

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

Eva Rieter, Henri de Waele



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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

Neutrality in Contemporary International Law James Upcher, 2020-04-30 The law of neutrality the corpus of legal rules regulating the relationship between belligerents and States taking no part in hostilities assumed its modern form in a world in which the waging of war was unconstrained The neutral State enjoyed territorial inviolability to the extent that it adhered to the obligations attaching to its neutral status and thus the law of neutrality provided spatial parameters for the conduct of hostilities Yet the basis on which the law of neutrality developed the extra legal character of war no longer exists Does the law of neutrality continue to survive in the modern era If so how has it been modified by the profound changes in the law on the use of force and the law of armed conflict This book argues that neutrality endures as a key concept of the law of armed conflict The interaction between belligerent and nonbelligerent States continues to require legal regulation as demonstrated by a number of recent conflicts including the Iraq War of 2003 and the Mavi Marmara incident of 2010 By detailing the rights and duties of neutral states and demonstrating how the rules of neutrality continue to apply in modern day conflicts this restatement of law of neutrality

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Judging International Human Rights Stefan Kadelbach,Thilo Rensmann,Eva Rieter,2019-04-15 This book attempts to establish how courts of general jurisdiction differ from specialized human rights courts in their approach to the implementation and development of international human rights Why do courts of general jurisdiction face particular problems in relation to the application of international human rights law and why in other cases are they better placed than specialized human rights courts to act as guardians of international human rights At the international level this volume focusses on the International Court of Justice and courts of regional economic integration organizations in Europe Latin America and Africa With regard to the judicial implementation of international human rights and human rights decisions at the domestic level the contributions analyze the requirements set by human rights treaties and offer a series of country studies on the practice of domestic courts in Europe the Americas Africa and Asia Thisbook follows up on research undertaken by the International Human Rights Law Committee of the International Law Association It includes the final Committee report as well as contributions by committee members and external experts

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

The Problem of Enforcement in International Law Elena Katselli Proukaki,2009-12-16 This book explores the contentious topic of how collective and community issues should be protected and enforced in international law Elena Katselli Proukaki takes a detailed look at the issue of third State countermeasures and considers the work the International Law Commission has done in this area The volume addresses both the theory and practice of third State countermeasures within international law Critically reviewing the conclusions of the International Law Commission on the non existence of a right to third State countermeasures it includes consideration of examples of State practice not previously covered in the literature of this topic In taking a thorough view of the issues involved the author identifies concerns about third State countermeasures which remain unanswered and considers the possible legal ramifications arising from a clash between a right to third State countermeasures and obligations arising from other international norms The Problem of

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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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