. The main subjects of public international law are states and international intergovernmental organizations, which regulate international legal relations, mainly involving the overall interests of the state, such as the sovereignty of the state, disputes concerning the violation of trade agreements, etc. Private international law regulates foreign-related civil and commercial legal relations. The subjects of private international law include natural persons, private persons and public persons. Disputes between companies of different countries concerning commercial contracts, marital relations between nationals and foreign nationals, inheritance of real estate located in foreign countries, etc. are all regulated by private international law. (2) Different sources and contents of law. The sources of public international law are international treaties and international customs, while the sources of private international law are mainly domestic laws, in addition to international treaties and customs. (3) Different methods of dispute settlement. Disputes under public international law are mainly resolved through political means such as negotiation and good offices between states or international organizations, and may also be referred to international arbitration or international judicial settlement on the basis of the voluntariness of the disputing states. Disputes under private international law are mainly resolved by domestic courts, but can also be resolved through international arbitration and judicial institutions [4].

### 2.2 Theorizing the Public/Private Divide

The myriad different approaches to distinguishing between public and private law can be divided into three broad categories, referred to here as the "relational" approach, the "authority or function-based" approach, and the "interest-based" approach. Each has a different starting point or focus as the basis for analyzing the public/private divide. However, as will be further illustrated below, all of these institutions have certain key elements in common that reflect the nature of the distinction between the public and private sectors [5].

#### 2.2.1 Related approaches.

The first category of approaches includes those that focus on the legal relationship created by a particular rule. Some of the approaches in this category focus on the identity of the parties to a legal relationship. This is a particularly common way of distinguishing public law from private law.

Essentially, public law is "the law that regulates the relationship between a government agency and its subjects," while private law is "the law that regulates the relationship between a government agency and its subjects" subjects. Thus, for example, rules regulating income taxes are public law, while a sales contract between two individuals is private law. The simplicity of this distinction is undermined by the difficulty of defining whether the actors are public or private Certain developments in modern society have blurred these lines, particularly the practice of government outsourcing of public services to private companies.

### 2.2.2 Authority-based/Functional-Method.

The second category focuses on the functions of public law and the systemic legal authority that underpins those functions. This is premised on the notion that some functions of law are inherently public and that what is considered a “public function” varies widely across politics. The expression enforcement and enforcement of law "through the deployment of public power to exercise absolute authority to rule is also essentially a public prerogative. In contrast to private legal structures, in which each subject has to “take care of itself” to enforce its rights and exercise its legal capacity, public legal structures centralize and generalize this power for the benefit of the community. The adjudicator has the power to rule on the rights and obligations of others; to issue binding judgments against parties to rights disputes. The role of the courts is thus a key feature in distinguishing between legal orders that operate within a public law system and those that do not (i.e., a purely private law system).

Rather than focusing on individual rules and relationships, these approaches focus on the nature of the legal system, public law both generates and limits public power. It sets the contours of the system - thus, private law exists and operates within public law, rather than in opposition to it. It presupposes a degree of legal organization; the ability to imagine various legal norms being arranged in a hierarchy that forms a coherent and logical order, centered on public power. A slightly more subtle version of this approach focuses on the nature or structure of the legal relationship itself, rather than on the identity or classification of the parties involved. The private/public distinction is often conceptualized as a relationship of equality, on the one hand, and “superiority” and “inferiority” on the other. This is similarly expressed in the language of “horizontal” and “vertical” under the terminology of vertical relations (traditionally between the state and the subject). Under this term, vertical relations (traditionally between the state and subjects) are regulated by public law, while horizontal relations (traditionally between individual subjects) are regulated by private law.

### 2.2.3 Interest-based Approach.

The last set of approaches focuses on the distinction between public and private interests. This is also a very common approach with ancient roots. The basic idea is that laws centered on the public interest are representatives of public law, while laws protecting private interests are subjects of private law. The main difficulty here lies in the definition of these two interests and the assumption that public and private interests refer to two distinct interests that can be compared and contrasted. However, this is problematic, by definition it excludes the only really serious case - that is, where a particular interest is considered to be a public interest but is not held by individuals or individuals in the community. It is not difficult to imagine a situation in which a law or policy (such as land reform or wealth redistribution) could be perceived as being in the public interest, but contrary to the individual interests of certain individuals (in this case, the rich or the landed class). As Mathis and Barton observe, if the public interest is identical to the sum of individual interests, there is no need to formulate and discuss it as a particular category or a particular concept. Thus, this conceptualization of the public interest does not seem to work, or at least does not serve any real purpose.

## 2.3 Elements of Publicness

The first and most fundamental element is the existence of a political community: a public. This

is the core of the idea of publicness, and especially public law, can be considered as the legal expression of a political community. Each of the above approaches relies on this element in its own way. The relational approach is premised on the distinction between the legal relationship between subjects and the relationship between subjects and the state - what is the state in this equation if not the legal expression or representative of the political community? The approach based on function and public authority also assumes the existence of a political community. The concept of public authority and the institutions within which it exists are essential to defining and determining the boundaries of the political community within which they operate. On the one hand, the interest-based approach presupposes a distinction between the interests of individuals, and on the other hand, the interests of a particular political community: the public. Thus, all approaches to the public/private divide inevitably rest on some idea of the political community expressed through the public.

Other major factors are more or less related to this political community. An easily overlooked but still fundamental factor in the domestic system is universality. It is an important aspect of the concept of a legal system that the "public" authority under discussion must be universally effective within the boundaries of the community under discussion - it constitutes a single, coherent whole. This is particularly evident in the authority/function-based approach, but is also related to the characteristics of the public actors in the relational approach and the commonality of the public interest in the interest-based approach.

Furthermore, publicness implies a certain hierarchical structure that stems from the idea that the legal expression of the community contains interests and functions that are separate from those of its members. This reflects the notion of superiority and inferiority in the relational approach described above. This is also evident in the case of the public interest: the community interest must sometimes be opposed to, and may even prevail over, the private interest Therefore, this implies the existence of a normative hierarchy (or at least normative difference) based on the public interest.

Finally, the public nature of the legal system includes the objectivity of obligations and responsibilities. Recalling the discussion on the power/function based approach, the existence of a public system of law making, enforcement and adjudication changes the way the concepts of duty and responsibility are understood and the connection between them. If legal compliance is dealt with on the basis of private law, it remains primarily a matter between private individuals, between individuals.

## 3. Community interest and public world order

### 3.1 Community Benefits Definition

Community interest is a term that is often used but rarely defined. It is often cited, sometimes apparently for purely rhetorical purposes, but sometimes it seems to be used as a more legal name [5]. This section attempts to define the concept by focusing on two key aspects in turn: what “interest” means, and who or what the international community is. Interest can be defined as “the interest or benefit of an individual or a group”; “a stake or participation in a cause”; therefore, interest exists only between subjects who can obtain such benefit or advantage. This is the main difference between interests and values: while interests are essentially dependent on the actors or holders from whom they arise, values exist independently of those who believe in them - although, of course, one may be interested in protecting or promoting them. The communal interest, like the public interest, reflects the common good - in this case the interest of the international community.

Not all interests are protected by law: non-legal interests should be distinguished from legal interests, and only the latter benefit from legal protection as confirmed by the International Court of Justice in the South West Africa case, when it stressed that the existence of an “interest” does not in itself imply that such an interest has a specific legal character" [6].

The common interests of the international community are commonly understood to include the common interests of States and the interests of humanity as a whole. The interests of mankind as a

whole, on the other hand, are global, sustainable and long-term interests. In short, they play a fundamental role in the formation of international law. The jus cogens rule and the erga omnes rule, in particular, represent the most generally accepted "doctrinal expressions" of the community interest, both of which are considered to be part of the same overarching philosophy: namely, to enhance the protection of fundamental community interests. Just as the potential for community interest may be important, the concept of interest, as mentioned above, depends on having a holder of the interest. Unlike values, an interest does not exist independently of the individual or group to which it belongs [7].

The term "international community" appears in such a variety of forms and contexts that it seems to mean everything and nothing at the same time. It is clear that in some cases the term is used purely rhetorically. In other cases, however, the term "international community" (sometimes "international community of states" or "international community") has a distinct meaning and applies only to actors with legislative authority at the national level. The term "international community" (sometimes "international community of states" or "international community") has a distinct meaning and applies only to actors with legislative authority at the national level. This is particularly true, for example, of the use of the term "international community of States as a whole" in the context of the recognition of jus cogens norms [8]. While other actors may have great influence in international law, the State remains the only State with legislative power. Other forms of international law, such as those of certain international institutions, ultimately derive from the authority of the state, reflecting the devolution of national legislative power. For the time being at least, the state remains the basic unit of the world of public international law.

Thus, the interest of the international community can be understood as a common interest, which is subsumed in the socio-legal structure of the "international community". These two aspects, interest and community, are intricately linked in the concept of community interest. This concept has had a transformative impact on the development of international law. While in some respects the changes have been slow and subtle, and some developments have taken decades to become theoretical, the evolution of key elements of the international legal order as a result of the common good has been striking. This is particularly true in light of the question of the public nature of the international legal order.

### 3.2 Community Interest and Communality

The legal incorporation of community interests has brought many new elements to the international legal landscape. In general, its impact has been transformative. States are no longer free to conclude treaties whose provisions conflict with peremptory norms such as the prohibition of torture International adjudication no longer merely provides a forum for resolving disputes between individual state interests, but now also includes issues of common and communal interest raised by non-injured states [9]. From human rights to environmental protection and beyond, modern international law is not limited to classic state-to-state relations, but also regulates the conduct in the domestic or international sphere. When one looks at the impact of community interests on the international legal order, it is clear that its impact can be closely linked to the narrative of publicness.

In a domestic setting, the formation of a public "community" is easy to establish. There is already an accepted social and legal framework consisting of elements such as a common language, national identity and citizenship. Nevertheless, there is no reason why the concept of "public" should necessarily be attached to the social organization of the nation-state. If publicness is something inherent in an organized legal-political community (as opposed to a "state of nature" or "anarchy"), then it would seem strange to attach the concept artificially to a form of such a community. In EU law, we have a good example of how the concept of publicness, including constitutionalism, transcends the state. Public law is about "public life"; it is about "community, not fragmentary or individual interests", not the construction of nation-states.

However, from a legal perspective, there is no need to establish the existence of a social community

when we can seek a society rooted in law. As mentioned above, community interests have been incorporated into the international legal system and the secondary rules of international law. The existence of such a community is codified through legal elements such as universal obligations and peremptory norms. International practice shows that the international community composed of equal subjects has formed certain basic values or common interests that need to be protected by international law. They form the basis for the establishment and existence of the international community. In contrast to the question of the existence of an international "social" community, this legal framework proves that a legal community of interests can constitute an international "public" International community is a legal fiction, a social construct -just like the concept of the public. According to the general understanding, in the international community, the community interests include the common interests between countries and the interests of mankind. The former refers to the bilateral or regional interests. Compared with the interests of the whole mankind, it is also relatively short-term and partial interests, mainly manifested in economic, political and cultural aspects. The interests of all mankind are global, sustainable and long-term interests, such as peace and security, human rights, the environment and the protection of the international Commons. In short, they play a fundamental role in the formation of international law, which can promote the degree of integration or integration of the international community.

## 4. Conclusion

International cooperation and international law are important forms of integration of the international community, and community interests are the foundation of international cooperation and international law. International law, as the most important way of governance of the international community, is nothing more than a balance of interests among members or subjects of the international community, that is, a reflection of community interests among subjects of the international community. This article first introduces the concepts of public international law and examines the differences between public international law and private international law. It then proposes four key elements of publicness that can be applied to the international legal order: community, universality, hierarchy and objectivity. The concept of community interest is further elaborated, and the recognition of community interest is central to the definition of community on which the concept of international public or public is based. The community interest changes the fundamental nature of international legal obligations and responsibilities and, as such, underpins the fundamental evolution of the international legal system from private to public law.

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