

Reconceiving State Engagement with International Law and Institutions in a Populist Era: Japanese Perspectives

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Project Team

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This 5-year project (2022-2027) seeks to address the fundamental problem of how to reconceive engagement by states with the international legal order ('ILO'), in the face of an apparent backlash against it. States that have traditionally been supporters or architects of the international legal order have started turning against it. Further domestic populist politics in some states have successfully portrayed international norms and institutions as elitist and anti-sovereign, antithetically opposed to the will of the 'people' and state national interests. Our project seeks to evaluate the origins, impact and evolution of scepticism towards the legal norms and architecture of the international community. It does so in four case study countries with populist domestic politics (India, Philippines, UK, US) and in four key international institutions (UNSC, UNHRC, WHO & WTO). The project also aims to examine the attitude and responses of international law supporting states – such as Japan – to rejections of, or attacks on international law from other states. How can states that support the ILO navigate backlashes against it?

Research questions: The following questions (RQs) guide the project enquiry:

RQ1: Why and in what ways have states disengaged from/undermined the ILO in the period 2014-25?

RQ2: How do differing views of international law affect state engagement in international institutions?

RQ3: How do the structure, politics and changing nature of international law influence and affect domestic politics?

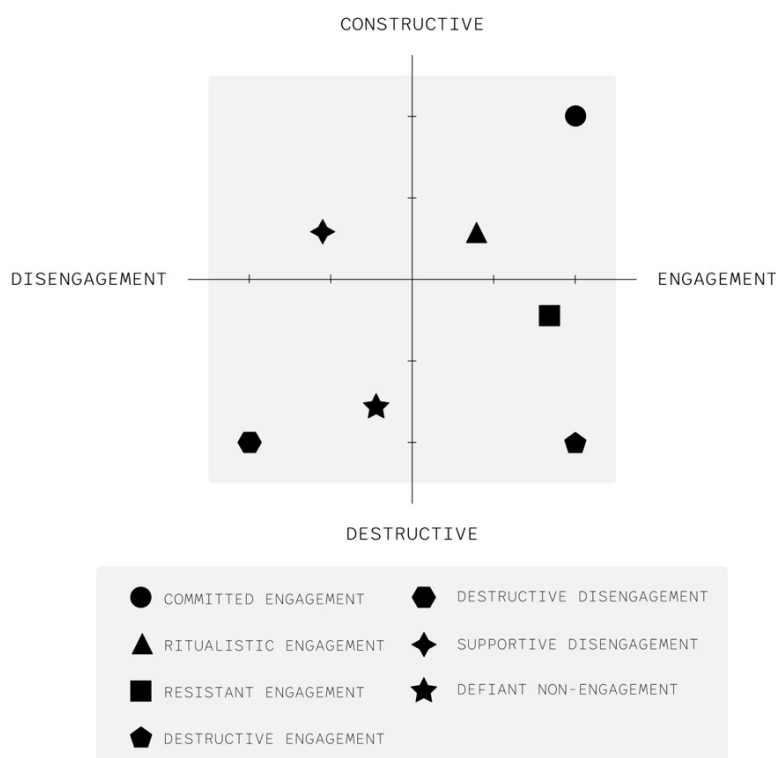
RQ4: How might state interaction with the ILO be reconceived so as to maximise forms of committed engagement, and minimise disengagement?

Case-study explanations: institutional fieldwork sites: The project seeks to evaluate the engagement of the four focus states in the international institutions tasked with promoting peace, trade, public health and human rights.

- While the impact of the backlash against international law and institutions has been less evident in the *UNSC* than on the other three focus institutions, the Security Council's failure to take or support assertive action in the face of COVID-19 reflected a weakening commitment by unease by its permanent members, particularly the US, in the utility/desirability of responding collectively to global problems.
- The US and the Philippines have been highly critical of *UNHRC* attempts to monitor their rights records. The US, key in setting up the UNHRC, withdrew from it in 2018, the first Trump administration accusing it of being ineffective and protecting human rights abusers.
- The *WHO* was at the epicentre of controversy as the COVID-19 crisis unfolded, illustrating all too clearly the consequences of the failure of cooperative multilateralism to halt the escalation of a global pandemic. The intense criticism levelled at WHO by the first Trump administration, compounded by the US withdrawal of funding, represented the culmination of sustained scapegoating of expert knowledge and global governance bureaucracies.
- The *WTO* was the site of extreme backlash at the hands of the US Trump administration, which blocked the appointment of Appellate Body members, robbing the WTO's dispute settlement mechanism of its legal force. A solution was sought outside the institution with the creation of the temporary Multi-Party Interim Appeal Arbitration Agreement (MPIA). While 22 WTO members have joined the MPIA there are notable exceptions including all four of our case study countries.

A framework for engagement: mapping state behaviour: Our initial work on the project has resulted in an original analytical framework to map state engagement with international law.¹ We identify two spectrums of modes of engagement behaviour (from disengagement to engagement; and from destructive to constructive), as a means of charting various positions taken by states when participating (or refraining from participating) in international institutions. We note that state *rhetoric* may be distinguished from state *action*; and that where a state shifts on our planes of engagement may shift over time, and between institutions. Various positions may then be plotted on our framework as below:²

QUADRANTS OF ENGAGEMENT



Committed Engagement indicates a situation where a state is pro-active in rhetoric and action to advance the goals, values and rationale of the legal order in its engagement with institutions.

Ritualistic Engagement is state's participation/rhetoric in or on the institution that is perfunctory, formalistic, ceremonial and reiterative, and largely superficial.

Resistant Engagement is state engagement with an institution that is obstructive to the institution's goals, values and rationale.

Destructive Engagement is where a state's engagement goals are not to reinforce, reform or transform an institution, but to overwhelm it or entirely change its premises, purposes and values.

Supportive Disengagement could be disengagement that ultimately stimulates other states to cooperate to the goals of the institution and does not challenge the legitimacy or goals of the institution.

Defiant Non-Engagement is where a state questions a regime and fails to engage with it: but does not wholly undermine its legitimacy or block its operation.

Destructive Disengagement is where a state actively undermines the legitimacy and operations of the institution before withdrawing altogether.

¹ Peter Danchin, Jeremy Farrall, Jolyon Ford, Shruti Rana & Imogen Saunders 'Reconceiving Engagement with International Law and Institutions in a Populist Era' (forthcoming, 2025).

² (Diagram from forthcoming article: not for publication, reproduction, or use with consent of the project team).