

# Breaches of Treaty

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*"In space, no one can hear you think."*

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# 1 Breaches of Treaty

## 1.1 Defining the Terrain: Treaties and Breach

The annals of diplomacy are stained with the ink of broken promises. From the moment sovereign entities first sought to codify their relationships, the tension between the solemn pledge and its violation has shaped the destiny of nations. The breach of the Treaty of Versailles by Nazi Germany, flouting disarmament and territorial restrictions with calculated audacity, stands as a stark twentieth-century testament to this enduring dynamic, precipitating global conflict. Yet, understanding such seismic ruptures requires first mapping the fundamental legal terrain: what constitutes a binding treaty, and what precisely transforms a state's action from mere non-compliance into a formal breach of international law? This foundational section delineates these core concepts, establishing the vocabulary and principles essential for navigating the complex landscape of treaty violations explored throughout this work.

At the heart of the international legal order lies the bedrock principle of *pacta sunt servanda* – agreements must be kept. This maxim, echoing from the *Digest* of Roman jurists through the foundational writings of Hugo Grotius in the 17th century, transcends mere practicality; it embodies a moral and legal conviction essential for stable relations between states. Grotius, often hailed as the father of modern international law, elevated it from a moral precept to a fundamental legal rule, arguing that the very existence of a society of nations depended upon the sanctity of promises. Its contemporary crystallization is found in Article 26 of the 1969 Vienna Convention on the Law of Treaties (VCLT), the cornerstone treaty governing treaties themselves: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.” The historical weight of this principle is palpable in anecdotes like that of King Louis IX of France, who, legend holds, burned the original treaty document ending conflict with England after its terms were fulfilled, symbolizing the absolute finality and respect owed to a concluded pact. *Pacta sunt servanda* is not merely aspirational; it is the gravitational force holding the constellation of international agreements in place, the presumption against which alleged deviations are measured.

But what, precisely, qualifies as a “treaty” under international law? The VCLT (Article 2.1(a)) provides the authoritative, intentionally broad definition: “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.” This definition encompasses the grandest charters – the United Nations Charter itself being paramount – alongside conventions, covenants, protocols, and exchanges of notes. Crucially, the label is less important than the substance: the intent of the parties to create binding obligations governed by international law. While typically written, the focus remains on the agreement's legal character, not ceremonial formality. The landmark *Military and Paramilitary Activities in and against Nicaragua* case (Nicaragua v. USA, ICJ, 1986) underscored this, as the International Court of Justice examined declarations and other unilateral acts to discern binding commitments. Thus, a treaty exists wherever sovereign entities formally undertake reciprocal duties enforceable under the international legal framework, setting the stage for potential breaches when those duties are unfulfilled.

A breach of treaty, therefore, occurs when a party to a valid and in-force treaty engages in conduct that

fails to conform to what is required of it by that treaty. This “actus reus” of treaty violation comprises three essential elements, established through state practice and codified implicitly in the VCLT and explicitly in the International Law Commission’s (ILC) Articles on State Responsibility. First, there must exist a valid treaty obligation binding upon the state in question. Second, the conduct (an action or omission) must be attributable to that state under international law (e.g., actions of its government organs, or entities acting under its direction or control). Third, this conduct must constitute a failure to perform the specific obligation as it stands at that time. Breaches vary in gravity. The VCLT (Article 60) distinguishes a “material breach” – defined as either a repudiation of the treaty not sanctioned by the VCLT itself, or the violation of a provision essential to accomplishing the treaty’s object and purpose – from other, less severe violations. The significance of this distinction is profound: a material breach entitles the other party or parties, under specific conditions, to potentially suspend the treaty’s operation or even terminate it entirely, consequences explored later in this work. The *Gabčíkovo-Nagymaros Project* case (Hungary/Slovakia, ICJ, 1997) hinged crucially on allegations of material breach, illustrating the high stakes involved in characterizing the nature of the violation.

It is vital, however, to distinguish an unlawful *breach* from lawful avenues for exiting or suspending treaty obligations. Treaties are not straitjackets designed for eternity. The VCLT explicitly provides mechanisms for states to lawfully terminate or suspend their participation. These include provisions within the treaty itself allowing for denunciation or withdrawal after a specified period, mutual consent of all parties, or the emergence of a fundamental change of circumstances (*rebus sic stantibus*) under exceptionally strict conditions (VCLT Article 62). Suspension of obligations, as a temporary measure, can also occur through mutual agreement or, crucially, as a lawful response invoked by an injured state against another party committing a material breach. The doctrine *rebus sic stantibus*, meaning “things thus standing,” reflects the understanding that treaties are concluded based on an underlying assumption of stability in key circumstances; if that foundation collapses utterly and unexpectedly, rendering obligations radically transformed or excessively onerous, a state may seek release – though successfully invoking this before an international tribunal is notoriously difficult, as Hungary discovered in the *Gabčíkovo-Nagymaros* case when its environmental and economic arguments for fundamental change were rejected by the ICJ. Termination or suspension under these lawful procedures, while potentially contentious, does not constitute a breach itself.

Thus, the legal landscape of treaty breach is defined by the sacred principle of *pacta sunt servanda*, the broad and functional definition of a treaty, the precise elements constituting a violation, and the critical distinction between unlawful breaches and lawful cessation or suspension. This foundation reveals breach not as a simple binary act, but as a complex legal determination situated within a framework designed both to ensure fidelity and acknowledge the need for lawful change. With this conceptual map established, we can now delve into the intricate process by which treaties – those instruments whose violation we seek to understand – are forged into binding obligations in the first place, examining the alchemy of negotiation, consent, and the sources of legal force that underpin the commitments states may one day choose, or be driven, to break.

## 1.2 The Anatomy of Treaty Formation and Obligation

Having established the fundamental nature of treaties and the definition of breach within the international legal framework, the inquiry naturally turns to the genesis of these binding obligations. How are the intricate webs of commitment, whose rupture we seek to understand, spun in the first place? The journey from diplomatic aspiration to binding legal duty is a complex alchemy, fraught with compromises, calculated decisions, and underlying tensions that can profoundly influence a state's future willingness and capacity to comply. Understanding this anatomy of treaty formation is crucial, for the seeds of future breaches are often sown in the very process of creation.

**The Alchemy of Negotiation and Consent** transforms political interests into legal obligations, a process rarely linear and often arduous. Diplomatic conferences, backchannel communications, and marathon drafting sessions are the crucibles where treaties are forged. Power dynamics inevitably shape the text; major powers often wield disproportionate influence, while smaller states may form coalitions to amplify their voice, as seen in the negotiation of the UN Convention on the Law of the Sea (UNCLOS), where the “Group of 77” developing nations successfully championed the concept of the “common heritage of mankind” for the deep seabed. Consent, the vital spark that binds a state, manifests in various forms: signature alone (which typically creates an obligation not to defeat the treaty's object and purpose prior to ratification), ratification (the formal domestic confirmation signifying consent to be bound), accession (for states joining after the treaty enters into force), or acceptance and approval (often used for simpler agreements). The domestic ratification hurdle, particularly in democracies, introduces a critical layer of complexity. The fierce battle within the US Senate over the ratification of the Intermediate-Range Nuclear Forces (INF) Treaty in 1988, involving extensive hearings, expert testimony, and intense lobbying, exemplifies how domestic political currents and constitutional requirements can delay or even derail a state's formal commitment, highlighting the “two-level game” states constantly play between international negotiation and domestic politics. This intricate dance between sovereign prerogative and international commitment lays the groundwork for potential friction points later on.

**Reservations: Tailoring Obligations, Planting Seeds of Discord?** Recognizing the difficulty of achieving universal consensus on every clause, the VCLT (Articles 19-23) permits states to formulate reservations – unilateral statements seeking to exclude or modify the legal effect of certain treaty provisions as they apply to that state. While ostensibly a tool to broaden participation by allowing states to opt out of specific, potentially problematic obligations, reservations carry the inherent risk of fragmenting the treaty regime and creating asymmetric commitments. A reservation is permissible unless the treaty prohibits it, or it is incompatible with the treaty's object and purpose. The legal effect hinges on acceptance or objection by other parties. The United States' package of reservations, understandings, and declarations (RUDs) upon ratifying the Genocide Convention, including a reservation stating it would not accept compulsory jurisdiction of the ICJ under the Convention without specific consent, significantly shaped its obligations and drew objections from several parties. Such reservations can fundamentally alter the reciprocal nature of obligations, potentially undermining the treaty's overall integrity and creating fertile ground for future disputes when one party acts based on a reservation another party deems invalid. The International Court of Justice, in its

*Reservations to the Genocide Convention* Advisory Opinion (1951), grappled with this tension, emphasizing the paramount importance of the treaty's object and purpose while acknowledging the practical need for flexibility to achieve widespread adherence. Reservations, therefore, represent a double-edged sword: facilitating broader acceptance while simultaneously introducing potential fault lines and perceptions of unequal burden that may later be invoked to justify non-compliance.

**Entry into Force and the Activation of Obligations** marks the crucial threshold where aspirations crystallize into binding law. The treaty text itself dictates the conditions for this transformation. Common triggers include ratification or accession by a specified minimum number of states (e.g., the 60 ratifications needed for the Rome Statute of the International Criminal Court), the lapse of a predetermined time period, or the fulfillment of specific events. This moment is not merely procedural; it signifies the point at which the meticulously negotiated obligations become legally operative, demanding performance in good faith from the consenting parties. The significance of this activation is starkly illustrated by treaties languishing in ratification limbo. The Comprehensive Nuclear-Test-Ban Treaty (CTBT), adopted in 1996, remains unenforceable decades later because it has not met its stringent entry-into-force requirement (ratification by 44 specific nuclear technology holder states, including the US, China, Israel, Iran, and others). Consequently, while a powerful normative statement, its core prohibition lacks universal legal force. Conversely, the rapid entry into force of the Paris Agreement on climate change in 2016, facilitated by pre-negotiated domestic processes in key states, underscored the global political urgency and enabled the swift initiation of its implementation mechanisms. The date of entry into force also determines the temporal scope of obligations – states are generally only bound by provisions applicable from that date onwards, a critical factor in assessing alleged breaches concerning past actions. This procedural step transforms parchment promises into enforceable duties, setting the clock ticking for compliance.

**Beyond the Text: Good Faith and Object/Purpose** reveals that the source of treaty obligation extends far beyond the literal wording of the articles. Article 26 of the VCLT enshrines the overarching duty: “Every treaty in force is binding upon the parties to it and must be performed by it in good faith.” Good faith (*bona fides*) permeates the entire lifecycle of a treaty, from negotiation through interpretation to performance. It demands honesty, fairness, and reasonableness, prohibiting states from exploiting loopholes or acting in a manner that eviscerates the treaty's intended purpose. Furthermore, Article 31 of the VCLT dictates that treaties are to be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” This principle prevents a rigidly literal reading that might undermine the treaty's fundamental aims. The *Gabčíkovo-Nagymaros Project* case (Hungary/Slovakia, ICJ, 1997) powerfully demonstrates this. The Court, while finding Hungary's invocation of ecological necessity for abandoning the project unjustified, simultaneously emphasized that the 1977 Treaty's object and purpose included environmental protection alongside economic development. It instructed the parties to negotiate in good faith to find a solution fulfilling *both* core aims, highlighting how obligations can be dynamically interpreted in light of the treaty's essence, even decades after its conclusion. This doctrine of systemic integration also suggests treaties should not be read in isolation but as part of the broader framework of international law, implying obligations necessary to give effect to the treaty's purpose, even if not explicitly stated. Thus, the binding force of a treaty obligation often resides as much in the spirit

and fundamental aims discerned through good faith interpretation as in the black-letter text itself.

The intricate process of treaty formation – a delicate interplay of negotiation, tailored consent through reservations, procedural activation, and the pervasive influence of good faith and purpose – shapes not only the substance of obligations but also the latent pressures that may later lead to their breach. Weaknesses in negotiation, burdens perceived as unfair due to asymmetric reservations, the weight of obligations suddenly activated, or disputes over the true scope of good faith performance can all become catalysts for non-compliance. Having examined how treaty obligations crystallize into binding law, the stage is set to explore the complex motivations and circumstances that drive states to cross the line from commitment to violation. What forces, internal and external, conspire to fracture the edifice of *pacta sunt servanda*?

### 1.3 Motivations and Catalysts: Why Breaches Occur

The intricate process of treaty formation, meticulously explored in the preceding section, reveals how obligations crystallize amidst negotiation pressures, domestic constraints, and interpretive complexities. Yet, the binding force of *pacta sunt servanda*, however solemnly invoked, is not inviolable. History is replete with moments where states deliberately or inadvertently cross the line from committed performance to violation. Understanding *why* breaches occur requires venturing beyond simplistic notions of rogue states or inherent bad faith. Instead, we must navigate a complex web of motivations and catalysts – political, strategic, economic, and domestic – that converge to fracture treaty commitments. These forces often represent a collision between the aspirations of international order and the realities of statecraft.

**The Perennial Tension: Sovereignty vs. Constraint** lies at the heart of many breaches. Treaties, by their very nature, entail a voluntary surrender of sovereign autonomy; states agree to limit their freedom of action in exchange for reciprocal benefits or collective goods. However, when vital national interests – particularly those framed as supreme security concerns – appear to clash with treaty obligations, the allure of unfettered sovereignty can prove overpowering. The United States’ rejection of the Kyoto Protocol, driven by concerns over economic competitiveness and perceived insufficient commitments from major developing economies like China and India, exemplifies this tension. President George W. Bush framed the decision explicitly in terms of protecting American jobs and sovereignty, prioritizing perceived national economic imperatives over multilateral environmental commitments. Similarly, Russia’s 2014 annexation of Crimea constituted a blatant violation of multiple treaties, including the UN Charter and the 1994 Budapest Memorandum guaranteeing Ukraine’s territorial integrity in exchange for its nuclear disarmament. Moscow justified its actions through a contested narrative of protecting ethnic Russians and national security, effectively asserting sovereignty over international legal constraints. This core dilemma – the balance between the benefits of cooperation and the costs of constraint – remains a fertile ground for non-compliance, especially when leaders perceive existential threats or unparalleled opportunities.

**Shifting Sands: Geopolitics and Changed Circumstances** further complicate adherence. Treaties are negotiated within specific historical, technological, and geopolitical contexts. When those foundations erode or transform dramatically, the original bargain can appear obsolete, excessively burdensome, or strategically disadvantageous. The doctrine of *rebus sic stantibus* (fundamental change of circumstances), codified



cautiously in VCLT Article 62, acknowledges this reality in theory, but its successful invocation in practice is rare. More often, states simply act, citing changed realities. The collapse of the Soviet Union rendered many Cold War-era arms control agreements, negotiated for a bipolar world, strategically awkward. While some were adapted (like START), others faced abandonment. The U.S. withdrawal from the Anti-Ballistic Missile (ABM) Treaty in 2002, justified by the perceived new threat of ballistic missile proliferation from “rogue states” and the opportunity to develop missile defenses deemed impossible under the treaty’s constraints, starkly illustrates how technological advancement and shifting threat perceptions can invalidate a treaty’s foundational assumptions for one party. Similarly, unanticipated global events like the 2008 financial crisis strained numerous international economic commitments, as governments scrambled domestically, sometimes resorting to protectionist measures that breached trade agreements in the name of economic survival. Treaties designed for stability can become casualties of the very dynamism inherent in international relations.

**Domestic Pressures and the “Two-Level Game”** powerfully shape treaty compliance, often in ways unforeseen during international negotiations. States are not monolithic actors; they are complex systems where executive branches must constantly navigate domestic constituencies – legislatures, courts, interest groups, public opinion, and bureaucratic factions – each with their own priorities. Robert Putnam’s metaphor of the “two-level game” aptly describes this: leaders negotiate internationally (Level I) while simultaneously bargaining domestically (Level II) to secure ratification and implementation. Failure at Level II can directly lead to breach. The enduring struggle within the U.S. Senate over treaties, requiring a two-thirds majority for ratification, has repeatedly hampered compliance. The failure to ratify the UN Convention on the Law of the Sea (UNCLOS), despite widespread international acceptance and advocacy by successive administrations and the military, means the U.S. navigates the regime it helped create from the outside, sometimes acting in ways arguably inconsistent with its provisions. Electoral cycles also exert pressure; leaders facing re-election may prioritize popular domestic policies over international commitments, as seen when governments facing voter anger over immigration violate refugee conventions or human rights accords. Powerful industry lobbies can also derail implementation; the persistent difficulty in enforcing global fisheries agreements often stems from resistance by well-connected domestic fishing industries facing economic hardship. The domestic arena, therefore, is not merely a backdrop but an active engine, capable of generating immense pressure to disregard international obligations.

**Capability Gaps and Implementation Failures** represent a significant source of non-compliance, often overlooked in narratives focused on deliberate defiance. Many treaties, particularly complex multilateral agreements on environmental protection, public health, or technical standardization, demand sophisticated regulatory frameworks, monitoring systems, enforcement mechanisms, and significant financial and technical resources. States lacking the institutional capacity, expertise, infrastructure, or funding may simply be unable to fulfill their obligations, despite genuine political will. This is especially prevalent in developing countries grappling with limited state capacity. For instance, fulfilling reporting requirements under environmental conventions like the Convention on Biological Diversity (CBD) or implementing intricate waste management protocols under the Basel Convention requires resources often diverted to more immediate development needs. The struggle of many nations to implement the International Health Regulations (IHR)



regarding disease surveillance and response capabilities, starkly exposed during the Ebola and COVID-19 pandemics, highlights how capability deficits can lead to unintentional breaches with global consequences. These failures are not acts of bad faith but rather reflections of the profound challenges faced by states in meeting the often demanding technical and administrative requirements of modern treaty regimes. Recognizing this category moves us beyond blame towards understanding the practical obstacles to a rules-based order.

**Perceived Illegitimacy or Asymmetry** provides a potent moral and political justification for violation in the eyes of the breaching state. When a treaty is viewed as fundamentally unfair, imposed under duress, lacking genuine reciprocity, or perpetuating historical injustice, the normative force of *pacta sunt servanda* weakens considerably. The historical paradigm is the “unequal treaties” of the 19th and early 20th centuries, such as those forced upon China after the Opium Wars or numerous agreements imposed on colonized peoples, which extracted heavy concessions while offering minimal benefits. While the era of overtly coercive treaty-making has largely passed, perceptions of asymmetry persist. Developing nations often argue that treaties like the WTO agreements or certain intellectual property conventions favor developed economies. North Korea’s pursuit of nuclear weapons, in violation of the Non-Proliferation Treaty (NPT), is framed by Pyongyang as a necessary response to enduring U.S. hostility and the perceived failure of the treaty’s disarmament pillar, which it views as disproportionately binding on non-nuclear states while allowing existing nuclear powers to maintain their arsenals. Similarly, the withdrawal of African nations from the International Criminal Court (ICC), citing perceptions of selective prosecution focused disproportionately on the continent, reflects a deep-seated sense of institutional illegitimacy. When parties believe the underlying bargain is unjust or the enforcement mechanisms are biased, the moral and political calculus shifts, making breach appear not merely expedient, but potentially righteous.

Thus, the landscape of treaty breach is shaped by a confluence of powerful forces: the inherent friction between sovereign prerogative and international constraint; the destabilizing impact of unforeseen geopolitical or technological shifts; the relentless pressure cooker of domestic politics; the sobering reality of limited state capacity; and the corrosive effect of perceived injustice or imbalance. Breaches are rarely simple acts of lawlessness; they are complex political decisions arising from a calculus where international legal obligation is weighed against a multitude of competing pressures and perceived necessities. Understanding this intricate web of motivations is crucial, not to excuse violations, but to comprehend their origins and anticipate their occurrence. This understanding provides the essential context for examining the tangible manifestations of broken promises – the specific historical and contemporary case studies where these abstract motivations crystallized into concrete acts of non-compliance, shaping the course of international relations and leaving enduring legacies explored in the sections to come.

## 1.4 Echoes of Broken Promises: Historical Case Studies

The complex tapestry of motivations explored in Section 3 – the clash of sovereignty and constraint, the impact of shifting circumstances, the pressures of domestic politics, the limitations of capacity, and the sting of perceived injustice – is not a modern phenomenon. These forces have pulsed through international

relations since the dawn of recorded diplomacy, manifesting in breaches of treaties that echo through history, shaping conflicts, redrawing maps, and revealing the enduring fragility and resilience of agreements between polities. Section 4 delves into seminal pre-20th century case studies, illuminating how these dynamics played out across millennia and tracing the evolution of treaty practice and responses to its violation.

**4.1 Antiquity: Alliances Forged and Forsaken** witnessed the earliest recorded treaties and their breaches, often underpinned by potent blends of realpolitik and religious sanctity. In the fractious world of Ancient Greece, treaties between city-states, known as *spondai*, were solemnized with elaborate oaths invoking the wrath of the gods upon violators. Yet, the chronicles of Thucydides are replete with betrayals driven by expediency and the relentless pursuit of power. The fragile Thirty Years' Peace treaty (446 BCE) between Athens and Sparta, intended to maintain a balance of power, crumbled under Athenian imperial ambition. Athens' interference in the affairs of Corcyra (Corfu), a neutral state aligned with neither bloc but strategically vital, and its subsequent aggressive actions against Potidaea, a Corinthian colony within the Athenian sphere but demanding autonomy, were perceived by Sparta and its allies as blatant violations of the treaty's non-interference clauses. Athens, led by Pericles, countered with legalistic arguments about technical compliance and the inherent right of a powerful state to secure its interests, highlighting an early tension between the letter of the agreement and perceived strategic necessity – a tension resonating with the sovereignty vs. constraint dilemma. Similarly, the complex web of alliances and treaties binding Rome and Carthage proved fatally fragile. The Ebro Treaty (226 BCE), demarcating spheres of influence in Iberia, was arguably violated by Rome's ally Saguntum, located south of the Ebro, appealing to Rome when attacked by the Carthaginian general Hannibal. While Rome claimed protection of an ally, Carthage viewed Roman intervention south of the demarcated river as a clear breach, providing the *casus belli* for the devastating Second Punic War. These ancient breaches underscore that the core motivations – perceived advantage, shifting power dynamics, and disputes over interpretation – have deep roots, often cloaked in justifications rooted in self-defense or treaty misinterpretation, setting precedents for centuries of diplomatic conflict.

**4.2 Medieval Oaths and the Sanctity of Parchment** introduced a new layer of solemnity, intertwining feudal loyalty, Christian doctrine, and nascent concepts of constitutional limits on royal power. Treaties and charters were often sealed with sacred oaths, violation of which was considered both a temporal crime and a mortal sin inviting divine retribution. The Magna Carta (1215) stands as the most iconic example. Forced upon King John by rebellious barons weary of arbitrary taxation and abuse of feudal rights, it enshrined specific limitations on royal power. Yet, King John almost immediately sought papal annulment of the charter, arguing it was extracted under duress – an early invocation of coercion as a justification for non-compliance. His successor, Henry III, also repeatedly flouted its provisions, leading to successive baronial revolts and reissues of the charter. These breaches were not passive failures but active repudiations, triggering internal conflict and demonstrating how violations could galvanize opposition and shape nascent constitutional development. Beyond royal charters, the bedrock of feudal society itself rested on reciprocal oaths of homage and fealty between lord and vassal. Breaches of these bonds were frequent catalysts for conflict. The infamous conflict between Henry II of England and Thomas Becket, Archbishop of Canterbury, stemmed partly from Henry's perception that Becket violated his feudal oath by prioritizing ecclesiastical authority over royal prerogative, culminating in Becket's martyrdom. Enforcement mechanisms evolved beyond mere war; the

Church wielded powerful spiritual sanctions. Papal interdicts – suspending religious services across an entire realm – were deployed against rulers who violated treaties guaranteed by the Pope, as occurred against King John for his refusal to accept Stephen Langton as Archbishop of Canterbury, a dispute intertwined with his breaches of feudal obligations. This period illustrates the potent blend of personal honor, religious sanction, and emerging legalistic frameworks surrounding treaty fidelity, where breaches were seen not merely as political missteps but as profound violations of sacred trust with tangible, often severe, consequences.

**4.3 The Westphalian Order Tested: Early Modern Breaches** unfolded against the backdrop of the 1648 Peace of Westphalia, which itself became a crucible for testing the nascent principles of state sovereignty and territorial integrity it enshrined. Ironically, the very architects of this new order were among its first violators. France, under Louis XIV, embarked on aggressive policies of *réunions*, using dubious historical and legal claims to annex territories along its borders, blatantly violating the Westphalian settlement’s guarantees of German princes’ rights and territorial boundaries. Similarly, Swedish encroachments in Northern Germany tested the peace. These actions, driven by dynastic ambition and the pursuit of *gloire*, underscored the fragility of the new system and the persistent temptation for powerful states to prioritize perceived national interest over treaty obligations. The late 17th and early 18th centuries witnessed notorious breaches stemming from cynical dynastic politics and the volatile balance of power. The Partition Treaties (1698 and 1700), secretly negotiated by England, the Dutch Republic, and France to peacefully divide the vast Spanish Empire upon the imminent death of the childless Charles II, were spectacularly violated. Charles II’s will, leaving the entire inheritance to Louis XIV’s grandson, Philip of Anjou, presented France with an irresistible opportunity. Louis XIV accepted the will, repudiating the Partition Treaty he had signed, and further inflamed tensions by recognizing the Stuart claimant to the English throne and stationing French troops in the Spanish Netherlands. This cascade of breaches shattered the carefully negotiated settlement, directly igniting the War of the Spanish Succession. The conflict itself saw further violations, such as the Duke of Marlborough’s controversial breaching of the *Ne Plus Ultra* lines – a massive French defensive fortification considered impregnable – in 1711, achieved through daring maneuver rather than direct assault, demonstrating how military ingenuity could circumvent physical barriers established by treaty. This era cemented the balance of power not just as a system of order, but as a primary *motivation* for breach when treaties were seen as creating dangerous imbalances or as a *mechanism* for enforcement through collective action against aggressors who violated the peace.

**4.4 Imperialism and “Unequal Treaties”:** **Coercion and Resistance** presents perhaps the most morally fraught category of pre-20th century breaches, where the very legitimacy of the treaty obligation was fundamentally contested. European powers and the United States, leveraging overwhelming military and technological superiority, imposed a series of profoundly asymmetric treaties on states across Asia, Africa, and the Americas. These agreements, often extracted under threat of force after military defeat, typically involved cessions of territory, imposition of extraterritorial rights for foreign nationals, crippling indemnities, and forced opening of markets to foreign goods – most notoriously, opium in China. The Treaty of Nanjing (1842), ending the First Opium War, exemplified this coercive model. Qing China, defeated and humiliated, ceded Hong Kong, opened treaty ports, and granted extraterritoriality to British subjects. Subsequent treaties with other powers entrenched this system. From the outset, these treaties were viewed within China, Japan,

and other subjected nations as fundamentally illegitimate, lacking mutual consent and reciprocity – the very foundations of *pacta sunt servanda*. Consequently, breaches by the subjugated powers were frequent and often framed as acts of national resistance or attempts to reassert sovereignty. Qing officials frequently obstructed the implementation of treaty provisions, particularly concerning foreign residence rights and the opium trade itself, actions which Western powers denounced as violations, sometimes triggering further conflict like the Second Opium War. Similarly, in North America, treaties signed between the United States government and Indigenous nations, such as the Fort Laramie Treaties (1851 & 1868) guaranteeing vast territories including the Black Hills, were systematically violated by the U.S. as settlers encroached and gold was discovered. Lakota and Cheyenne resistance, including the victory at Little Bighorn, constituted a breach from the U.S. perspective but was, from the Indigenous viewpoint, a defense of land guaranteed by a solemn covenant the U.S. had already shattered. Japan's experience during the Bakumatsu period also illustrates resistance; while formally adhering to the unequal treaties forced upon it by Perry's gunboats (Kanagawa Treaty, 1854), internal factions actively sought ways to undermine foreign influence and renegotiate terms, culminating in the Meiji Restoration and the eventual revision of the treaties. These breaches highlight the critical role of *perceived legitimacy* as a catalyst for violation. When a treaty is seen as a tool of subjugation rather than a mutually beneficial compact, compliance becomes inherently unstable, and breach transforms into an act of defiance and self-preservation against an order deemed unjust.

The echoes of these pre-20th century breaches – the Athenian overreach, King John's repudiation, Louis XIV's *réunions*, and the Qing resistance – reverberate through the mechanisms and rationalizations employed in modern violations. They reveal enduring patterns: the invocation of sovereignty and security to override constraint, the use of changed circumstances as justification, the impact of domestic power struggles, and the powerful role of perceived injustice in eroding the normative force of agreements. As the world entered an era of industrialized warfare, ideological confrontation, and global institutions, the scale, consequences, and complexities of treaty breaches would intensify dramatically. The shattered promises of the 20th century, explored next, would test the international legal order forged in the aftermath of Westphalia and the tumultuous 19th century to its very limits.

## 1.5 The Century of Upheaval: Breaches in the 20th Century

The shattered promises of the pre-20th century, echoing through Athenian ambition, feudal betrayal, Bourbon *gloire*, and imperial coercion, set the stage for an era where treaty breaches achieved unprecedented scale and catastrophic consequence. The 20th century, aptly termed a century of upheaval, witnessed the clash of industrialized nation-states, the rise and fall of totalitarian ideologies, the shadow of nuclear annihilation, and the fragile birth of a universal international legal order. Against this backdrop, breaches of treaties were not merely diplomatic incidents but catalysts for global conflagration and defining moments in the struggle for international peace and security, demonstrating with brutal clarity the high stakes of fractured commitments.

**The Powder Keg Ignites: Breaches Preceding WWI** revealed how intricate alliance systems and solemn guarantees could unravel with terrifying speed under the pressure of perceived necessity and miscalculation. The network of late 19th and early 20th century treaties – the Triple Alliance (Germany, Austria-Hungary,

Italy), the Triple Entente (France, Russia, Britain), and numerous bilateral agreements – was designed as a deterrent, a complex mechanism of mutual restraint. Yet, inherent tensions and conflicting interpretations sowed the seeds of disaster. A pivotal breach occurred almost immediately upon the outbreak of hostilities in August 1914. The 1839 Treaty of London, signed by all major European powers including Prussia (later Germany), explicitly guaranteed the perpetual neutrality and inviolability of Belgium. Germany's Schlieffen Plan, however, depended critically on a rapid invasion of France through neutral Belgian territory. Faced with the choice of abandoning its meticulously crafted war plan or violating a cornerstone treaty, Germany chose the latter. Chancellor Theobald von Bethmann Hollweg infamously dismissed the treaty to the British ambassador as a mere “scrap of paper,” a statement that reverberated globally, encapsulating the perceived cynicism of the act and galvanizing British public opinion for war. This breach was not an isolated act of aggression; it was a calculated gamble prioritizing military expediency over solemn obligation, a stark manifestation of the sovereignty vs. constraint dilemma on a continental scale. Furthermore, the web of secret treaties often contradicted public postures. Russia's mobilization plans, partially triggered by its secret agreements with Serbia, directly challenged Austria-Hungary's ultimatum following the assassination of Archduke Franz Ferdinand. While technically mobilizing in defense of an ally, Russia's actions were perceived by Germany and Austria-Hungary as an unacceptable escalation, violating the spirit of crisis diplomacy and contributing to the rapid domino effect of declarations of war. The failure of the intricate alliance treaties to deter conflict, and indeed their role in escalating a regional crisis into a world war, underscored the perilous fragility of treaty-based security when core national strategies were perceived to demand their violation.

**Versailles and the Seeds of WWII** provided perhaps the most consequential case study of how the perceived injustice of a treaty and the failure to enforce its terms could fuel revisionism and catastrophic re-violation. The Treaty of Versailles (1919) imposed harsh reparations, territorial losses, military restrictions (limiting the Reichswehr to 100,000 men, prohibiting an air force, submarines, and heavy artillery, and demilitarizing the Rhineland), and the infamous “war guilt” clause (Article 231) on Germany. From its inception, significant segments of the German populace and political elite viewed Versailles not as a binding agreement but as a *Diktat* – an illegitimate, coercive imposition lacking true consent. This profound sense of grievance and illegitimacy became fertile ground for Adolf Hitler and the Nazi Party. Upon seizing power, Hitler embarked on a systematic and highly public campaign to dismantle the Versailles restrictions, each step a calculated breach testing the resolve of the victorious powers. The remilitarization of the Rhineland in March 1936 was the first major overt violation. German troops marched into the demilitarized zone, explicitly prohibited by Articles 42-44 of Versailles and reaffirmed by the Locarno Treaties (1925). France, internally divided and lacking British support for military action, offered only verbal protests. This successful breach, met with appeasement rather than enforcement, emboldened Hitler. Subsequent violations followed: the *Anschluss* (annexation) of Austria in March 1938, contravening Article 80 of Versailles and the explicit prohibition of German-Austrian union in the Treaty of Saint-Germain (1919); the aggressive dismemberment of Czechoslovakia, culminating in the occupation of Prague in March 1939, which shattered the Munich Agreement signed merely months earlier; and the overt naval rearmament, including the construction of U-boats and capital ships like the *Bismarck*, flouting naval limitations. The League of Nations, envisioned as the



guardian of the post-war order, proved utterly ineffective. Its mechanisms for collective security were hamstrung by the absence of key powers (the US never joined, the Soviet Union joined late, Germany and Japan left) and a pervasive reluctance among members, particularly Britain and France, to risk war over treaty enforcement. The policy of appeasement, epitomized by Neville Chamberlain's declaration of "peace for our time" after the Munich Agreement sacrificed Czechoslovakia, was predicated on the hope that satisfying Hitler's "legitimate grievances" would restore stability. Instead, it signaled weakness, demonstrating that the Versailles system could be breached with impunity, directly paving the road to the even more devastating global conflict Hitler actively sought.

**Cold War Confrontations: Breaches in the Shadow of the Bomb** unfolded within a unique and terrifying context: a bipolar world divided by ideology, armed with nuclear arsenals capable of mutual annihilation, and governed by treaties designed to manage the existential risk. Breaches in this era were often shrouded in secrecy, ambiguity, and disputes over interpretation, reflecting the high-wire act of managing hostility without triggering Armageddon. The very foundation of uneasy cooperation was shaken by events like the U-2 Incident (1960). An American U-2 spy plane, piloted by Francis Gary Powers, was shot down deep over Soviet territory. President Eisenhower initially denied its espionage purpose, but the captured pilot and wreckage exposed the lie. This violated both the spirit of the ongoing Paris Summit aimed at easing tensions and, more concretely, fundamental norms of sovereignty and non-intervention enshrined in the UN Charter, shattering nascent trust and derailing diplomacy. Arms control agreements, painstakingly negotiated to slow the arms race, were constant battlegrounds for allegations of breach. The Anti-Ballistic Missile (ABM) Treaty (1972), limiting missile defenses to encourage strategic stability through mutual vulnerability (MAD), became mired in disputes over interpretation, particularly concerning the development of new technologies like the US Strategic Defense Initiative ("Star Wars") and Soviet radar systems. Both sides accused the other of pushing the boundaries or violating the treaty's constraints, eroding confidence even before the US withdrawal in 2002. Perhaps the most cynical breach of the early Cold War was the Nazi-Soviet Non-Aggression Pact (Molotov-Ribbentrop Pact) of August 1939. Just days after its public signing, with celebratory toasts in Moscow, the secret protocols were revealed (though not officially acknowledged by the USSR until 1989), carving up Eastern Europe into spheres of influence. Stalin's subsequent invasion of Poland from the east in September 1939, coordinated with Hitler's invasion from the west, was a direct implementation of this secret annex, constituting a flagrant act of aggression that violated the pact's public façade of non-aggression and non-interference. Furthermore, breaches proliferated in proxy wars and decolonization struggles. North Vietnam's invasion of South Vietnam violated the Geneva Accords (1954), while the Soviet invasion of Afghanistan (1979) breached principles of non-intervention and the spirit of détente, triggering widespread condemnation and sanctions. Similarly, South Africa's prolonged illegal occupation of Namibia, defying repeated UN Security Council resolutions and advisory opinions from the International Court of Justice (notably the 1971 *Legal Consequences for States of the Continued Presence of South Africa in Namibia* opinion), exemplified the violation of foundational self-determination norms during decolonization. Cold War breaches were often masked by superpower vetoes in the Security Council or obscured by ideological justifications, but they consistently undermined the fragile structures of restraint.

**Foundational Challenges: Breaches of the UN Charter** struck at the very heart of the international legal

order established in the aftermath of WWII's devastation. The Charter's core prohibition, enshrined in Article 2(4), mandates that "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state." Acts of aggression violating this provision represented the most fundamental breach of the post-war system. Iraq's invasion and annexation of Kuwait in August 1990 stands as the clearest modern example. Saddam Hussein's forces overran the small emirate, disregarding Kuwait's sovereignty and territorial integrity, flagrantly violating Article 2(4), and triggering an unprecedented collective security response authorized by the UN Security Council under Chapter VII (Resolutions 660 and 678). This response, leading to Operation Desert Storm, demonstrated the Charter's enforcement potential when great power consensus existed. However, the Charter's mechanisms proved far less effective in other instances where such consensus was absent, often due to the veto power wielded by the five permanent members (P5) of the Security Council. The Soviet invasions of Hungary (1956) and Czechoslovakia (1968) to crush reform movements, and the US intervention in Grenada (1983) and Panama (1989), were widely condemned as violations of Article 2(4) and the principle of non-intervention, but faced no meaningful Security Council action due to Cold War vetoes. The Vietnam War saw deep controversy over whether US actions constituted a violation of the Charter or actions in collective self-defense, paralyzed by Cold War divisions. Even post-Cold War, the Security Council often struggled. The Rwandan Genocide (1994) unfolded amidst catastrophic failure; the Security Council, scarred by the recent Somalia experience, drastically reduced the UN peacekeeping force (UNAMIR) just as the killing began, failing to authorize timely and robust intervention to prevent a clear breach of fundamental human rights norms protected by the Charter's purposes. The persistent inability of the Security Council to act decisively against aggression or mass atrocities when a P5 member was involved or had vested interests exposed a critical flaw: the collective security system's effectiveness depended on the very powers most capable of breaching its core rules. These foundational challenges highlighted the tension between the Charter's noble aspirations and the enduring realities of power politics.

The century of upheaval thus demonstrated that treaty breaches, in an age of mass mobilization, ideological extremism, and nuclear weapons, were no longer contained diplomatic ruptures but potential triggers for global catastrophe. From the violation of Belgian neutrality igniting the Great War, through the unchecked dismantling of Versailles enabling Nazi aggression, to the perilous breaches amidst Cold War brinkmanship and the fundamental challenges to the UN Charter itself, the 20th century underscored the devastating cost of failed commitments and the immense difficulty of enforcing obligations against determined major powers. The collapse of the Soviet Union ushered in a new, complex era – not an end to treaty breaches, but a transformation in their nature and context within a globalized, multi-polar world facing novel threats, an era where the echoes of broken promises would continue to shape the landscape of international relations in profound and often unsettling ways, setting the stage for the contemporary fractures explored next.

## 1.6 Contemporary Fractures: Breaches in the Post-Cold War Era

The collapse of the Soviet Union, heralded by some as an "end of history," proved instead to be the opening act of a more fragmented, complex era where treaty breaches persisted but manifested in novel forms against



a backdrop of globalization, asymmetric threats, resurgent authoritarianism, and unprecedented transnational challenges. While the existential nuclear standoff faded, the post-Cold War landscape witnessed breaches driven by civil conflict, proliferation anxieties, environmental urgency, economic nationalism, and the exploitation of ambiguities in rapidly evolving domains like cyberspace. The enforcement mechanisms of the nascent “rules-based international order,” often reliant on great power consensus that proved fleeting, faced severe stress tests, revealing persistent vulnerabilities.

**Humanitarian Law Under Fire** became tragically commonplace as intrastate conflicts proliferated, often involving state actors or their proxies systematically flouting the core tenets of the Geneva Conventions and their Additional Protocols. The Syrian Civil War descended into a grim laboratory for violations. The Assad regime’s deliberate targeting of civilian infrastructure – hospitals, schools, and markets – using barrel bombs and chemical weapons constituted flagrant breaches of the prohibitions on indiscriminate attacks and the use of chemical arms (outlawed by the Chemical Weapons Convention, which Syria joined under duress in 2013 yet repeatedly violated, as confirmed by OPCW-UN Joint Investigative Mechanism reports on attacks in Khan Sheikhoun, Saraqib, and Douma). Simultaneously, sieges deliberately denying food and medicine to civilian populations violated fundamental obligations to allow humanitarian access. Russian military intervention, ostensibly supporting the regime, compounded these breaches, including the devastating bombing of eastern Aleppo in 2016. Parallel horrors unfolded in Yemen, where the Saudi-led coalition’s airstrikes on civilian targets, often with US-supplied munitions, and the Houthi rebels’ indiscriminate shelling and use of landmines, breached fundamental norms. The conflict also saw widespread obstruction of aid, exacerbating famine. The war in Ukraine, ignited by Russia’s full-scale invasion in 2022, added further egregious chapters: documented massacres of civilians in Bucha and Izium, attacks deliberately targeting energy infrastructure to inflict suffering during winter, forced deportations of children, and the extensive use of torture in filtration camps – all stark violations of the Geneva Conventions and international humanitarian law. Accountability remained elusive, hamstrung by UN Security Council vetoes (particularly Russia shielding Syria), weak domestic judicial mechanisms in perpetrator states, and the sheer scale of violations overwhelming international bodies like the International Criminal Court (ICC), despite its investigations into all these theaters. These conflicts starkly illustrated how the foundational rules of armed conflict, painstakingly codified over centuries, could be systematically disregarded with relative impunity in the contemporary era.

**The Non-Proliferation Regime Strained** as the grand bargain of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) – non-proliferation, disarmament, and peaceful use – faced profound challenges. North Korea presented the most brazen case. After signing the NPT in 1985, Pyongyang repeatedly violated its safeguards agreement with the International Atomic Energy Agency (IAEA), expelled inspectors in 2002, announced withdrawal from the NPT in 2003 (legally contested, as the NPT requires notice for withdrawal only if a state is in compliance, which it arguably wasn’t), and conducted multiple nuclear tests (2006, 2009, 2013, twice in 2016, and 2017) in direct contravention of UN Security Council resolutions. Its ongoing ballistic missile development and provocative launches further destabilized the region. Iran’s nuclear program became a focal point of intense dispute. While Iran maintained its program was peaceful, the IAEA repeatedly reported inconsistencies and failures to declare nuclear material and activities, indicating potential breaches of its NPT safeguards obligations. The Joint Comprehensive Plan of Action (JCPOA) in

2015 aimed to temporarily constrain Iran's program in exchange for sanctions relief. However, the US withdrawal in 2018 under President Trump, denounced by other parties as a violation of the agreement's spirit and undermining its reciprocity, triggered Iran's own subsequent, incremental breaches. Tehran progressively exceeded JCPOA limits on uranium enrichment levels and stockpiles, installed advanced centrifuges, and restricted IAEA monitoring access, actions it justified as responses to the US withdrawal and the failure of European parties to deliver promised economic benefits. While negotiations continued fitfully, these reciprocal actions severely damaged trust in the non-proliferation architecture. Furthermore, the stagnation of nuclear disarmament by the five NPT nuclear-weapon states (NWS), despite Article VI obligations, fueled perceptions of hypocrisy among non-nuclear states, undermining the treaty's legitimacy and providing rhetorical cover for proliferators. The AUKUS pact (Australia, UK, US), involving the transfer of nuclear-propulsion technology (though not nuclear weapons) to Australia, a non-nuclear-weapon state, also sparked debates about compliance with NPT spirit and potential precedents, highlighting evolving challenges.

**Environmental Accords: Breaches with Planetary Consequences** escalated from diplomatic irritants to existential threats as scientific consensus on climate change solidified. The Kyoto Protocol (2005-2020), while a landmark, suffered from critical limitations. Canada's withdrawal in 2011, citing the lack of binding commitments for major emitters like the US (which never ratified) and China, and its failure to meet its own targets, exemplified the challenges of asymmetric obligations and enforcement. However, the most significant jolt came with the Paris Agreement (2015). Its nationally determined contributions (NDCs) were voluntary, yet the core obligation of good faith effort and progressively enhancing ambition was clear. The US withdrawal under President Trump in 2020, despite being procedurally permitted after a waiting period, constituted a profound political and moral breach, undermining global momentum and signaling retreat by a major emitter. Although the US rejoined under President Biden in 2021, this episode highlighted the fragility of climate commitments vulnerable to domestic political shifts. More pervasive than outright withdrawal was the widespread failure of states to set sufficiently ambitious NDCs or to implement policies meeting even their stated targets. Analyses consistently showed the collective NDCs falling far short of the Paris goal of limiting warming to well below 2°C, a gap starkly illustrated by record-breaking global temperatures year after year. Beyond climate, breaches of environmental treaties continued: rampant illegal wildlife trafficking violating CITES (Convention on International Trade in Endangered Species), particularly affecting elephants, rhinos, and pangolins; ongoing illegal, unreported, and unregulated (IUU) fishing undermining regional fisheries management organizations and the UN Fish Stocks Agreement; and persistent violations of the London Convention against dumping hazardous waste at sea. These breaches, often driven by short-term economic gain, weak monitoring, and limited enforcement capacity, threatened biodiversity, ocean health, and the stability of ecosystems upon which human civilization depends.

**Trade Wars and the Erosion of the Rules-Based Order** saw the World Trade Organization (WTO), the cornerstone of multilateral trade governance, severely weakened by actions of its most powerful members. The most dramatic rupture was the US-China trade war initiated by the Trump administration in 2018. The US imposed tariffs on hundreds of billions of dollars of Chinese goods under Section 301 of the Trade Act of 1974, alleging unfair practices like forced technology transfer and intellectual property theft. Crucially, the US bypassed the WTO's Dispute Settlement Body (DSB), acting unilaterally rather than seeking multi-

lateral authorization, a move widely condemned by trade experts and other WTO members as a fundamental breach of the core WTO principle requiring members to resolve disputes through the agreed multilateral system (Article 23 of the Dispute Settlement Understanding - DSU). China retaliated with its own tariffs, escalating tensions and disrupting global supply chains. This unilateralism crippled the system further by directly attacking its enforcement mechanism. The US had already been blocking appointments to the WTO's Appellate Body (AB), the supreme "court" for trade disputes, since 2017, objecting to perceived judicial overreach. By December 2019, with terms expiring and no replacements confirmed, the AB lost its quorum and became functionally paralyzed. This rendered the DSB incapable of issuing final, binding rulings on appeals, effectively neutralizing the WTO's most powerful enforcement tool and allowing members to "appeal into the void" to avoid adverse rulings. While negotiations for reform continued, the damage was profound, encouraging tit-for-tat protectionism, undermining predictability, and signaling a retreat from rules-based trade towards power-based bargaining. The EU and others established interim appeal arrangements, but the systemic crisis exposed deep fissures in the multilateral trading system painstakingly built after WWII.

**Emerging Frontiers: Cyber and Space Treaty Challenges** revealed how technological leaps outpaced legal frameworks, creating ambiguity ripe for exploitation and breaches difficult to attribute or categorize. The applicability of existing international law, including the UN Charter's prohibition on the use of force (Article 2(4)) and the law of state responsibility, to cyberspace remained contested. Russia's disruptive cyber operations exemplified this gray zone. The NotPetya malware attack in 2017, originating from Russian military cyber units and initially targeting Ukrainian infrastructure but causing billions in global collateral damage, raised profound questions. Was this an unlawful use of force, prohibited intervention, or merely an unfriendly act? While widely condemned as a violation of sovereignty and norms of responsible state behavior endorsed by the UN GGE (Group of Governmental Experts), the precise legal categorization remained debated, complicating responses. Similarly, widespread cyber-enabled intellectual property theft, often attributed to Chinese state actors, violated trade norms but fell into a legal gray area regarding traditional espionage prohibitions. In outer space, the foundational 1967 Outer Space Treaty (OST) faced stress tests. Its key principles – the prohibition of weapons of mass destruction in orbit, the non-appropriation of celestial bodies, and the use of space "for peaceful purposes" – were increasingly challenged by technological developments and strategic competition. Russia's deliberate destruction of its defunct Cosmos 1408 satellite in a 2021 anti-satellite (ASAT) missile test created a massive, dangerous debris field in low Earth orbit. While not explicitly prohibited by the OST, the test was widely condemned as irresponsible and reckless, potentially violating the obligation under Article IX to avoid "harmful contamination" of space and conducting activities with "due regard" to the interests of other states. China's 2007 ASAT test and India's 2019 test raised similar concerns. Furthermore, the development and testing of sophisticated on-orbit capabilities by major powers – proximity operations, robotic manipulators, even rendezvous and proximity operations (RPO) satellites that could inspect or potentially disable others – pushed against the boundaries of "peaceful purposes," sparking fears of space weaponization and the potential for breaches of the OST's spirit, if not yet its letter, in an environment where verification remains extremely difficult.

These contemporary fractures demonstrate that the era following the Cold War did not herald the triumph of international law, but rather its navigation through a turbulent sea of new threats, enduring power politics,

and technological disruption. The breaches cataloged here – from the horrors of Syria to the paralysis of the WTO, the melting Arctic to contested cyber operations – underscore the persistent gap between legal obligation and state action. The mechanisms for responding to these violations, for enforcing *pacta sunt servanda* in this complex landscape, themselves face unprecedented challenges, forming the critical focus of the next exploration into the arsenal of response available to the international community.

## 1.7 The Arsenal of Response: Enforcement and Consequences

The persistent gap between the solemn pledges enshrined in treaties and the stark reality of violations, vividly illustrated by the contemporary fractures explored previously, inevitably raises the critical question: what recourse exists when *pacta sunt servanda* is breached? The international legal system, lacking a centralized global sovereign wielding a monopoly on legitimate force, possesses a distinct and multifaceted arsenal for responding to treaty violations. This arsenal, ranging from quiet diplomacy to coercive economic measures and, in extreme cases, authorized military force, reflects the decentralized nature of the system itself, relying heavily on the initiative of injured states and the fragile consensus of the international community. Section 7 examines this complex toolkit, assessing the legal, political, and economic instruments available, their practical effectiveness, inherent limitations, and the crucial role played by diverse actors – from individual states to international organizations and courts – in navigating the treacherous waters of enforcement.

The first line of response almost invariably lies in **Diplomatic Channels: Protests, Negotiation, Good Offices**. When a breach is suspected or detected, the injured state typically initiates direct communication through diplomatic notes, summoning ambassadors, or issuing formal protests demanding an explanation, cessation of the offending conduct, and potentially assurances of non-repetition. This serves several purposes: formally recording the objection (preserving legal rights), signaling seriousness, and opening a pathway for de-escalation and resolution. Diplomatic consultations, often shielded from public view, allow parties to clarify misunderstandings, present evidence, and explore negotiated settlements. The protracted diplomatic engagement following Iran's incremental breaches of the JCPOA nuclear deal exemplifies this stage, with European parties (E3) engaging Tehran in complex talks aimed at salvaging the agreement despite the US withdrawal. Beyond bilateral talks, third-party involvement can prove crucial. The good offices of a neutral state or international organization, offering discreet mediation without proposing specific solutions, or more active conciliation, where a third party investigates and proposes settlement terms, provide vital off-ramps. The role of the Swiss government in facilitating communication between the US and Iran during periods of intense hostility, or Algeria's mediation leading to the Algiers Accords ending the 1980-1988 Iran-Iraq War hostage crisis stemming from treaty disputes, demonstrates the value of neutral intermediaries. While seemingly low-key, these diplomatic tools are essential for crisis management, preserving relationships, and offering the least costly path to restoring compliance or resolving the dispute amicably. Their success, however, hinges entirely on the willingness of the alleged violator to engage constructively – a willingness often absent in cases of deliberate, strategic breaches.

When diplomacy falters, states may resort to forms of **Retorsion and Countermeasures: The Law of Self-Help**. This represents the frontier where lawful pressure shades into potential escalation. *Retorsion*

involves unfriendly but otherwise lawful acts taken in response to a prior unlawful act. These are actions a state is always entitled to take, such as recalling an ambassador, imposing visa restrictions on officials, suspending cultural or scientific exchanges, or expelling diplomats. Following Russia's annexation of Crimea, numerous states imposed travel bans and asset freezes on specific Russian officials – classic acts of retorsion signaling disapproval without violating international law themselves. *Countermeasures*, however, occupy a more legally precarious space, codified primarily in the International Law Commission's Articles on State Responsibility. These are actions that would *otherwise* be unlawful under international law, taken by an injured state to induce a responsible state to cease its internationally wrongful act (the breach) and provide reparation. Crucially, countermeasures must be proportionate to the injury suffered, temporary (aimed solely at securing compliance, not punishment), and reversible once the breach ceases. They cannot involve the threat or use of force or violate fundamental human rights or peremptory norms (*jus cogens*). Examples include suspending the performance of reciprocal treaty obligations towards the violator, freezing the violator's state assets located abroad (within specific legal bounds), or imposing economic sanctions not mandated by the UN Security Council. The European Union's suspension of certain trade preferences granted to Belarus under its Generalized Scheme of Preferences (GSP+) in response to human rights violations and electoral fraud, actions deemed breaches of international covenants, functioned as lawful countermeasures. The inherent risk lies in miscalculation and escalation; the targeted state may perceive countermeasures as new wrongful acts, justifying reciprocal counter-countermeasures, spiraling into wider conflict. Furthermore, identifying the precise "injured state" entitled to take countermeasures in multilateral treaties with obligations *erga omnes partes* (owed to all parties) or *erga omnes* (owed to the international community as a whole) remains complex, potentially diffusing responsibility for enforcement. The 2014 dispute between Canada and the EU over the Comprehensive Economic and Trade Agreement (CETA), where Canada threatened targeted sanctions (countermeasures) against EU members blocking ratification due to investment court concerns, illustrates both the tool's utility and the diplomatic friction it generates, even among allies.

For disputes requiring a definitive legal determination of breach and its consequences, **Adjudication: International Courts and Tribunals** provides a formal pathway, though one fraught with jurisdictional hurdles and enforcement challenges. A diverse constellation of judicial bodies exists. The International Court of Justice (ICJ), the UN's principal judicial organ, adjudicates disputes between states that have accepted its jurisdiction, often through compromissory clauses in treaties. Its rulings are legally binding and can declare a breach, order cessation, and award reparations. The landmark *Military and Paramilitary Activities in and against Nicaragua* case (1986) found the US in breach of customary international law and its Treaty of Friendship, Commerce and Navigation with Nicaragua for supporting Contra rebels and mining harbors. However, the US refused to participate fully after the Court affirmed jurisdiction and subsequently vetoed Security Council enforcement, starkly demonstrating the limitations when powerful states defy rulings. Similarly, the International Tribunal for the Law of the Sea (ITLOS) resolves disputes concerning UNCLOS, as seen in its provisional measures order against Russia in 2019 concerning detained Ukrainian naval vessels and sailors. Specialized tribunals also play crucial roles. The World Trade Organization's Dispute Settlement Body (DSB), particularly its (now largely paralyzed) Appellate Body, was remarkably effective for decades in authoritatively determining breaches of trade agreements and sanctioning proportionate retaliation (like



countermeasures) when the losing party failed to comply, as in the long-running Boeing-Airbus subsidies disputes. Regional human rights courts, such as the European Court of Human Rights (ECtHR) and the Inter-American Court of Human Rights (IACtHR), routinely find states in breach of human rights treaties, ordering specific remedies. Ad hoc arbitral tribunals established under treaties like the Energy Charter Treaty also issue binding awards. While adjudication offers legal clarity and legitimacy, its effectiveness hinges on state consent to jurisdiction, the political will to comply with rulings, and the absence of robust enforcement mechanisms independent of powerful state actors. The UK's prolonged diplomatic and legal maneuvering following the ICJ's 2019 advisory opinion on the Chagos Archipelago, which found its continued administration unlawful and required decolonization, underscores the gap between judicial pronouncement and political reality.

For breaches constituting threats to international peace and security, the **Collective Security Action: The UN Security Council's Role** represents the pinnacle of centralized enforcement authority. Acting under Chapter VII of the UN Charter, the Security Council possesses unique powers to determine the existence of a threat to peace, breach of the peace, or act of aggression (often involving treaty breaches like the invasion of Kuwait) and to authorize measures to maintain or restore peace. These measures can range from non-military coercion – comprehensive or targeted sanctions (arms embargoes, travel bans, asset freezes) – to the authorization of military force by member states. The robust response to Iraq's 1990 invasion of Kuwait, culminating in Resolution 678 authorizing “all necessary means” to liberate Kuwait, stands as the archetype of successful Chapter VII enforcement against a clear treaty breach and act of aggression. Similarly, Resolution 1973 (2011) authorized a no-fly zone and “all necessary measures” to protect civilians in Libya during the initial uprising against Gaddafi. However, the Security Council's effectiveness is notoriously inconsistent and politically constrained. The permanent five members (P5) – China, France, Russia, the UK, and US – hold veto power, allowing them to block action against themselves or their allies. Russia's repeated vetoes shielding Syria from significant consequences for egregious breaches of international humanitarian law, including chemical weapons use, exemplify this paralysis. China's general reluctance to support robust intervention, and US/UK/French vetoes protecting Israel from numerous resolutions concerning its occupation policies, demonstrate how geopolitical alignments routinely trump enforcement imperatives. Even when sanctions are imposed, their humanitarian impact and effectiveness in changing target state behavior are often debated, as seen in the long-running sanctions regimes against Iran (pre-JCPOA) and North Korea. Furthermore, the precise threshold for invoking Chapter VII for breaches not involving outright invasion (e.g., severe human rights violations, cyberattacks) remains contested, limiting its scope. The Council's role is thus powerful in theory but often hamstrung in practice by the very power politics that frequently underlie treaty breaches.

Finally, many treaties incorporate **Treaty-Based Sanctions and Suspension Mechanisms** directly into their fabric, providing specific, pre-defined consequences for non-compliance tailored to the agreement's subject matter. These mechanisms offer a more predictable and potentially depoliticized response compared to ad hoc Security Council action or unilateral countermeasures. Environmental treaties are prominent examples. The Montreal Protocol on Substances that Deplete the Ozone Layer includes provisions for non-compliance procedures involving a dedicated Implementation Committee. While focused on facilitation and assistance,

it can ultimately recommend measures like suspension of specific treaty rights and privileges, such as the crucial right to trade in controlled ozone-depleting substances. Trade agreements often allow for the suspension of equivalent concessions if a party fails to comply with a dispute settlement ruling, as codified in the WTO DSU. Arms control treaties may include provisions for withdrawal or suspension of obligations in response to material breaches; the New START treaty allows for meetings of the Bilateral Consultative Commission to address concerns about compliance, theoretically paving the way for more serious consequences if unresolved. Human rights treaties may involve political bodies suspending a state's membership rights. The Commonwealth suspended Fiji and Pakistan multiple times following military coups violating fundamental democratic principles enshrined in the organization's charter. The Rome Statute of the International Criminal Court allows the Assembly of States Parties to refer non-cooperation by a state party to the UN Security Council, potentially triggering wider sanctions. These internal mechanisms provide structured, regime-specific pathways for responding to breaches, leveraging the collective interest of treaty members. Their strength lies in their specificity and integration within the treaty regime, though their effectiveness ultimately still depends on the political will of the participating states to impose costs on violators.

The arsenal available to respond to treaty breaches is thus diverse but inherently imperfect, reflecting the decentralized and sovereignty-based nature of the international system itself. From quiet diplomatic demarches to the coercive might authorized by the Security Council, each tool carries specific legal bases, operational logics, and limitations shaped by power, politics, and the practical challenges of enforcement in an anarchical society. While these mechanisms can sometimes compel compliance, provide redress, or deter future violations, their success is never guaranteed and often contingent on factors extraneous to the legal merits of the breach itself. The invocation of these responses, however, inevitably sends ripples far beyond the immediate parties to the dispute, affecting the very fabric of international relations, the perception of legal norms, and the prospects for future cooperation – systemic consequences that form the critical focus of the next exploration.

## 1.8 The Ripple Effect: Consequences Beyond the Immediate Parties

The invocation of enforcement mechanisms, explored in the preceding section, represents a direct confrontation with a specific breach, seeking cessation, reparation, or deterrence. Yet, the impact of treaty violations reverberates far beyond the immediate parties and the specific dispute resolution process. Like a stone cast into the still waters of the international order, a single breach, particularly a significant one by a major power, sends ripples cascading outward, eroding foundational trust, reshaping diplomatic landscapes, weakening normative standards, fueling dangerous security dynamics, and imposing tangible economic costs on the global community. These systemic consequences constitute the often-overlooked yet profoundly damaging legacy of broken promises, undermining the very architecture of international cooperation painstakingly built over decades.

The most pervasive and insidious consequence is the **Erosion of Trust and the Fabric of International Law**. Treaties function not merely as isolated contracts but as threads woven into a larger tapestry of rules, expectations, and shared understandings that constitute the international legal order. When a state, espe-



cially a powerful one, deliberately violates a significant commitment, it damages the perceived reliability of treaties as a whole. Other states become more cautious, demanding stricter terms, inserting more escape clauses, or hesitating to enter new agreements altogether, fearing the precedent set by the violation. This dynamic creates a self-reinforcing “cynicism trap.” The U.S. withdrawal from the Paris Agreement, while procedurally permissible, delivered a seismic shock to the global climate regime, signaling that even meticulously negotiated, universally endorsed agreements could be discarded based on shifting domestic politics. It fostered deep skepticism among vulnerable nations about the reliability of major emitters’ commitments. Similarly, Russia’s annexation of Crimea in violation of the Budapest Memorandum and the UN Charter shattered assumptions about the inviolability of territorial integrity in post-Cold War Europe, particularly for states that had relinquished security assets (like Ukraine’s nuclear arsenal) based on such guarantees. Repeated breaches, or breaches left unaddressed by the international community, foster a pervasive sense that international law is merely “aspirational” or applicable only to the weak, undermining the foundational principle of sovereign equality. The cumulative effect is a fraying of the normative fabric, making cooperation more difficult, more expensive, and less ambitious, as states prioritize hedging strategies over binding commitments. This erosion is particularly damaging in areas requiring deep, sustained collaboration, such as arms control, where verification regimes rely fundamentally on mutual trust, or pandemic response, where timely information sharing is critical. The concept of “entanglement” in diplomacy – the web of mutually reinforcing obligations that constrain behavior – weakens when threads are repeatedly snapped, diminishing the constraining power of the whole system.

Closely linked to the erosion of systemic trust is the **Reputational Costs and Diplomatic Isolation** borne by the violating state. While often dismissed by realists as ephemeral, reputation in international relations constitutes a crucial form of “soft power” – the ability to attract and persuade rather than coerce. A state perceived as a reliable treaty partner can build coalitions, secure favorable terms in negotiations, and exert influence through its perceived integrity. Conversely, a reputation for unreliability or bad faith carries significant diplomatic penalties. Canada’s withdrawal from the Kyoto Protocol in 2011 significantly damaged its international standing as an environmental leader, a reputation painstakingly cultivated over decades. It faced widespread condemnation at climate summits and struggled to regain moral authority in subsequent negotiations. Saudi Arabia’s conduct in Yemen, involving repeated violations of international humanitarian law, triggered widespread diplomatic condemnation, boycotts by some states and corporations, and severely tarnished its efforts at international image-building initiatives like “Vision 2030.” Russia, following its invasion of Ukraine, experienced unprecedented diplomatic isolation: expulsion from the Council of Europe, suspension from numerous international bodies (including the UN Human Rights Council), and a mass exodus of Western businesses. While Russia retains alliances of convenience, its ability to act as a credible diplomatic broker or build broad-based coalitions on issues beyond its immediate sphere of influence has been profoundly diminished. This isolation translates into concrete losses: reduced foreign investment, difficulties securing international financing, exclusion from beneficial cooperative ventures, and the need to expend immense diplomatic capital simply to counter negative perceptions. The UK’s struggle to rebuild its reputation as a reliable international actor and predictable economic partner post-Brexit, amidst disputes over the Northern Ireland Protocol (itself an international agreement), illustrates how perceptions of treaty

unreliability can have long-lasting diplomatic and economic repercussions, limiting a state's options and influence on the global stage.

Perhaps the most dangerous systemic consequence is **Normative Entropy: The Weakening of Legal Standards**. Treaties codify and reinforce norms – shared expectations of appropriate state behavior. A significant breach, especially if unpunished or tacitly accepted through inaction, can erode the normative force of the rule itself, lowering the threshold for future violations and creating dangerous precedents. This is not merely about the specific treaty broken; it's about the broader principle it embodies. Russia's 2014 annexation of Crimea, blatantly violating the UN Charter's prohibition on the acquisition of territory by force – a cornerstone norm upheld since 1945 – sent shockwaves through the international system. While widely condemned, the limited concrete consequences emboldened revisionist actors globally, raising fears that the norm against conquest was weakening. Similarly, the repeated, large-scale violations of the Chemical Weapons Convention (CWC) in Syria, with confirmed use of sarin and chlorine by the Assad regime, severely damaged the near-universal taboo against chemical warfare painstakingly built since the horrors of WWI. Each unpunished attack chipped away at the norm's robustness, potentially lowering the perceived cost for other actors contemplating their use. The Trump administration's withdrawal from or threats against multilateral institutions and agreements (Paris, JCPOA, WHO, TPP) contributed to a perception that core tenets of the post-WWII liberal international order – multilateralism, rules-based trade, collective security – were themselves negotiable or discardable by powerful states. This "normative entropy" creates ambiguity where clarity is essential. When the prohibition on aggressive war, the ban on torture, or the principle of non-refoulement for refugees is weakened by precedent, it becomes easier for other states to justify similar actions, arguing they are merely following established practice or responding to changed circumstances. The norm doesn't disappear overnight, but its deterrent power diminishes, and its violation becomes gradually normalized, creating a perilous slippery slope towards a less constrained and more volatile international environment.

In the realm of security, breaches can directly trigger **Security Dilemmas and Arms Races**, fundamentally destabilizing regional or global balances. This is most evident in arms control. A violation by one party is often perceived by others as an attempt to gain unilateral military advantage, compelling them to respond in kind to restore their security, even if that response involves withdrawing from the treaty or accelerating their own military programs. The collapse of the Intermediate-Range Nuclear Forces (INF) Treaty provides a stark example. The U.S. determination that Russia's deployment of the SSC-8 (9M729) ground-launched cruise missile violated the treaty's ban on such systems created a profound security concern in Europe. Russia's denial and refusal to address the violation credibly ultimately led the U.S. to withdraw in 2019. This reciprocal action dismantled a landmark Cold War-era agreement that had eliminated an entire class of nuclear weapons, freeing both powers to develop and potentially deploy new intermediate-range systems, heightening tensions and increasing the risk of rapid escalation in a crisis. Similarly, North Korea's persistent breaches of the Non-Proliferation Treaty (NPT) and its development of nuclear weapons and ballistic missiles have fueled a regional arms race, prompting neighbors like Japan and South Korea to bolster missile defenses and reconsider their own defense postures, while complicating non-proliferation efforts globally. Beyond formal treaties, breaches erode the transparency and verification mechanisms essential for stability. Russia's

suspension of New START inspections in 2022, amidst the Ukraine conflict, though framed as a response to Western sanctions, reduced crucial predictability regarding nuclear arsenals, fostering mutual suspicion and increasing the risk of miscalculation. Furthermore, the erosion of trust stemming from breaches makes negotiating new arms control agreements exceedingly difficult, as states are less willing to accept intrusive verification or limits on their capabilities when they doubt the adversary's commitment to compliance. The paralysis of the Comprehensive Nuclear-Test-Ban Treaty (CTBT), still not in force partly due to verification concerns amplified by past breaches elsewhere, exemplifies how violation-induced distrust stifles progress on critical security issues.

Finally, breaches inflict tangible **Economic Fallout: Market Instability and Lost Cooperation** that extends far beyond the disputing parties. Trade agreement violations disrupt established supply chains, create market uncertainty, and stifle investment. The U.S.-China trade war, initiated through U.S. tariffs imposed outside WTO dispute settlement mechanisms, caused significant global economic disruption. Businesses faced higher costs, supply chains were reconfigured at great expense, and global growth forecasts were repeatedly downgraded due to the uncertainty generated by tit-for-tat tariffs and the undermining of the WTO system. Similarly, breaches of environmental treaties impose enormous economic costs, often disproportionately borne by states not responsible for the violation. Failure to meet Paris Agreement commitments contributes to accelerating climate change, resulting in devastating economic losses from extreme weather events, sea-level rise, and ecosystem collapse – costs borne globally but hitting vulnerable developing economies hardest. The collapse of fisheries agreements due to Illegal, Unreported, and Unregulated (IUU) fishing, as witnessed in the South China Sea disputes undermining regional fisheries management, devastates local economies dependent on fishing, depletes vital protein sources, and damages marine ecosystems with long-term economic consequences. Breaches in the financial sector, such as violations of sanctions regimes or anti-money laundering standards, can destabilize markets and facilitate illicit financial flows that harm legitimate economies worldwide. Moreover, breaches destroy the potential economic benefits of deeper cooperation. The failure to fully implement or the withdrawal from agreements like the Trans-Pacific Partnership (TPP) or the stalling of the EU-Mercosur deal due to environmental concerns represent lost opportunities for economic growth, job creation, and shared prosperity that depended on the stability and predictability promised by the treaty framework. The economic ripples of breach thus manifest as immediate market volatility, long-term environmental and resource degradation costs, and the forfeiture of the cooperative gains treaties were designed to achieve.

The ripples emanating from a treaty breach, therefore, extend far beyond the legal dispute or the immediate enforcement action. They corrode the foundational trust upon which the international system relies, tarnish the violator's standing and influence, erode the strength of shared norms essential for predictability and restraint, trigger dangerous escalatory dynamics in security affairs, and inflict widespread economic harm and lost opportunity. These systemic consequences underscore that the cost of broken promises is borne not just by the immediate victim, but by the entire community of states invested in a stable, predictable, and cooperative international order. Understanding these far-reaching impacts is crucial for appreciating the true gravity of treaty violations and the collective interest in upholding *pacta sunt servanda*. Yet, the landscape of breach is rarely black and white; complex controversies arise where allegations are fiercely contested,

interpretation is ambiguous, or justification is claimed, forming the intricate terrain we must next navigate.

## 1.9 Gray Zones and Contentious Ground: Controversies in Defining and Assigning Breach

The profound systemic consequences of treaty breaches explored in Section 8 underscore the high stakes involved in determining *whether* a breach has occurred and *who* bears responsibility. Yet, the landscape of international obligation is often shrouded in fog, where clear-cut violations give way to contentious disputes over interpretation, attribution, legitimacy, and justification. Section 9 delves into these murky “gray zones,” where allegations of breach are fiercely contested, and the bright lines of *pacta sunt servanda* blur under the pressures of ambiguity, covert action, complex state relationships with non-state actors, and claims of overriding necessity. Navigating this terrain requires dissecting the intricate controversies that arise when defining and assigning breach becomes a battleground in itself, revealing the political and legal fault lines within the international system.

**The Fog of Interpretation: Ambiguity and Good Faith** presents the most fundamental gray zone. Treaties, like all legal texts, are susceptible to varying interpretations. Vague language, evolving technologies, unforeseen circumstances, and differing legal traditions can all fuel disputes over what an obligation *actually* requires. While the VCLT (Article 31) provides the framework – interpretation based on ordinary meaning, context, object and purpose, and subsequent practice – applying these principles in contentious situations is fraught. The U.S.-China trade war pivoted significantly on clashing interpretations of China’s WTO accession protocol. The U.S. argued that China’s state-led economic model inherently violated its commitment to operate as a “market economy,” enabling unfair subsidies and forced technology transfer. China countered that its model was compatible with WTO rules, emphasizing its unique development status and claiming the U.S. was imposing novel obligations not explicitly agreed upon. This dispute, fundamentally about interpreting broad terms like “market conditions” and “public body,” paralyzed the WTO Appellate Body and fueled unilateral action. Similarly, the meaning of “peaceful purposes” in the Outer Space Treaty (OST) is intensely debated. Does it merely prohibit weapons of mass destruction and aggressive acts, or does it impose a broader constraint on military activities, such as developing anti-satellite weapons (ASATs) or deploying conventional weapons in orbit? The U.S. and its allies generally favor a narrower interpretation permitting extensive military support functions and defensive capabilities, while Russia and China advocate a broader reading seeking to limit the “weaponization of space.” Accusations of bad faith often accompany such disputes. When Russia annexed Crimea, it invoked the controversial doctrine of “responsibility to protect” (R2P), claiming intervention was necessary to protect ethnic Russians facing threats from the new Ukrainian government. The international community overwhelmingly rejected this interpretation as a blatant misuse of R2P’s principles to mask a violation of sovereignty and territorial integrity, highlighting how interpretations perceived as pretextual can exacerbate tensions and deepen the sense of breach. Cyber operations magnify these challenges exponentially. Is a disruptive cyberattack disabling a power grid an unlawful “use of force” prohibited by the UN Charter (Article 2(4))? Or merely an “intervention” violating sovereignty? Or just an unfriendly act? The Tallinn Manual process, involving international experts, has sought to clarify the application of existing law, but state practice remains contested and ambiguous, creating a fertile ground for

breaches disguised as permissible activities or met with accusations of excessive claims.

Compounding these interpretive challenges is the complex issue of **State Responsibility for Non-State Actors**. The foundational principle, enshrined in the ILC Articles on State Responsibility, is clear: a state is responsible for the conduct of its organs (government, military) or entities exercising governmental authority. However, the modern landscape is dominated by breaches committed by militias, proxy forces, private military companies, and terrorist groups operating with varying degrees of state connection. Attributing conduct to a state in such scenarios requires proving a specific link. Did the state *direct* or *instruct* the non-state actor to commit the breach (Article 8)? Did it exercise *effective control* over the specific operation (as established by the ICJ in *Nicaragua v. USA*, requiring more than general support)? Or did it subsequently *acknowledge and adopt* the conduct as its own (Article 11)? The Iran-Contra affair exemplified the murky terrain. While the U.S. government publicly maintained it was not involved in arming Nicaraguan Contras (in violation of congressional restrictions and potentially international law), evidence revealed a complex covert operation involving National Security Council staff facilitating arms transfers via third parties. Proving “effective control” by the U.S. state apparatus over specific Contra actions was legally complex, though the ICJ ultimately found the U.S. responsible for certain breaches due to its overall direction and control. More recently, Russia’s use of unmarked soldiers (“little green men”) in Crimea in 2014 presented an attribution challenge. Moscow initially denied any involvement, claiming these were local “self-defense” forces. Only later did Putin admit Russian military personnel were involved, effectively adopting the conduct. Similarly, Iran’s support for groups like Hezbollah in Lebanon or various Shia militias in Iraq and Syria constantly raises questions of attribution for breaches of international humanitarian law. Does providing funding, training, and weapons constitute sufficient direction or control to hold Iran responsible for specific violations committed by these groups? Or is it merely permissible support for allies, falling below the threshold of attribution? States adeptly exploit this ambiguity, maintaining plausible deniability while reaping strategic benefits through proxies, making definitive assignment of responsibility for breaches perpetrated by non-state actors a persistent and contentious challenge.

Adding another layer of opacity is the historical and potential contemporary reality of **Secret Treaties and Clauses: Breach in the Shadows**. While the VCLT emphasizes the primacy of the written agreement, history is replete with instances where public treaties were contradicted by secret annexes or parallel understandings, creating inherent contradictions and opportunities for clandestine breaches. The most infamous example remains the Molotov-Ribbentrop Pact (1939). Its public text proclaimed Nazi Germany and the Soviet Union’s non-aggression and non-interference. However, the secret protocols attached carved up Eastern Europe into spheres of influence, assigning Finland, Estonia, Latvia, Lithuania, and parts of Poland and Romania to the USSR, and western Poland to Germany. Stalin’s subsequent invasion of eastern Poland and actions against the Baltic states were thus, from the Soviet perspective, implementing a secret agreement, but from the perspective of international law and the targeted states, they constituted blatant acts of aggression violating the public pact and fundamental norms. This historical precedent raises enduring concerns. Could modern treaties, particularly in sensitive areas like intelligence sharing, military basing, or resource extraction, have undisclosed side agreements modifying public commitments? The practical difficulty of proving the existence of such secret clauses makes detecting breaches related to them exceptionally hard.



Furthermore, breaches themselves can occur clandestinely. States may covertly develop prohibited weapons systems, conduct illicit arms transfers, or engage in cyber intrusions aimed at espionage or sabotage, all while publicly professing adherence to the relevant treaties. Iran's alleged past activities at undisclosed nuclear facilities (like the Fordow enrichment plant revealed in 2009), potentially violating its NPT safeguards agreement before the JCPOA, demonstrate the challenge. Verification regimes, like IAEA inspections or Open Skies Treaty overflights (now defunct), aim to pierce this veil of secrecy, but determined states can employ sophisticated denial and deception techniques. The very existence of secret agreements, or the clandestine nature of certain violations, creates a parallel reality where public compliance masks private breach, fundamentally undermining transparency and trust in the treaty regime.

When breaches are exposed or alleged, states frequently invoke **Arguments of Justification: Necessity, Self-Defense, and Reprisal**. International law recognizes limited circumstances where conduct otherwise constituting a breach may be excused. However, these defenses are narrowly construed and highly contentious, often serving as contested justifications for actions widely condemned as illegal. The plea of *necessity* (ILC Article 25) requires that the act is the *only way* for the state to safeguard an essential interest against a grave and imminent peril, and that it does not seriously impair an essential interest of the state(s) to whom the obligation is owed or of the international community. Israel's construction of the West Bank barrier, ruled illegal by the ICJ in 2004 due to its route through occupied territory, was defended by Israel as a necessary measure to prevent terrorist attacks constituting an existential threat. The Court rejected this, finding the route violated proportionality and Palestinian rights, and that alternative, legal security measures existed. *Self-defense* (UN Charter Article 51) permits force in response to an armed attack. Its application is perennially disputed, particularly concerning pre-emptive or preventive strikes and responses to attacks by non-state actors. The U.S. drone strike program targeting terrorists in countries like Pakistan, Yemen, and Somalia, often without the consent of the host state, is justified as necessary self-defense against imminent threats. Critics argue these strikes violate sovereignty and international humanitarian law, contending the threat often does not meet the high threshold of "imminence" required by the *Caroline* criteria and that they constitute unlawful extraterritorial law enforcement. *Belligerent reprisals* – acts otherwise unlawful under international humanitarian law (IHL) taken to compel an adversary to stop its own violations of IHL – are subject to exceptionally strict conditions: proportionality, necessity (last resort), temporary nature, and cessation once the adversary complies. Their permissibility is highly controversial and heavily restricted; reprisals against civilians or civilian objects are absolutely prohibited. The doctrine is prone to abuse and escalation. While rarely formally invoked today, the tit-for-tat strikes between Iran and Israel in Syria, or accusations of disproportionate responses by parties in Yemen and Ukraine, often carry echoes of reprisal logic. States also invoke *force majeure* (unforeseeable, irresistible events making performance impossible) or *distress* (saving lives by breaching an obligation), but these face similar high bars. The invocation of these justifications is invariably scrutinized, with opposing parties and international bodies often finding them inapplicable, revealing them as attempts to cloak breaches in a veneer of legality.

Finally, the enduring legacy of coercion colors modern disputes in **The "Unequal Treaty" Debate in Modern Contexts**. Historically, "unequal treaties" referred explicitly to agreements like those imposed on Qing China or colonized peoples, extracted through superior force or threat, lacking reciprocity, and imposing

humiliating or exploitative terms. While the era of overtly coercive treaty-making is largely past, arguments about fundamental unfairness, asymmetry, and lack of genuine consent persist, influencing perceptions of legitimacy and potentially justifying demands for renegotiation or even non-compliance. Developing nations frequently argue that the structure of international economic agreements, particularly those negotiated under the GATT/WTO framework, inherently favors developed economies with greater negotiating leverage and pre-existing advantages. Debates surrounding the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) highlight this tension. While promoting innovation, TRIPS was seen by many developing countries as imposing costly intellectual property regimes that hindered access to affordable medicines and technology transfer, raising questions about equitable burden-sharing in achieving the treaty's objectives. Climate change negotiations are another flashpoint. The principle of "Common But Differentiated Responsibilities and Respective Capabilities" (CBDR-RC) embedded in the UNFCCC and its offspring (Kyoto, Paris) explicitly acknowledges historical disparities in contributions to the problem and differences in capacity to respond. Developing nations argue that imposing stringent, uniform emission reduction targets on them, without adequate financial and technological support from historical emitters, would constitute a modern form of inequity, potentially rendering compliance economically disastrous and morally unjust. While not typically framed as grounds for outright breach, this perceived asymmetry fuels demands for adaptation, greater support, and understanding if targets are missed, framing non-compliance as a consequence of systemic unfairness rather than bad faith. The continued presence of artifacts from colonial-era agreements, such as disputed borders or resource rights established under duress, can also resurface, with affected states arguing these obligations lack legitimacy. While the VCLT provides mechanisms for addressing treaties procured by coercion (Article 52), applying this to historical treaties is legally complex and politically explosive. The modern "unequal treaty" debate thus centers less on overt coercion and more on structural inequities, historical legacies, and differing capacities, shaping the political context in which compliance is assessed and breaches are alleged.

Navigating these gray zones – the fog of interpretation, the attribution labyrinth, the shadows of secrecy, the contested grounds of justification, and the echoes of historical inequity – reveals that the determination of treaty breach is rarely a purely legal exercise. It is deeply intertwined with power dynamics, strategic calculation, competing narratives, and the inherent challenges of applying abstract legal principles to a complex and ever-shifting geopolitical reality. Recognizing these controversies is essential for understanding why breaches occur, how they are contested, and the profound difficulties in achieving clear accountability. This understanding of the contentious ground upon which breaches are defined and assigned sets the stage for exploring how diverse cultures and philosophical traditions conceptualize the very act of breaking treaties – a journey into the profound ethical and normative dimensions underpinning *pacta sunt servanda* and its violation.

### 1.10 Cultural and Philosophical Perspectives on Treaty-Breaking

The preceding exploration of the contentious gray zones surrounding treaty breach – where interpretations clash, attribution blurs, justifications are contested, and legacies of inequity linger – underscores that the



determination of violation is never purely an objective legal exercise. It is inevitably filtered through distinct cultural lenses, shaped by deep-seated philosophical traditions, and weighed against competing ethical imperatives. Section 10 delves into this profound dimension: how diverse cultural traditions, ethical frameworks, and political philosophies conceptualize the very act of breaking agreements between polities. Examining these perspectives reveals that the gravity, legitimacy, and perceived consequences of treaty-breaking are not universally constant but are deeply embedded in specific worldviews about the nature of obligation, sovereignty, and the relationship between power and morality.

**Honor, Shame, and Trust in Diplomatic Cultures** highlights the varying weight societies place on personal integrity, reputation, and the sanctity of oaths in upholding commitments. Historical European diplomacy, heavily influenced by notions of monarchical honor and aristocratic *parole d'honneur* (word of honor), imbued treaties with a profound personal dimension for rulers. A breach was not merely a legal infraction but a deep stain on the sovereign's personal honor and the prestige of the state, potentially triggering not just legal consequences but duels or wars of vendetta. The elaborate oath-swearing ceremonies accompanying major treaties, like the Peace of Westphalia (1648), underscored this personal commitment before God and man. Violating such an oath invited divine retribution and profound social shame. This contrasts, though not entirely distinctly, with traditions emphasizing the binding power of written contracts and reciprocal benefit. Yet, even within Europe, the rise of *Realpolitik*, epitomized by figures like Cardinal Richelieu and later Otto von Bismarck, prioritized *raison d'état* over personal honor, viewing treaties as temporary tools of expediency to be discarded when interests shifted, though often cloaked in legalistic justifications to mitigate reputational damage. Conversely, Confucian thought, deeply influential in East Asian diplomatic traditions, elevates *xin* (信), meaning trustworthiness, sincerity, and keeping promises, to a fundamental virtue essential for harmonious relations, both personal and interstate. A ruler's failure to uphold *xin* was seen as a catastrophic failure of moral leadership, undermining the Mandate of Heaven and eroding the foundation of societal order. The concept of "losing face" in many Asian cultures carries a powerful social sanction linked directly to broken commitments. While modern international law emphasizes state consent and legal obligation, these cultural undercurrents – the weight of personal honor, the fear of shame, the centrality of trust (*xin*) – continue to subtly influence how states perceive the reputational costs of breach and the importance of maintaining reliable partnerships, shaping diplomatic rhetoric and the calculus of compliance beyond purely legal considerations.

**Realism vs. Liberalism: Philosophical Divides** offer fundamentally opposing views on the role and enforceability of treaties within international relations. The Realist school, tracing its lineage through Thucydides' account of the Melian Dialogue ("the strong do what they can and the weak suffer what they must"), Machiavelli, and modern thinkers like Hans Morgenthau and Kenneth Waltz, views the international system as inherently anarchic. States are rational, unitary actors locked in a perpetual struggle for survival and power. From this perspective, treaties are merely reflections of the prevailing balance of power at the moment of signing. They possess no inherent moral force or binding power beyond a state's continuing self-interest. Breach is not only predictable but essentially unremarkable; it is the natural consequence when the cost of compliance outweighs the perceived benefit or when power dynamics shift, creating new opportunities or vulnerabilities. Thucydides himself documented numerous breaches among Greek city-states driven purely

by perceived advantage. Realists expect treaties to be broken whenever vital interests are at stake, viewing mechanisms like international law and institutions as largely epiphenomenal, incapable of constraining powerful states pursuing core security objectives. They point to examples like the Nazi-Soviet Pact or the US withdrawal from the ABM Treaty as evidence of this immutable logic. In stark contrast, Liberal Institutional theory, drawing on Enlightenment thinkers like Kant and modern scholars like Robert Keohane, posits that cooperation under agreed rules is not only possible but essential for mutual gain in an interdependent world. Treaties, embedded within broader international institutions, create stable expectations, reduce transaction costs, facilitate reciprocity, and build trust over time. Breaches are therefore costly disruptions to this cooperative framework, damaging reputations, inviting reciprocal non-compliance, and undermining the entire system's ability to provide collective goods like security, open trade, or environmental protection. Liberals argue that even powerful states have a long-term interest in maintaining the rules-based order, as it ultimately enhances their security and prosperity more than unconstrained competition. They highlight the relative stability achieved through arms control treaties during the Cold War (when both sides broadly complied) or the success of the WTO dispute system (before its recent paralysis) as evidence that treaties *can* constrain state behavior and foster cooperation. This fundamental philosophical schism – between viewing treaties as ephemeral tools of power versus foundational pillars of order – profoundly shapes how different analysts interpret, predict, and respond to instances of treaty violation.

**Natural Law and Positivism: Sources of Obligation** delves into the jurisprudential foundations of why treaties *should* be binding, a question with deep implications for justifying breach. The Natural Law tradition, rooted in Greco-Roman philosophy (Cicero) and profoundly developed by medieval scholastics like Thomas Aquinas and later Hugo Grotius, posits that the binding force of agreements stems from a higher moral law inherent in nature or divine order. *Pacta sunt servanda*, under this view, is a fundamental principle of justice discoverable by reason, antecedent to and superior to the will of individual states. Treaties derive their obligatory force not merely from consent but because keeping promises is intrinsically right. Breach is therefore not just legally wrong but morally reprehensible, a violation of a universal ethical principle. Grotius, often considered the father of modern international law, grounded the sanctity of treaties firmly in this Natural Law foundation, arguing it was essential for any society of nations to function. Conversely, Legal Positivism, articulated most forcefully by figures like John Austin and H.L.A. Hart in the modern era, locates the source of legal obligation solely in the commands of a sovereign backed by the threat of sanction. Applied to international law, positivists argue treaties are binding *only* because states have consented to be bound (the principle of consent), and their obligations exist only within the positive legal framework created by that consent. There is no inherent moral obligation; the force of a treaty is derived entirely from the social fact of state practice and *opinio juris* (the belief that the practice is legally required). From this perspective, a breach is a violation of a positive legal rule, but its moral dimension is contingent, not inherent. The justification for breach, therefore, becomes a purely legal or political question – did circumstances absolve the state under positive law (e.g., *rebus sic stantibus*, self-defense)? Or was the cost of compliance simply too high given the lack of effective sanctions? The Nuremberg Trials grappled with this tension, convicting Nazi leaders for breaching treaties (like the Kellogg-Briand Pact) based partly on the idea that such agreements reflected fundamental principles of humanity (echoing natural law), even while operating within a largely

positivist procedural framework. The enduring debate shapes arguments about whether deeply immoral treaties (like historical “unequal treaties” imposed under duress) could ever be truly binding, and whether states can be morally compelled to breach treaties that require participation in grave injustices.

**The Ethics of Civil Disobedience in International Agreements** confronts the complex question of whether actors *within* a state can justifiably push for breach or withdrawal from treaties they deem profoundly immoral or harmful, drawing parallels to domestic civil disobedience. The tradition of civil disobedience, theorized by Thoreau, Gandhi, and Martin Luther King Jr., involves the public, non-violent breach of domestic law to protest injustice, accepting legal penalties to highlight the law’s moral failings. Can this logic extend to the international plane? Citizens, NGOs, legislators, or even dissenting government officials might argue that their state’s adherence to a particular treaty perpetuates grave wrongs, demanding that the state violate or exit the agreement. Protests against nuclear weapons treaties by groups like the Ploughshares movement, involving symbolic (and illegal) damage to weapon systems, explicitly frame their actions as civil disobedience against agreements they view as enabling mass destruction. More commonly, domestic political movements campaign for withdrawal. The campaign leading to the US exit from the Paris Agreement under President Trump was fueled partly by arguments (contested by climate scientists) that the treaty imposed unfair economic burdens and threatened national sovereignty – a form of political, rather than strictly legal or moral, disobedience. Conversely, individuals resigning from positions in protest, like Carla Del Ponte stepping down as Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY) over perceived lack of support for prosecuting NATO officials, represent an assertion of individual conscience against the state’s fulfillment of its international obligations. The ethical justification hinges on several factors: the severity of the perceived injustice perpetrated or enabled by the treaty (e.g., environmental destruction, perpetuating armed conflict, human rights abuses), the exhaustion of legal avenues for change (e.g., amendment procedures), the proportionality of the action (advocating breach vs. working within the system), and the willingness to accept consequences. This creates profound tension between the state’s international legal duty (*pacta sunt servanda*) and domestic actors’ perception of a higher moral duty to resist, raising difficult questions about democratic accountability and the locus of moral authority in foreign policy.

**The Concept of “Perfidy” and Treachery in Warfare** isolates a specific, universally condemned category of breach rooted in profound moral revulsion: the violation of agreements intended to protect the vulnerable or facilitate humanitarian functions within armed conflict, codified in International Humanitarian Law (IHL). Perfidy, as defined in Article 37 of Additional Protocol I to the Geneva Conventions, involves “acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence.” It exploits the very humanitarian restraints imposed by law to gain a military advantage, representing the ultimate betrayal of trust essential for even minimal civilization in war. Classic examples include feigning surrender by flying a white flag to lure enemy troops into an ambush, or misusing the distinctive emblems of the Red Cross/Red Crescent/Red Crystal to shield military operations. Such acts are not merely breaches; they are war crimes. The visceral taboo against treachery transcends specific legal systems, appearing in diverse warrior codes throughout history (e.g., medieval chivalry, Bushido) and cultural narratives condemning betrayal. This near-universal condemnation stems from the recognition that perfidy undermines the fragile

mechanisms designed to mitigate war's horrors. If surrender offers no safety, if medical personnel are targeted under their protected emblem, if humanitarian pauses are exploited for attack, then all incentive to adhere to *any* humanitarian rule evaporates, plunging conflict into unrestrained barbarity. Recent conflicts provide grim examples. Syrian regime forces have been repeatedly accused of perfidy, including reportedly luring civilians with promises of safe passage through “humanitarian corridors” only to detain or attack them. Houthi rebels in Yemen have been accused of disguising fighters as civilians and using ambulances for military transport. Russian forces in Ukraine faced allegations of feigning surrender during the battle of Mariupol to ambush Ukrainian troops. The specific prohibition and universal condemnation of perfidy highlight a crucial point: while states may debate the justification for other breaches based on interest or interpretation, the deliberate betrayal of trust established by humanitarian rules is viewed across diverse cultures as a uniquely reprehensible violation that corrodes the very possibility of restraint in warfare, meriting both legal sanction and profound moral censure.

Understanding these diverse cultural and philosophical perspectives is not an academic exercise; it illuminates the deep-seated values, beliefs, and strategic logics that inform state behavior and shape global reactions to treaty breaches. The tension between honor and expediency, the clash of Realist power politics and Liberal institutional faith, the debate over whether obligation springs from universal morality or mere consent, the ethical dilemmas of resistance, and the unique stigma attached to treacherous breaches – all these factors permeate the practical realities of treaty adherence and violation explored throughout this work. They reveal that *pacta sunt servanda*, while a foundational legal principle, exists within a complex ecosystem of human values and strategic calculation. This comprehension of the underlying normative landscape provides essential context as we turn our attention to the practical strategies employed to fortify treaty regimes against the ever-present risk of breach, exploring the mechanisms of prevention, compliance, and resilience designed to uphold the fragile edifice of international agreement.

### 1.11 Fortifying the Foundations: Prevention, Compliance, and Resilience

The rich tapestry of cultural norms and philosophical traditions explored in the preceding section underscores that adherence to treaties is not merely a legal imperative but is profoundly shaped by perceptions of legitimacy, honor, trust, and strategic calculation. Recognizing these deep-seated influences, alongside the complex motivations driving breaches and the often-limited effectiveness of *ex post facto* enforcement, logically shifts the focus towards proactive strategies. How can the international community fortify the foundations of treaty regimes *before* breaches occur? Section 11 examines the evolving toolbox of mechanisms designed to prevent violations, foster voluntary compliance, and enhance the resilience of treaty systems in the face of changing circumstances and enduring political pressures. This represents the constructive counterpoint to the analysis of breach – the ongoing effort to make *pacta sunt servanda* a lived reality through foresight, cooperation, and adaptability.

**Crafting Robust Agreements: Precision, Flexibility, and Inclusion** begins at the drafting table, where the seeds of future compliance – or discord – are often sown. Recognizing that ambiguity breeds disputes, negotiators increasingly strive for precision in defining obligations, particularly in technically complex or

politically sensitive areas. The Conventional Armed Forces in Europe (CFE) Treaty (1990), negotiated as the Cold War thawed, exemplified this meticulous approach. It included exhaustive, detailed definitions of treaty-limited equipment (tanks, artillery, armored combat vehicles, aircraft, helicopters), established precise numerical ceilings for each category within distinct geographical zones, and mandated intrusive verification protocols. This precision aimed to leave minimal room for subjective interpretation, thereby reducing the potential for inadvertent breaches or bad-faith claims of compliance. However, excessive rigidity can itself become a liability in a dynamic world. Thus, modern treaties increasingly incorporate deliberate flexibility mechanisms. The Montreal Protocol on Substances that Deplete the Ozone Layer (1987), arguably one of the most successful environmental treaties, masterfully combined clear, science-based phaseout schedules for specific ozone-depleting substances (ODS) with built-in procedures for adjusting these schedules based on periodic scientific assessments and technological advancements. Meetings of the Parties (MOPs), informed by expert panels, could accelerate phaseouts if science warranted or provide limited, temporary exemptions for developing countries facing genuine implementation challenges. This adaptability allowed the regime to respond effectively to new scientific understanding (e.g., recognizing the threat of hydrofluorocarbons, HFCs, later addressed by the Kigali Amendment) without requiring full renegotiation. Furthermore, inclusive negotiation processes that genuinely incorporate the concerns and capacities of diverse stakeholders – particularly developing states and marginalized groups – enhance perceived legitimacy and ownership, fostering a stronger intrinsic commitment to comply. The negotiation of the UN Convention on the Law of the Sea (UNCLOS) demonstrated this, incorporating the concept of the “common heritage of mankind” for the deep seabed, a major victory for developing nations. Conversely, agreements perceived as imposed by powerful states, even if technically sound, often face resistance and higher risks of non-compliance or withdrawal demands, as seen in critiques of certain intellectual property or investment rules. Robust treaty design, therefore, involves a delicate balancing act: precise enough to create clear obligations and enable verification, flexible enough to endure and evolve, and inclusive enough to generate genuine buy-in from all parties essential for its success.

**Transparency and Monitoring: Shedding Light on Compliance** acts as a powerful deterrent against deliberate violations and a crucial tool for identifying and addressing unintentional non-compliance. The premise is simple: states are less likely to cheat if they know they will likely be caught, and early detection of implementation problems allows for timely assistance before a minor lapse becomes a significant breach. Modern treaty regimes employ increasingly sophisticated monitoring arsenals. Mandatory state reporting is a common baseline, requiring parties to submit regular data on their implementation efforts, as seen under human rights conventions (like ICCPR), environmental accords (like UNFCCC), and arms control treaties (like the NPT). While reliant on self-disclosure, cross-checking mechanisms and analysis by treaty secretariats can flag inconsistencies. International inspections provide a critical layer of independent verification. The International Atomic Energy Agency (IAEA) safeguards system, underpinning the NPT, involves routine and challenge inspections of declared nuclear facilities, complemented by environmental sampling and satellite imagery analysis, designed to detect undeclared activities. The groundbreaking verification regime established for the Comprehensive Nuclear-Test-Ban Treaty (CTBT), though the treaty is not yet in force, includes a global network of seismic, hydroacoustic, infrasound, and radionuclide monitoring stations, cou-



pled with an On-Site Inspection (OSI) mechanism capable of investigating suspicious events. Technological advancements have revolutionized monitoring capabilities. Satellite imagery from commercial providers (e.g., Maxar, Planet Labs) and governmental programs allows near-real-time tracking of activities like deforestation (potentially breaching REDD+ agreements or national commitments), large-scale construction in disputed territories, troop movements near sensitive borders, or emissions from industrial facilities. Open-source intelligence (OSINT), utilizing publicly available information from social media, news reports, and shipping databases, empowers NGOs and researchers to act as independent watchdogs. Organizations like the Stockholm International Peace Research Institute (SIPRI) meticulously track global arms flows, while Human Rights Watch (HRW) and Amnesty International document violations of humanitarian law treaties using satellite imagery, witness testimony, and digital forensics. Whistleblowers, though operating at great personal risk, have also played pivotal roles in exposing breaches, from the Pentagon Papers revealing hidden aspects of the Vietnam War to revelations about mass surveillance programs potentially violating privacy protections in international covenants. This ecosystem of transparency – combining state reporting, international inspections, cutting-edge technology, and vigilant civil society – creates a powerful web of accountability, making clandestine breaches significantly harder to sustain and facilitating cooperative solutions for capacity-related non-compliance.

**Positive Incentives: Assistance, Capacity Building, and Benefits** move beyond the traditional deterrence model, recognizing that many instances of non-compliance stem not from ill will but from lack of resources, expertise, or tangible benefits. Proactively encouraging compliance through support and rewards fosters a more cooperative dynamic. Financial and technical assistance is often crucial for developing states struggling to meet demanding treaty obligations. The Montreal Protocol’s Multilateral Fund, established specifically for this purpose, provides billions of dollars to assist Article 5 (developing) countries in phasing out ODS by funding technology transfer, training, and industrial conversion projects. This model of “common but differentiated responsibilities” coupled with concrete support has been instrumental in the Protocol’s near-universal compliance and success. Similarly, the Global Environment Facility (GEF), serving as a financial mechanism for multiple environmental conventions (CBD, UNFCCC, Stockholm Convention on POPs), funds projects helping countries meet reporting requirements, develop national strategies, and implement conservation or pollution control measures. Capacity building programs focus on developing the human and institutional infrastructure necessary for compliance. The Organisation for the Prohibition of Chemical Weapons (OPCW) runs extensive training programs for national authorities responsible for implementing the Chemical Weapons Convention (CWC), covering declaration procedures, inspection preparedness, and safety protocols. The World Health Organization (WHO) assists states in strengthening core capacities required under the International Health Regulations (IHR), such as disease surveillance, laboratory diagnostics, and emergency response systems, vital for preventing and containing pandemics. Beyond assistance, linking treaty compliance to tangible benefits creates powerful positive reinforcement. The European Union’s Generalized Scheme of Preferences Plus (GSP+) grants significant tariff advantages to developing countries that ratify and effectively implement core international conventions on human rights, labor standards, environmental protection, and good governance. This “trade for compliance” approach incentivizes adherence by making market access contingent on meeting international obligations. Similarly, international financial

institutions may consider a country's environmental or governance record when making lending decisions. By addressing the root causes of capability-related non-compliance and aligning state interests with treaty goals through concrete benefits, these positive incentives build a more sustainable foundation for long-term adherence than solely relying on the threat of punishment.

**The Role of Domestic Implementation and “Compliance Pull”** highlights a crucial truth: treaties do not exist in a vacuum; their ultimate success hinges on being effectively woven into the fabric of national legal and political systems. The concept of “compliance pull,” developed by legal scholar Thomas Franck, suggests that treaties perceived as legitimate, fair, and aligned with state interests generate an internalized motivation to comply. Effective domestic implementation is key to realizing this pull. States employ two primary approaches: monism and dualism. Monist states (e.g., Netherlands, France) consider ratified treaties to be automatically part of domestic law, often taking precedence over conflicting statutes. Dualist states (e.g., UK, Canada, Australia) require explicit domestic legislation to incorporate treaty obligations into national law. The process of drafting, debating, and passing implementing legislation serves a vital function beyond mere technical transposition. It fosters domestic ownership, educates legislators and the public about the treaty's implications, and builds constituencies – within government bureaucracies, industry sectors, courts, and civil society – with a stake in the treaty's success. For instance, the complex process of implementing the WTO agreements within the US legal framework involved extensive congressional hearings and amendments to numerous statutes, embedding trade rules within domestic policy. Once incorporated, domestic courts play a critical role in enforcing treaty obligations against the state or private actors. Landmark rulings like the *Medellín v. Texas* case in the US Supreme Court (2008), though limiting the direct domestic effect of certain ICJ rulings without congressional action, underscore the intricate interplay between international obligations and domestic legal orders. National human rights institutions, independent judiciaries, and empowered regulatory agencies become essential enforcers on the ground. Furthermore, fostering a genuine culture of compliance within government ministries and agencies – where adherence to treaty obligations becomes a routine part of policy-making and administration – is vital. This requires training, clear lines of responsibility, and accountability mechanisms. The “compliance pull” is strongest when treaties resonate with domestic values, serve tangible national interests (e.g., environmental treaties protecting shared resources, trade agreements opening markets), and are championed by influential internal actors. When treaty norms become internalized domestically, they create powerful bulwarks against arbitrary breach driven by transient political pressures.

**Adaptive Governance: Treaty Management in a Changing World** acknowledges that even the best-designed treaties face the test of time. Geopolitical shifts, technological revolutions, unforeseen global events, and evolving scientific understanding can render original provisions inadequate or obsolete. Rigid treaties risk becoming dead letters or targets for withdrawal; adaptable ones can endure and remain relevant. Adaptive governance provides the toolkit for peaceful evolution. Formal amendment procedures, outlined in the treaty itself (e.g., requiring specific majorities for adoption and ratification), offer the clearest path but can be cumbersome. The Montreal Protocol's success is partly due to its relatively streamlined amendment process (adoption by two-thirds majority of parties present and voting), enabling crucial adjustments like the Kigali Amendment targeting HFCs. Subsequent practice of the parties can also shape treaty interpre-



tation over time, establishing new understandings of obligations. The Antarctic Treaty System (1959) has evolved significantly through subsequent measures adopted by consensus at Consultative Meetings, addressing new challenges like tourism, bioprospecting, and environmental protection without formally amending the core treaty. Agreed protocols can provide targeted modifications. The Kyoto Protocol (1997) was itself an implementation protocol adding binding targets to the framework UNFCCC. Managing treaty succession – ensuring continuity when states fragment or unify – is another critical aspect. The Vienna Convention on Succession of States in Respect of Treaties (1978) provides guidelines, but practice varies widely, often requiring pragmatic solutions like the “rolling over” of obligations or renegotiation, as seen with successor states of the Soviet Union and Yugoslavia navigating arms control and environmental commitments. Mechanisms for agreed suspension or temporary modification of obligations in response to crises can also preserve the core treaty while accommodating exceptional circumstances, though requiring careful safeguards against abuse. The Paris Agreement, while emphasizing progressive enhancement of NDCs, incorporates a Global Stocktake every five years to assess collective progress towards its goals, explicitly designed to inform and ratchet up national ambitions over time – a built-in mechanism for continuous, dynamic adaptation based on collective assessment. This capacity for peaceful change through established channels reduces the temptation for states to resort to unilateral breach or withdrawal when faced with changing realities, strengthening the long-term resilience of treaty regimes against the inevitable currents of global transformation.

Thus, fortifying the treaty system against breach is a multifaceted endeavor. It demands foresight in crafting clear, fair, and adaptable agreements; vigilance through robust transparency and monitoring; investment in building capacity and aligning incentives; deep integration within domestic legal and political systems to generate intrinsic “compliance pull”; and flexible mechanisms for managing change and resolving disputes peacefully. These strategies do not guarantee perfect compliance, nor do they eliminate the profound political pressures explored earlier. However, they represent the collective wisdom gleaned from centuries of diplomatic practice – a proactive toolkit designed to strengthen the bonds of commitment, minimize the friction points that lead to violation, and maximize the resilience of the international legal order in an unpredictable world. While breaches will inevitably occur, a system fortified by these pillars is better equipped to manage them, uphold accountability, and preserve the indispensable role of treaties as the bedrock of global cooperation. The enduring challenge of upholding *pacta sunt servanda* amidst the complexities of the 21st century, marked by rapid technological change, shifting power dynamics, and unprecedented global challenges, forms the critical focus of our concluding reflections.

## 1.12 The Future of Pacta Sunt Servanda in a Complex World

The intricate mechanisms for fortifying treaty regimes explored in Section 11 – from robust design and positive incentives to domestic implementation and adaptive governance – represent the international community’s evolving toolkit for upholding *pacta sunt servanda*. Yet, these proactive strategies unfold against a backdrop of profound and persistent challenges that will inevitably shape the future of treaty adherence. The principle that “agreements must be kept” remains indispensable, yet its application in the 21st century faces tests of unprecedented complexity, demanding clear-eyed assessment of enduring obstacles, emerging

vulnerabilities, and potential pathways towards a more resilient international legal order.

**Enduring Challenges: Power Asymmetry and Multipolarity** continue to cast a long shadow over the treaty system's efficacy. The fundamental difficulty of enforcing obligations against major powers, evident throughout history from Louis XIV's *réunions* to Russia's invasion of Ukraine, persists. In an increasingly multipolar world, characterized by the relative decline of US hegemony and the assertive rise of China, alongside significant regional powers like India, Brazil, and resurgent actors like Russia, the dynamics of constraint become even more intricate. The concentration of power, particularly the UN Security Council veto wielded by the P5, remains a critical weakness. Russia's repeated use of its veto to shield itself and its ally Syria from accountability for egregious breaches of international humanitarian law starkly illustrates how the collective security mechanism can be paralyzed by the very states whose compliance is most crucial. China's growing assertiveness, particularly in the South China Sea where it disregards the 2016 UNCLOS arbitral ruling, coupled with its strategic ambiguity towards aspects of the international order it deems Western-dominated, presents another layer of complexity. The risk is not merely selective enforcement but the potential fragmentation of treaty regimes along geopolitical lines. Climate negotiations exemplify this tension: while the US, EU, and many vulnerable nations push for accelerated ambition under the Paris Agreement, major developing economies like India understandably emphasize historical responsibility and the primacy of development needs, and strategic competitors may leverage climate commitments as bargaining chips in wider geopolitical contests. Initiatives like the Belt and Road Initiative (BRI) or AUKUS can create parallel structures potentially undermining universal treaty regimes. Furthermore, the diverse priorities of the "Global South" – encompassing states with vastly different economic models, governance systems, and strategic alignments – complicate the formation of cohesive coalitions needed to pressure powerful violators or uphold universal norms. Navigating this fragmented landscape requires unprecedented diplomatic agility to prevent the treaty system from fracturing into competing spheres of influence where *pacta sunt servanda* applies only selectively or within blocs, eroding its universalist aspiration.

Simultaneously, **New Frontiers, New Vulnerabilities** emerge at a pace that often outstrips the ability of existing treaty frameworks to adapt. The digital realm presents profound legal ambiguities. While the UN Charter's core principles (sovereignty, non-intervention, prohibition on force) apply, their translation to cyberspace is contested. Russia's disruptive cyber campaigns (NotPetya, SolarWinds), China's pervasive cyber-espionage and intellectual property theft, and disruptive attacks by non-state actors constantly probe the boundaries. Is a crippling cyberattack on critical infrastructure a "use of force"? What level of state involvement in cyber operations by proxy groups constitutes an "armed attack" triggering self-defense? Ongoing UN processes like the Open-Ended Working Group (OEWG) grapple with applying existing law and developing new norms, but progress is slow, and the attribution hurdle remains significant, creating ample space for deniable breaches. The advent of Artificial Intelligence (AI) adds another layer of complexity. The development and potential deployment of Lethal Autonomous Weapons Systems (LAWS) raise urgent questions about compliance with International Humanitarian Law (IHL) principles of distinction, proportionality, and meaningful human control. Current treaties offer little specific guidance. Efforts within the Convention on Certain Conventional Weapons (CCW) to address LAWS have stalled, highlighting the difficulty of preemptive regulation for rapidly evolving dual-use technologies. Similarly, advances in genetic engineering,

including CRISPR-Cas9, pose challenges to treaties like the Biological Weapons Convention (BWC), where verification is notoriously difficult and the line between peaceful research and offensive capabilities is perilously thin. The commercialization of space creates new friction points. The 1967 Outer Space Treaty's foundational principles – peaceful use, non-appropriation, avoidance of harmful contamination – are tested by the proliferation of actors, potential resource extraction (e.g., lunar water ice, asteroids), and the dual-use nature of technologies like on-orbit servicing satellites, which could be used for repair or sabotage. Russia's destructive 2021 anti-satellite (ASAT) test, creating dangerous debris in low Earth orbit, violated the spirit of “harmful contamination” and “due regard,” yet no specific prohibition exists. Deep-sea mining, governed by the complex International Seabed Authority (ISA) regime under UNCLOS, presents another frontier where environmental protection obligations under Part XI must be balanced against technological feasibility and commercial interests, creating potential flashpoints for disputes over compliance with environmental impact assessments and benefit-sharing mechanisms. The rapidity of technological change necessitates treaty regimes that are inherently more adaptive or frameworks capable of generating swift, specific protocols, lest critical activities occur in a governance vacuum prone to exploitation and violation.

Confronting both enduring power imbalances and novel threats requires a concerted effort towards **Strengthening Accountability: From Rhetoric to Reality**. While the *arsenal of response* (Section 7) exists, its consistent and effective application remains elusive. Enhancing the legitimacy and capacity of international courts is paramount. Overcoming jurisdictional limitations – such as the ICJ's requirement for state consent or the ICC's dependence on state cooperation and Security Council referrals – is politically fraught but essential. Initiatives like the proposed International Anti-Corruption Court (IACC) or efforts to bolster universal jurisdiction for core international crimes (genocide, crimes against humanity, war crimes) offer potential avenues, though they face significant resistance. The principle of universal jurisdiction, invoked in cases like the arrest warrant for former Chilean dictator Augusto Pinochet and ongoing investigations into Syria war crimes in European courts, demonstrates potential but also highlights political and legal hurdles. Sanctions, a primary tool, require refinement. Moving beyond broad, often counterproductive economic embargoes towards genuinely “smart” or targeted sanctions – focusing on specific individuals, entities, and sectors responsible for breaches while minimizing humanitarian harm – is crucial. The evolution of Magnitsky-style sanctions regimes, targeting human rights abusers and corrupt officials globally based on legislation in the US, EU, UK, Canada, and others, represents a step in this direction, though their geopolitical application is often selective. International coordination to combat sanctions evasion through cryptocurrencies, shell companies, and third-party states remains a major challenge. Empowering civil society and national human rights institutions as independent monitors and advocates is vital. NGOs like Bellingcat, utilizing open-source intelligence (OSINT), have played pivotal roles in documenting breaches in Ukraine and Syria, forcing states to respond. Supporting such actors, protecting whistleblowers, and ensuring access to information are key. Finally, fostering a genuine culture of compliance requires consistent leadership from major powers. When powerful states disregard rulings (like the US ignoring the ICJ's *Nicaragua* decision or Israel rejecting advisory opinions on the Occupied Territories) or withdraw from agreements (Paris, JCPOA), it severely undermines the credibility of the entire accountability architecture. Building robust, depoliticized mechanisms for verifying compliance and resolving disputes within treaty regimes themselves, insulated as

much as possible from great power vetoes, is an ongoing imperative. The proposed International Journalists' Rights Court (IJRC), though nascent, exemplifies innovative thinking towards specialized accountability.

The contemporary landscape is also characterized by **Treaty Networks and Regime Complexity: Strength or Weakness?** The proliferation of multilateral, regional, and bilateral treaties across overlapping domains creates a dense web of obligations. This complexity can be a source of resilience. Redundancy provides backup; if one regime fails or is paralyzed (like the WTO Appellate Body), others might offer alternative dispute resolution or reinforce norms (e.g., regional trade agreements incorporating environmental standards, human rights courts reinforcing universal treaties). The interaction between the UN Framework Convention on Climate Change (UNFCCC), its Paris Agreement, the Montreal Protocol (addressing ozone and now HFCs), and the International Maritime Organization (IMO) regulations on shipping emissions demonstrates how multiple regimes can tackle interconnected environmental problems, creating reinforcing pressures and sharing best practices. However, complexity also breeds confusion, contradiction, and opportunities for strategic manipulation. States can engage in “forum shopping,” choosing the treaty body or dispute mechanism most favorable to their position, or “regime shifting,” attempting to move negotiations to a venue where they hold more sway. Conflicts can arise between different legal obligations – for instance, WTO trade rules potentially conflicting with domestic environmental regulations implementing the Paris Agreement or CITES trade bans. The search for Malaysia Airlines Flight MH370 involved complex jurisdictional overlaps between aviation law (Chicago Convention), maritime law (UNCLOS), and search and rescue conventions, highlighting coordination challenges. The fragmentation of international law can lead to inconsistent interpretations of similar principles across different tribunals, creating uncertainty. Managing this complexity requires enhanced coordination between treaty secretariats, judicial dialogue between international courts, and principles for resolving normative conflicts, such as *lex specialis* (the more specific rule prevails) or *lex posterior* (the later in time prevails), though these are not always clear-cut. The challenge is to harness the inherent strength and adaptability offered by a networked system while minimizing the risks of fragmentation, conflict, and exploitation by states seeking to evade accountability.

**Conclusion: An Indispensable, Imperfect Tool** brings us full circle to the foundational tension illuminated throughout this examination of treaty breaches. *Pacta sunt servanda* is not a description of reality but a necessary aspiration – the bedrock principle upon which the precarious edifice of international order rests. Despite its persistent violation, the sheer volume, scope, and indispensability of treaties in the modern world – governing everything from postal services and air traffic control to nuclear non-proliferation and pandemic response – testifies to their irreplaceable role. They are the essential infrastructure of global cooperation, enabling states to manage interdependence, mitigate security dilemmas, and address transnational challenges that no nation can solve alone. The historical case studies, from the broken oaths of antiquity to the shattered promises of the 20th and 21st centuries, reveal the devastating costs of failure: war, environmental degradation, economic chaos, and the erosion of trust essential for collective action. Yet, the very persistence of the treaty-making endeavor, the continuous refinement of compliance strategies, and the unwavering (if often frustrated) demand for accountability underscore humanity's enduring recognition that anarchy is not a viable alternative. Treaties are imperfect instruments, vulnerable to power politics, shifting interests, interpretive disputes, and the relentless pace of change. Their enforcement mechanisms remain fragmented

and often inadequate against determined major powers. However, they represent the best available means to codify shared expectations, constrain the raw exercise of power, and build frameworks for peaceful co-existence and collaboration. The future of *pacta sunt servanda* hinges not on achieving perfect compliance – an unrealistic goal in a world of sovereign states – but on relentless vigilance: strengthening the tools of prevention and accountability where possible, adapting frameworks to new challenges with ingenuity, managing complexity wisely, and, above all, preserving the collective commitment to the ideal that promises made between nations, however difficult, must be promises kept. As Dag Hammarskjöld aptly noted, the purpose of the UN (and by extension, the treaty system it embodies) is “not to take men to heaven, but to save humanity from hell.” Treaties, for all their flaws, remain humanity’s indispensable, imperfect shield against that descent.