




Chapter 14

Is International Law “Law”?

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Introduction

In terms of international law, there is high contestation and a long-standing debate on whether international law falls under the accepted view of ‘law’.¹ One school of thought states that international law establishes standards and norms that are accepted by nations, organisations, and individuals, consequently establishing guidelines for conduct in areas such as trade, the environment, and human rights. The legally binding responsibilities established by treaties, conventions, and customary practices – which governments often abide by – illustrate the regulative power of its law.²

John Austin, one of the lead minds who did not regard international law as law, construed law as “orders of a sovereign backed by the threat of sanctions; the view that the function of law is to identify delicts (conduct characterised as illegal), which are the condition of a sanction (a coercive act against the law-breaker)”. Austin further argued that affording the title of “law” to international law is improper, furthermore claiming that the duties that it imposes are “enforced by moral sanctions: by fear on the part of nations, or by fear on the part of sovereigns, of provoking general hostility, and incurring its probable evils, in

1 Kwarteng “Is international law really law?” 2018 *Asian Research Journal of Arts & Social Sciences* 1– 9

2 See above the Kwarteng article, n2.

case they shall violate maxims generally received and respected.”³ Essentially, Austin argues that since international law does not have a centralised authority or binding legal consequences, it is not law in the traditional sense. Rather, it is upheld by the majority of the global community and imposed via moral pressure and the threat of retaliation. States abide by these regulations to prevent discord and the unfavourable effects of breaking norms that are generally acknowledged and recognised by other countries.

This paper aims to clarify whether the absence of a centralised enforcement mechanism undermines the classification of international law as true ‘law. To answer this question, this paper first defines what ‘international law’ is and what is meant by centralised enforcement and its necessity. Then, it will draw into focus the challenges caused by the absence of a dependable and authoritative worldwide enforcement organisation by contrasting the national and international contexts of law. Finally, other strategies that aim to maintain accountability and compliance within the framework of international law in the absence of a centralised enforcement mechanism, such as state responsibility and legal certainty, are explored.

What Is International Law?

International law is the self-constituting body of law that aims to unite all human societies. It is the realisation of an international society’s and all societies’ common interests through the application of law. All human societies – including the types of societies commonly referred to as “states” – can freely choose and act according to the legal relations of international law.⁴

Conceptualisation of Centralised Enforcement in the Context of Domestic Law and International Law

A centralised enforcement authority is a body or department that has the jurisdiction to impose laws throughout the entire

3 Lefkowitz “John Austin: enforcement and international law” 2020 *Philosophy and International Law* 8-19.

4 Allot “The concept of international law” 1999 *European Journal of International Law* 31-50.

legal system. This authority ensures that the jurisdiction's laws are followed consistently and that decisions made by courts are respected. A society's formal attempt to ensure adherence to its established laws, rules, and regulations is generally referred to as law enforcement. For uniformity and justice to be fostered, it is essential to have a centralised body responsible for guaranteeing the objectives encompassed by the law's enforcement. Subsequently, society, as we know it would probably collapse into chaos and instability in the absence of law enforcement.⁵

A particular regime is considered to have a legal system if it possesses the essential attributes of a modern state, especially the exclusive right to apply force inside its borders to enforce its laws.⁶ This monopoly of enforcement is exercised domestically by an interlinked connection of bureaucratic agencies that conduct the law, often with the use of force. These agencies include police, militia, prosecuting offices, and penitentiary facilities. In accordance with this view, the significance of law derives from the knowledge that it is reinforced by these institutions' authority and, when needed, enforcement ability.⁷

Domestic Context

In the domestic or local setting, the use of government officials to find and punish people who break the law is known as public enforcement of law, and it is a topic of great importance. Law enforcement agencies work to prevent violations of consumer protection, financial disclosure, and environmental and safety regulations, while prosecutors and police try to solve crimes and prosecute offenders. Agents of a society's tax collection services work to enforce the tax code.⁸

5 Consor, Paynich & Gingerich "Law enforcement in the United States" 2013 *Jones & Bartlett Learning*.

6 Hathaway & Shapiro "Outcasting: enforcement in domestic and international law" 2011 *Yale Law Journal* 252-349.

7 See above the Hathaway article, n8.

8 Polinsky & Shavell "The theory of public enforcement of law" 2007 *Handbook of Law and Economics* 403-454.

International Context

In terms of the global scale, following years of planning, the United Nations member nations and 250 non-governmental organisations convened for five weeks in Rome, Italy, in 1998, officially founding the International Criminal Court.⁹ During the summit, the drafted a treaty establishing the International Criminal Court (ICC), which would have the authority to prosecute people for “the most serious” crimes against humanity, war crimes, and genocide.¹⁰

The purpose of the ICC is to stop and prevent anyone from seriously breaching international law. Advocates of the court claim that the creation of the court marked the beginning of a new era in international justice. Unlike human rights treaties or other international legal instruments, the court can investigate and bring charges against those who are suspected of committing crimes against humanity, war crimes, and genocide. Consequently, supporters of the court assert that the “culture of impunity” that permitted violators of human rights to carry out crimes without fear of repercussions has ended.¹¹

In March 2009, the ICC issued its first arrest warrant against Omar Al-Bashir, the sitting president of Sudan, for genocide, war crimes, and crimes against humanity in Darfur. This historic arrest charge, which was based on UN Security Council Resolution 1593, highlighted an essential flaw in the international legal system: the ICC’s lack of enforcement power. Without its own police force or authority to apprehend and imprison suspects, the ICC relies on state cooperation, which often fails because of political considerations.

Al-Bashir avoided prosecution for over a decade after the ICC issued several warrants, illustrating the limitations of the court’s authority to uphold international law. The court’s inability to

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- 9 Rome Statute of the International Criminal Court.
10 Bardavid “The failure of the state-centric model of international law and the International Criminal Court.” 2002 *New York International Law Review* 9-30.
11 Appel “In the shadow of the International Criminal Court: does the ICC deter human rights violations?” 2018 *Journal of Conflict Resolution* 3-28.

conduct trials in ‘*absentia*’, as required by Article 63 of the Rome Statute, further diminishes its effectiveness in preventing future crimes.¹² This case shows a deeper issue in international law, where the lack of centralised enforcement mechanisms makes it more challenging to recognise international law as “true” law and raises concerns about its capacity to carry out justice.¹³

Counter Argument

However, in international law, this requirement of the domestic model is not met because of the lack of a global government with the authority to enact laws and impose penalties at the international level, such as an independent international armed force.¹⁴ Instead of centralised enforcement mechanisms, international law opts for state responsibility and legal certainty as measures to ensure cooperation and deter any sort of deviation from the implemented rules through the treaties and conventions states find themselves a party.

Nevertheless, using the ICC as an object of comparison, this system seems to be in favour the Western civilisations, or more specifically, focuses more on third-world countries. To date, no Western powers have been subject to the jurisdiction of the court; in fact, by 2016, the ICC was actively involved in ten cases, nearly all involving African states and indicted individuals, for which investigations and/or prosecutions were pending.¹⁵

Conclusion

In conclusion, there is still a lot of contention about whether international law counts as “true” law. This disagreement

12 RSICC (n6) art 63.

13 Hossain “Assessing the International Criminal Court’s response to genocide: a reference to the case of Al-Bashir” 2024 *International Journal of Human Rights* 648–670

14 Sandra “Is coercion necessary for law: the role of coercion in international and domestic Law.” 2015 *Washington University Jurisprudence Review* 35–58.

15 Reynolds & Xavier “The Dark Corners of the World: TWAIL and International Criminal Justice” 2016. *Journal of International Criminal Justice* 959–983.

derives mostly from the lack of a centralised enforcement mechanism that is similar to that of domestic legal systems. International law does not have the direct enforcement power that domestic law does since domestic law is derived from the state's ability to use institutions such as the police and judiciary to implement its laws. This means that essentially states may do what they please without direct repercussions or face any force to face repercussions. Nonetheless, it compensates for this lack of enforcement by ensuring that nations continue to be held accountable for breaking their international responsibilities through procedures such as state accountability and legal certainty. International law certainly plays an essential role in regulating international relations, maintaining order, and fostering collaboration among states, even though it is not law in the traditional sense. It continues to provide a framework that advances global standards, harmony, and responsibility, demonstrating its usefulness in today's highly interconnected and complex globe.

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