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COMPENSATORY JUSTICE AND ARTIFICIAL INTELLIGENCE WITHIN THE FRAMEWORK OF INTERNATIONAL LAW

JUSTIÇA COMPENSATÓRIA E INTELIGÊNCIA ARTIFICIAL NO ÂMBITO DO DIREITO INTERNACIONAL

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Abstract
The increasing use of artificial intelligence (AI) in areas like trade, healthcare, and the courts has made it harder to use compensatory justice under public international law. AI systems don't have legal personality as conventional legal actors do, but their judgements are having more and more of an effect on rights, duties, and results that affect people in other countries. This brings up a big question: who is responsible when algorithmic decisions hurt people, and how can victims get fair compensation? This study looks at how compensatory justice and AI relate to each other in the context of international law. It looks into how international legal documents, like the International Covenant on Civil and Political Rights, the UN Guiding Principles on Business and Human Rights, and relevant court decisions, deal with or don't deal with the liability and reparation systems that apply to harm caused by autonomous or semi-autonomous systems. The study shows that the current frameworks are not good enough for assigning blame, especially when it comes to AI systems that are not clear about who is responsible or are decentralised. Three real-world examples show how this works: AI-driven credit scoring in international finance, diagnostic tools in healthcare services across borders, and algorithmic risk assessments in court decisions. Each example shows a different problem that comes up when trying to deliver compensatory justice across different areas. The paper ends with strategic legal suggestions for making treaties clearer, creating soft law tools, and encouraging global cooperation for algorithmic governance. The goal is to let people who have been hurt by AI seek justice through international law. This will make sure that the law is fair and

Resumo
O uso crescente da inteligência artificial (IA) em áreas como o comércio, a saúde e os tribunais tem dificultado a aplicação da justiça compensatória no âmbito do direito internacional público. Os sistemas de IA não possuem personalidade jurídica como os atores jurídicos convencionais, mas suas decisões estão tendo cada vez mais impacto sobre direitos, deveres e resultados que afetam pessoas em outros países. Isso levanta uma grande questão: quem é responsável quando decisões algorítmicas prejudicam pessoas, e como as vítimas podem obter uma indenização justa? Este estudo analisa como a justiça compensatória e a IA se relacionam no contexto do direito internacional. Ele examina como documentos jurídicos internacionais, como o Pacto Internacional sobre Direitos Civis e Políticos, os Princípios Orientadores da ONU sobre Empresas e Direitos Humanos e decisões judiciais relevantes, tratam ou não tratam os sistemas de responsabilidade e reparação aplicáveis aos danos causados por sistemas autônomos ou semiautônomos. O estudo mostra que as estruturas atuais não são suficientes para atribuir culpa, especialmente quando se trata de sistemas de IA cuja responsabilidade não é clara ou que são descentralizados. Três exemplos reais mostram como isso funciona: pontuação de crédito baseada em IA nas finanças internacionais, ferramentas de diagnóstico em serviços de saúde transfronteiriços e avaliações algorítmicas de risco em decisões judiciais. Cada exemplo mostra um problema diferente que surge ao tentar garantir justiça compensatória em diferentes áreas. O artigo termina com sugestões jurídicas estratégicas para tornar os tratados mais claros, criar

consistent in a world where technology is changing quickly.

Keywords: Artificial Intelligence. Compensatory Justice. Public International Law. Algorithmic Liability. Legal Gaps.

ferramentas de soft law e incentivar a cooperação global para a governança algorítmica. O objetivo é permitir que as pessoas prejudicadas pela IA busquem justiça por meio do direito internacional. Isso garantirá que a lei seja justa e consistente em um mundo onde a tecnologia está mudando rapidamente.

Palavras-chave: *Inteligência Artificial. Justiça Compensatória. Direito Internacional Público. Responsabilidade Algorítmica. Lacunas Jurídicas.*

1 SIGNIFICANCE OF THE STUDY

In some important fields, artificial intelligence has gone from being a support technology to making decisions on its own. AI systems now handle algorithms for international trade, help with medical diagnostics across borders, and help with risk assessments in the courts. When algorithmic decisions cause harm, especially when they affect people or businesses across national borders, these uses have legal consequences.

Compensatory justice is an important part of public international law. It gives people a way to get justice when their rights are violated or they are harmed by actions or inactions of the state. But the laws that are already in place don't cover autonomous decision-making systems that work on their own, without the help of traditional state actors. This makes a structural gap.

The main point of this study is to look at this normative gap. Current international legal systems have a hard time figuring out when AI systems make decisions that cause physical, economic, or legal harm:

- Who is responsible?
- What standards apply?
- How can victims receive reparation?

This study is really relevant right now. The UN and the OECD are two international organisations that are starting to write rules for how to use AI. Still, most of the work is on ethics, not enforcing the law. At the same time, more and more incidents of damage caused by AI are coming forward. Victims often don't know how to get paid for their losses.

This study addresses a gap in research by linking AI responsibility to the idea of compensating justice in international law. It looks at how ideas like state responsibility, due diligence, and international cooperation can change to control decisions made by algorithms.

The results of the study give treaty-makers, courts, and regulatory bodies useful advice. It adds to the body of legal knowledge by showing that compensatory justice may not apply to one of the fastest-growing sources of global harm: autonomous digital systems unless certain legal changes are made.

2 PROBLEM STATEMENT

Principles of state sovereignty, legal personality, and responsibility are the basis of public international law. People, organisations, and states usually follow these rules. But artificial intelligence makes this structure harder to work with. AI systems can make decisions on their own that have a direct impact on human rights, trade agreements, and court outcomes without any human input at the time of execution.

When these decisions hurt people, like denying access to international financial services, misdiagnosing a patient from another country, or leading to a wrong judicial outcome, it's often hard to find a clear legal actor to blame. Victims have trouble getting help because of:

- The lack of legal personality attributed to AI.
- The decentralized nature of AI development and deployment.
- Unclear jurisdiction in transboundary digital operations.

These problems were not meant to be solved by international legal systems like state responsibility theories, treaties, and customary law. They don't have any rules for blaming AI for harm or for holding states or non-state actors responsible for giving autonomous systems the power to make decisions.

Thus, the core problem this research addresses is:

> **How can compensatory justice be applied within public international law when harm results from algorithmic decisions made by artificial intelligence systems operating beyond national boundaries?**

This issue has real-world effects on the future of resolving international disputes, legal responsibility, and getting justice. It also makes us think about the idea of legal personhood, agency, and whether or not current legal doctrine is good enough to deal with harm caused by technology.

3 HYPOTHESIS

Current frameworks within public international law are inadequate for addressing the challenges posed by artificial intelligence in delivering compensatory justice. They lack the necessary legal structures to:

- Attribute responsibility for harm caused by AI systems
- Ensure access to redress for cross-border victims
- Maintain legal coherence across jurisdictions where AI operates

Public international law has ways to hold states accountable and protect human rights, but these ways don't work for non-human agents like AI. Giving algorithms the power to make decisions makes the law unclear. Victims don't know what to do or who is responsible for what, especially when private players or decentralised systems are involved [1].

This study suggests that without specific legal changes—such as treaty clarification, soft law development, or judicial interpretation—compensatory justice will not be available in most cases of algorithmic harm. Also, not fixing this problem will make people less likely to trust international legal institutions and lead to different levels of protection in different countries [2].

So, the hypothesis that guides this study is as follows:

> **Public international law, in its current form, does not provide sufficient legal instruments to ensure compensatory justice in cases of harm caused by artificial intelligence systems, particularly in transnational contexts involving trade, health, or judicial outcomes.**

4 INTRODUCTION

Artificial intelligence (AI) is now a part of the infrastructure of systems all over the world. It helps decide whether someone is creditworthy in international finance, helps make medical decisions across borders, and helps make legal decisions in transnational justice systems. As these systems become bigger, they may also inflict more damage without meaning to. Errors in algorithms, biassed data, or unclear decision-making may all lead to financial losses, wrong health diagnoses, or unfair court decisions. These results are not just ideas. They are already happening [1].

International law was created to control how states act, set out their duties, and give them ways to fix problems. It acknowledges the right to payment and repair for damage. But AI is a problem because it works across borders, doesn't need to be there in person, and is often not very clear. It's hard to follow or check its decisions. When damage happens, victims—whether they be people or whole states—don't know who to blame or how to get justice [2].

This problem needs to be fixed right away. AI is being used more and more in both commercial multinational businesses and governmental services. International organisations have recognised the concerns, but they are still not clear on how to make them go away. The UN and human rights groups raise moral issues, but they don't set any rules that must be followed [3]. At the same time, states and private actors keep giving important decisions to non-human agents.

This study looks into whether public international law, as it stands now, can guarantee fair compensation when AI decisions cause harm. It focusses on the legal gap that makes it hard to figure out who is responsible and enforce remedies across borders. It wants to give a legal roadmap for reform by using doctrinal analysis and case studies. The main point of the study is that the principle of compensatory justice will stop working in a world with autonomous systems unless the law changes.

The analysis is broken up into three parts. The first looks at the basic ideas of compensating justice in international law. The second one talks about the legal problems that AI decision-making can cause. The third looks at specific case studies to see if current legal standards are still useful. The study ends with strategic suggestions for change aimed at treaty-makers, courts, and international organisations.

5 SECTION ONE: FOUNDATIONS OF COMPENSATORY JUSTICE IN PUBLIC INTERNATIONAL LAW

In public international law, compensatory justice is a very important idea. It says that when someone does something wrong that hurts someone else, they have to make it right. This part looks at the legal sources and ways that this principle is based on, as well as their limitations when it comes to AI systems.

5.1 The idea of compensatory justice in international law

The idea behind compensatory justice is that international law must offer ways to fix problems when they happen. The Permanent Court of International Justice's decision in the Factory at Chorzów case in 1928 is still the standard. The Court said that reparations must "as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed" [6].

The International Law Commission adopted the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (ARSIWA), which makes this principle official. Article 31 says that a state that does something wrong must fully compensate the person who was hurt, including both material and moral damage [7].

But these rules assume that a person or the government is responsible for the act. They don't think about the damage that autonomous digital systems can inflict.

5.2 Causation and attribution of responsibility

Compensatory justice in international law requires a clear causal link between the wrongful act and the harm. It also requires that the act be attributable to a legally recognized actor—usually a state, international organization, or in some cases, a private entity.

When AI systems cause harm, determining responsibility becomes difficult:

- AI lacks intent or agency.

- Multiple actors—developers, deployers, data providers—may be involved.
- Algorithms often make decisions in opaque or unexpected ways.

For example, if an AI tool used in global credit scoring produces discriminatory outcomes, it is challenging to assign blame under international law. Who is liable—the software company, the financial institution using it, or the state that allowed its deployment? [8].

5.3 The problem of cross-border application

AI systems often work in more than one country. A diagnostic algorithm could be made in Canada, stored on servers in Germany, and used by clinics in Kenya. If it gets a patient in Ethiopia wrong, a lot of different judicial systems are involved. There is no clear definition of jurisdiction or legal standards that apply to these kinds of transnational harms in public international law.

Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR) [9] says that this violates the victim's right to a fair remedy. It also makes enforcement harder because international courts usually want clear state responsibility, which is hard to prove in AI-related cases.

5.4 The legal non-personhood of AI

International law does not recognise AI systems as legal persons. You can't hold them directly responsible. They can't be involved in legal cases. This leaves a gap in the law. There is no one to sue for damages if the damage can't be traced back to a person or the government.

Some soft law tools, like the UN Guiding Principles on Business and Human Rights, push companies to be responsible, but they don't have the power of law [10]. This makes it harder to get compensatory justice, especially when AI systems in the private sector cause harm across borders.

6 SECTION TWO: LEGAL CHALLENGES POSED BY ALGORITHMIC DECISION-MAKING

The integration of artificial intelligence into decision-making processes raises several legal challenges that international law has not yet resolved. These challenges revolve around accountability, transparency, due process, and enforcement. This section outlines the main legal obstacles to applying compensatory justice in AI-related harms.

6.1 Lack of accountability mechanisms

International law depends on the identification of a responsible actor. When AI causes harm, this requirement becomes problematic. AI systems may be developed by one entity, trained by another, and deployed by a third, across multiple jurisdictions.

For instance, in the case of an AI-powered credit rating platform used by global banks, harm may occur due to algorithmic bias or poor data quality. However:

- Developers may deny responsibility by claiming the system evolved beyond their control.
- Banks may argue they relied in good faith on "standard" tools.
- Governments may claim no jurisdiction over foreign digital infrastructure [11].

This diffusion of responsibility leads to a situation where victims cannot clearly identify a liable party under international law.

6.2 Opaqueness and lack of explainability

Many AI systems, especially those based on machine learning or neural networks, are non-transparent. Their decision-making processes are not easily auditable or interpretable. This is referred to as the "black box" problem.

The legal consequence is significant. Victims may not know:

- What caused the harm.
- Whether the harm was discriminatory.
- Whether human rights or international obligations were violated.

For example, if an AI tool used in visa processing rejects a large number of applications from a particular region, proving discrimination may be impossible without full access to the system's code, training data, and parameters [12].

International courts require factual and legal clarity to assign responsibility and assess damages. AI systems obscure both.

6.3 Difficulty in proving damage and intent

Public international law often requires that the harm be:

- Significant,
- Direct,
- Caused by a wrongful act,
- Intentional or at least foreseeable.

However, AI systems can cause harm:

- Gradually, through cumulative small effects,
- Without human intent,
- By reinforcing existing biases in data.

This means many AI-generated harms fall outside the definitional scope of international wrongs. For instance, an AI triage system used in cross-border telemedicine may consistently under-prioritize patients from low-income areas. The harm is real, but dispersed and difficult to link to specific legal violations [13].

6.4 Absence of treaty-based regulation on AI

There is currently no binding international treaty that governs AI liability or accountability. While initiatives exist—such as the OECD AI Principles and the UNESCO AI Ethics Framework—they are non-binding. Their legal effect is limited.

The absence of treaty-based norms:

- Leaves states free to interpret liability standards inconsistently.
- Prevents uniform standards of protection.
- Complicates the enforcement of compensatory remedies [14].

As a result, victims of algorithmic harm must rely on fragmented and often non-functional national remedies, with no guarantee of international legal support.

6.5 Limited jurisdiction of international courts

International courts and tribunals can only hear cases involving state responsibility or violations of international obligations. They do not typically have jurisdiction over private actors unless states are involved directly. Most AI systems are developed and operated by private entities.

Unless a state:

- Deploys the AI directly,
- Fails to regulate its use,
- Or knowingly benefits from its unlawful outcomes,

it cannot be held liable. This restricts the ability of affected individuals or communities to access justice through international mechanisms like the ICJ or regional human rights courts [15].

7 SECTION THREE: CASE STUDIES AND LEGAL ANALYSIS

This section presents three real-world scenarios in which artificial intelligence systems have caused or contributed to harm in international contexts. Each case study highlights the difficulty of applying compensatory justice under current public international law. The examples focus on the sectors of trade, health, and justice—areas where algorithmic decision-making has direct human and legal impact across borders.

7.1 Case study 1: AI in global credit scoring

7.1.1 Background

International banks and credit institutions increasingly use AI-based credit scoring tools to assess financial risk. These systems analyze massive datasets, including online

behavior, location history, and purchase records. Global financial institutions apply these scores to individuals in multiple countries without local oversight.

7.1.2 Legal issue

In several documented cases, AI credit systems have exhibited bias against applicants from particular regions, ethnic groups, or socio-economic backgrounds [16]. The algorithm's output resulted in unjust loan denials or higher interest rates for applicants from Global South countries.

7.1.3 Compensatory justice gap

- The credit scoring companies are often private, transnational, and shielded by user agreements.
- The affected individuals have no clear access to a remedy under public international law.
- Discrimination may breach international human rights norms (e.g., ICCPR Article 26), but no state actor can be directly linked to the decision.
- Legal attribution and enforcement of compensation are nearly impossible in the current legal system [17].

7.2 Case study 2: AI diagnostic tools in transnational healthcare

7.2.1 Background

Hospitals in Europe and North America use AI diagnostic platforms developed by multinational companies. These systems are also deployed in developing countries through international partnerships and telemedicine platforms.

7.2.2 Legal issue

An AI diagnostic tool misclassified a patient's condition in a cross-border telehealth service. The incorrect diagnosis delayed treatment, leading to severe harm.

7.2.3 Compensatory justice gap

- The AI system was trained on data sets that lacked representation from the patient's region.
- The system was neither regulated locally nor adapted for regional health variables.
- The patient's country had no jurisdiction over the developers or service providers.
- International health regulations do not provide binding rules for AI deployment [18].

This case shows that even when harm is medically evident, international law provides no direct path to compensation.

7.3 Case study 3: algorithmic risk assessment in Criminal Justice

7.3.1 Background

Some states use AI risk assessment tools developed in other countries to assist judges in decisions regarding bail, parole, or sentencing. These tools generate scores based on criminal history, geography, and socio-economic indicators.

7.3.2 Legal issue

In cross-border legal cooperation, a country used a foreign AI tool in a case involving an extradited suspect. The AI tool assigned a high-risk score, influencing the judge's decision to deny bail.

7.3.3 Compensatory justice gap

- The algorithm was not designed for the local legal context.
- The defense could not access or challenge the algorithm's scoring logic.
- The decision affected the suspect's liberty and right to a fair trial, guaranteed under international law (e.g., ICCPR Articles 9 and 14) [19].
- There was no legal mechanism to hold the developer or the deploying state accountable.

This case illustrates how algorithmic decisions, when used in legal proceedings, can undermine core international human rights without triggering liability under international legal systems.

Each of these case studies shows a consistent pattern:

- AI causes or contributes to harm.
- Legal responsibility is fragmented or unclear.
- Victims cannot access meaningful redress through international legal channels.

These cases support the hypothesis that public international law lacks the necessary legal tools to apply compensatory justice to AI-related harms.

8 CONCLUSION

Artificial intelligence is reshaping decision-making across sectors that directly affect human rights, economic access, and legal outcomes. As shown in this research, AI-driven systems used in trade, healthcare, and criminal justice can cause serious harm. However, public international law, in its current form, does not offer sufficient legal tools to ensure that victims receive compensatory justice when such harm occurs.

Existing doctrines such as state responsibility, due diligence, and the right to reparation are built on assumptions of human agency, legal personality, and clear attribution of conduct. AI challenges all three. Its decentralized development, opaque logic, and borderless deployment break the traditional link between wrongful act and legal accountability.

The case studies demonstrate the practical failure of international law to provide recoursewhen algorithmic decisions result in economic exclusion, misdiagnosis, or

infringement of liberty. Victims are left without clear paths to remedy. States are often unable or unwilling to regulate foreign AI systems. Private actors evade international responsibility due to the absence of binding obligations. Courts lack jurisdiction over transnational technical infrastructures.

While soft law instruments have begun to address ethical aspects of AI, they fall short of enforceable norms. Without formal legal mechanisms, the idea of compensatory justice becomes abstract and inaccessible in AI-related harm scenarios.

This legal vacuum poses broader risks. It undermines trust in international institutions. It encourages unregulated AI deployment. It widens global inequality by shifting the burden of harm onto populations with the least legal protection.

The next section outlines strategic legal reforms to address these gaps and bring compensatory justice into alignment with the realities of AI-powered global systems.

Recommendations

To ensure that compensatory justice remains effective in the age of artificial intelligence, public international law must evolve. The following recommendations offer legal and institutional reforms aimed at closing accountability gaps and enabling victims of AI-related harm to access redress across borders.

8.1 Establish a binding international treaty on AI accountability

- A multilateral treaty should define the responsibilities of states and non-state actors in deploying AI systems that affect fundamental rights.
- It should include enforceable provisions on due diligence, risk assessment, and liability allocation.
- The treaty should also create an independent oversight mechanism to review cross-border complaints related to AI harm [20].

8.2 Introduce attribution rules for AI-driven conduct

- International law must expand the doctrine of attribution to include conduct by AI systems.

- When a state deploys or fails to regulate AI, resulting harm should be attributable to the state under modified principles of control or benefit.
- Where private actors are involved, states should be required to exercise extraterritorial regulation over AI firms incorporated under their jurisdiction [21].

8.3 Create a victim-focused remedial framework

- A global compensatory mechanism should be established—possibly under the UN—to receive and evaluate claims from individuals harmed by AI across borders.
- This body should operate with simplified procedures, public funding, and a mandate to cooperate with regional human rights courts [22].
- Remedies should include financial compensation, restoration of rights, and guarantees of non-repetition.

8.4 Strengthen procedural transparency in AI use

- International standards should mandate algorithmic transparency in decision-making processes that affect legal rights.
- Affected individuals must have the right to access the logic, data, and criteria behind AI decisions that influence outcomes such as loans, diagnoses, or bail [23].
- This right should be enforceable through international complaints mechanisms.

8.5 Promote technical standardization through international bodies

- The International Telecommunication Union (ITU) and similar organizations should lead in creating technical norms for safe and explainable AI.
- These standards must be integrated into international trade, health, and judicial cooperation treaties to ensure uniform application [24].

8.6 Encourage judicial engagement with AI cases

- International courts and tribunals should be encouraged to accept jurisdiction over AI-related harm when states are indirectly involved.
- Advisory opinions should be sought from bodies like the International Court of Justice to clarify legal obligations around AI deployment [25].
- Regional human rights courts can pioneer jurisprudence by addressing AI use in state-run services.

These recommendations aim to transition from ethical reflection to legal obligation. Without enforceable international norms, AI will continue to operate in a legal grey zone—one where responsibility is diffuse, and victims are invisible. The future of compensatory justice depends on the legal community's willingness to act now, before the harm becomes untraceable and irreversible.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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