

Can International Law Be Called True Law

International Law Essay

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Despite the fact that international law is the predominant method for organising an increasingly globalised and complex international community, it has not had an easy time facing sceptics who question its credibility as a legal system which has difficulty in the enforcement of its rules. Over the past several centuries, states have created legal rules to regulate their conduct in a wide variety of areas ranging from economic transactions to outer space. Nevertheless, international lawyers have to face a recurring question. Is International Law true Law?

For many international lawyers this question has become both old and tiresome. [2] Nevertheless, legal theorists, scholars and practitioners are by no means unified in their response to this question. It is usually those who put the element of force to the forefront of their theories that faces the most difficulties in describing the legal nature of international law due to, what they view, as its lack of a 'coherent, recognised and comprehensive framework of sanctions.'[3] This viewpoint has been criticised for over-emphasizing the role of sanctions and for confusing the nature of law in society.[4] Others disagree with this viewpoint, as they do believe that international law does possess a system of sanctions and that it can be enforced. Coherent in most corners of the debate is the usage of a framework that compares international law to municipal law.

My argument is that without a proper system of enforceable sanctions international law does not exist and therefore cannot be termed 'true law'.

I will begin by assuming that international law does not in fact own a credible system of sanctions. That assumption made, I will analyse whether this constitutes sufficient grounds on which to negate International Law as 'true law'

Is it in correct to assume that international law does not possess a credible system of sanctions?

The question must be asked, if international law is in custody of a successful enforcement mechanism or not? And is it irrelevant to its nature as a legal system. Having made this argument, however, it will then be necessary to highlight the characteristics of international law that do deem it "law".

Following the example of Hart, let us assume that international law enforcement provisions are few and inadequate.[5] Does this necessarily mean that international law should be denied a legal quality? John Austin would answer this question in the positive. At the turn of the nineteenth century he constructed a theory of law that required the existence of a sovereign issuing a command backed by a sanction or punishment.[6] As international law was not found to meet this requirement, Austin and his followers considered that it ought to be called "positive international morality" instead.[7] The important issue when enforcing positive law is who has the power to define an offence, establish whether it has occurred and issue the relevant punishment. It thus stands that a credible system of sanctions starts with an over-riding authority able to issue the sanctions. In our national legal system the creation and modification of law generally lies with Parliament. Courts determine whether the law has been breached and police officers enforce the law. This, for international law, provides a problem. Unlike municipal law which has a vertical structure of authority and power, the international community is comprised of a horizontal structure. No state or group of states hold overwhelming authority, rather power is fragmented and dispersed. Under the process of globalisation, the importance of non-state entities has augmented and it is increasingly difficult to locate a central point of authority or power. This decentralised horizontal structure essentially means that there is no clear authoritative body in international law that can effectively create law, determine breaches and sanction accordingly.[9]

Essays On International Law And Practice Essays On International Law And Practice

Chia-Jui Cheng



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Recueil Des Cours/Collected Courses, Volume 281 (1999) Academie De Droit International de la Haye, 2001-04-17 The Academy is an institution for the study and teaching of public and private international law and related subjects Its purpose is to encourage a thorough and impartial examination of the problems arising from international relations in the field of law The courses deal with the theoretical and practical aspects of the subject including legislation and case law All courses at the Academy are in principle published in the language in which they were delivered in the Collected Courses of the Hague Academy of International Law This volume contains Since the end of the Second World War cross border relations among nations have intensified on a large scale and in addition to international peace and security many other problems have arisen that possess worldwide dimensions However international law is still predicated on the basic rule of national sovereignty Given this discrepancy humankind is called upon to establish a system of international governance that is able to deal effectively with all the challenges that threaten its survival as a civilized community of nations Practice is already evolving in that direction

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International Legal Responsibility of International Organizations in the ILC Draft Articles and Beyond Sarah Bayani,2022 The phenomenon of proliferation of international organizations has urged focus on the responsibility of international organizations under international law as the effect of their activities is witnessed everywhere in our daily life The main purpose of the present book is to examine and review some specific aspects relevant to the question of international legal responsibility of international organizations mainly with a view to assessing the International Law Commission s work on the codification of the international legal rules applicable on international organizations in this area At the same time the intention is to address the major challenge to the codification of general rules for international organizations namely their wide varying nature and their differences from each other Furthermore the perspective has been enlarged by elaborating on the broader concept of accountability of international organizations

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The United Nations Security Council in the Post-Cold War Era Kenneth Manusama,2006-06-01 The United Nations Security Council is meant to be the central international organ for maintaining international peace and security and it has a profound impact on the rights and duties of states under international law However it has been severely criticized throughout its existence This book examines the role of international law in its decisions and decision making process since the end of the Cold War with the principle of legality as theoretical framework It explores the limits that international law places on the Security Council i e what it is allowed to demand of and impose on states More importantly however this study provides great insight into how states use international legal arguments in the Council s decision making process and whether the Security Council has in practice respected and observed these legal limits Selected case studies include Iraq the former Yugoslavia Haiti East Timor and international terrorism

Evolving Principles of International Law Eva Rieter,Henri de Waele,2012 This volume offers an overview of some emerging trends and structural patterns in the development of international law highlighting its evolution over the course of time and discussing leading principles through various different thematic lenses

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Table of Contents Essays On International Law And Practice Essays On International Law And Practice

1. Understanding the eBook Essays On International Law And Practice Essays On International Law And Practice
 - The Rise of Digital Reading Essays On International Law And Practice Essays On International Law And Practice
 - Advantages of eBooks Over Traditional Books
2. Identifying Essays On International Law And Practice Essays On International Law And Practice
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Essays On International Law And Practice Essays On International Law And Practice
 - User-Friendly Interface
4. Exploring eBook Recommendations from Essays On International Law And Practice Essays On International Law And Practice
 - Personalized Recommendations
 - Essays On International Law And Practice Essays On International Law And Practice User Reviews and Ratings
 - Essays On International Law And Practice Essays On International Law And Practice and Bestseller Lists
5. Accessing Essays On International Law And Practice Essays On International Law And Practice Free and Paid eBooks
 - Essays On International Law And Practice Essays On International Law And Practice Public Domain eBooks

- Essays On International Law And Practice Essays On International Law And Practice eBook Subscription Services
- Essays On International Law And Practice Essays On International Law And Practice Budget-Friendly Options
- 6. Navigating Essays On International Law And Practice Essays On International Law And Practice eBook Formats
 - ePub, PDF, MOBI, and More
 - Essays On International Law And Practice Essays On International Law And Practice Compatibility with Devices
 - Essays On International Law And Practice Essays On International Law And Practice Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Essays On International Law And Practice Essays On International Law And Practice
 - Highlighting and Note-Taking Essays On International Law And Practice Essays On International Law And Practice
 - Interactive Elements Essays On International Law And Practice Essays On International Law And Practice
- 8. Staying Engaged with Essays On International Law And Practice Essays On International Law And Practice
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Essays On International Law And Practice Essays On International Law And Practice
- 9. Balancing eBooks and Physical Books Essays On International Law And Practice Essays On International Law And Practice
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Essays On International Law And Practice Essays On International Law And Practice
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine Essays On International Law And Practice Essays On International Law And Practice
 - Setting Reading Goals Essays On International Law And Practice Essays On International Law And Practice
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Essays On International Law And Practice Essays On International Law And Practice

- Fact-Checking eBook Content of Essays On International Law And Practice Essays On International Law And Practice
- Distinguishing Credible Sources
- 13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
- 14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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