
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

IS INTERNATIONAL LAW TRULY “LAW”? A CRITICAL ANALYSIS- Sindhu M¹**ABSTRACT**

The status of international law as “true law” has been long debated among scholars. Jurists and political theorists. Unlike municipal legal systems, international law lacks in centralized legislature, executive authority, uniform enforcement mechanism, and compulsory jurisdiction. International law governs the conduct of the states and regulates individuals and international organizations. This paper critically examines whether the international satisfies the essential attributes of “true law” by engaging with competing theoretical perspective and authorized legal sources. It engages critically with the classical positivist position of John Austin, who denied its legal status, and contrasts with the developed theoretical frameworks of H.L.A Hart and Hans Kelsen, which recognize the normative force and structural validity of international legal systems.

The analysis grounded in Article 38(1) of the statute of the international court of justice, which codifies the primary sources of international law, and further supported by judicial pronouncements in landmark cases such as *S.S Lotus (France v. Turkey)*, 1927 P.C.I.J. (ser.A) No.10(1927). And military and paramilitary activities in against Nicaragua (*Nicaragua v. United state of America*) 1986 I.C.J.14. These authorities demonstrate that international law operates through binding norms derived from the state consent, customary practice and general principles of law. The paper argues that the absence of centralized enforcement does not neutralize the legal status of international law; rather, it reflects a decentralized system of legal ordering based on cooperation, reciprocity, and institutional mechanisms. It concludes that the international law fulfills the essential functions of the law such as regulating conduct, resolving disputes, and

¹ Student at KMC College of Law, Tirupur

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

maintaining international orders and therefore qualifies as “ true law “ within its unique structural context .

INTRODUCTION

Even from the early stage of international law , there was much speculation about it's juristic nature . There were extreme views and sharply divided opinions on this controversial point. The controversy is due to the weakness of international law and also in the way of defining it. International law represents a system of norms that regulates the conduct of states and other international actors within the global community . Historically rooted in custom and later codified through treaties , now it encompasses diverse fields such as human rights , environmental protection .Trade , and criminal accountability. Despite its expansion , the persistent critique remains that international law lacks the coercive force and institutional completeness of municipal legal systems .Modern international law is a body of legal rules and principles which regulate the relations between subjects of the international law, in other words entities which possess international personality such as Sovereign states and international organizations .The classification of international law as ‘true law’ determines its authority , legitimacy, and ,enforceability in global governance . The present analysis addresses this issue by examining jurisprudential theories , legal provisions ,and authoritative case law .

LITERATURE REVIEW

Scholarly engagement with the nature of international law has evolved from the strict theoretical denial to a more practice oriented acceptance . Early positivist thought treated law as inseparable from centralized authority , which led to skepticism about the legal status of international norms .However , later jurisprudence shifted focus from structure to function , examining how international law actually operates in regulating state conduct .

Contemporary writers such as Malcolm N. Shaw emphasize that international law is grounded in identifiable sources , particularly those reflected in Article 38(1) of the Statute of the international court of justice , and that its authority is reinforced through consistent state practice and institutional recognition. This doctrinal clarity has reduced reliance on purely theoretical objections.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

RESEARCH OBJECTIVES

The present study seeks to critically examine the fundamental question of whether international law can be regarded as “true law” within the meaning of legal theory and practice. It aims to analyze the conceptual foundation of the law through competing jurisprudential perspectives, particularly engaging with the theories of John Austin, H.L.A. Hart, and Hans Kelsen, in order to evaluate the applicability of their frameworks to the international legal order. The research seeks to determine whether the absence of centralized enforcement undermines the legal character of international law, or whether its decentralized and consensual nature constitutes an alternative but equally valid model of legality.

RESEARCH METHODOLOGY

This study adopts a doctrinal and analytical approach, relying on secondary sources such as treaties, caselaw, and scholarly writings. The analysis is grounded in article 38(1) of the statute of the international court of justice, which identifies the sources of international law. The study engages in case law analysis, drawing upon landmark decisions such as the case of the S.S. Lotus (France v. Turkey), North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands), and Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) to assess judicial interpretation and the binding nature of international norms. The methodology also incorporates a comparative jurisprudential approach, evaluating competing theoretical frameworks to determine their relevance to the international legal system. The research is qualitative in nature, emphasizing critical analysis and interpretation rather than empirical data, with the objective of providing a reasoned and coherent assessment of the legal status of international law.

JURISPRUDENTIAL FOUNDATIONS OF INTERNATIONAL LAW

The classical denial of international law as “law” originates in the command theory articulated by John Austin. Austin conceptualized law as a command issued by a determinate sovereign, backed by sanctions. Applying this framework, he concluded that international law, lacking a sovereign authority above states, could not be categorized as law but merely as “positivemorality.” This approach, however, has been widely criticized for its rigid and narrow

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

conception of legal system .A more nuanced understanding emerges from the work of H.L.A Hart , who rejected the necessity of a sovereign for the existence of law .Hart introduced that distinction between primary rules ,which impose obligations and secondary rules , which confers powers and establish procedures. Which he acknowledged that international law lacks a fully developed system of secondary rules , he nevertheless affirmed its legal character , emphasizing that it functions as a set of binding norms accepted by states .Similarly , Hans Kelsen advanced the pure theory of law , asserting that the validity of legal norms derives from a fundamental norms ,or ,Grund norms . In the international legal order ,this foundational norms may be understood as the principle that states ought to behave in accordance with accepted international obligations .Kelsen's situates international law at the apex of the normative hierarchy , thereby reinforcing its legitimacy as a legal system .

LEGAL FRAMEWORK AND SOURCES UNDER INTERNATIONAL LAW

The most authoritative articulation of the sources of the international law is found in Article 38(1) of the statute of the ICJ . This provision identifies treaties , customary international law , and general principle of law as primary sources , while judicial decisions and scholarly writings serve as subsidiary means for determining legal rules .Article 38(1) (b) acknowledges customary international law , which emerges from consistent state practice accompanied by *opinio juris* ,or the belief such that practice is legally obligatory , Article 38(1)(c) incorporates general principles common to major legal system , thereby ensuring completeness of the legal framework . The inclusion of these sources demonstrates that international law is not an amorphous or purely moral system ;rather , it is grounded in identifiable and structured legal norms .

JUDICIAL ELABORATION OF INTERNATIONAL LAW

Judicial decision have played a central role in affirming the legal status of international law. In the case of *S.S Lotus (France v Turkey)* , PCIJ Series A No. 10 (1927) articulated the foundational principle that restrictions upon the independence of states cannot be presumed . The court held that international law operates primarily through consent , thereby emphasizing its permissive yet binding character . The binding nature of customary law was further reinforced in *Military and Parliamentary Activities in and against Nicaragua (Nicaragua v United states of*

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

America)1986 . The international court of justice held that the prohibition on the use of force and the principle of non-intervention were binding norms of customary international law , independent of treaty obligations . This case is particularly significant for establishing that even powerful states are subject to legal accountability under international law .

In North Sea Continental Shelf Cases (FederalRepublic of Germany v Denmark) (Federal Republic ofGermany v Netherlands),the court clarified the requirements for the formation of customary international law ,emphasizing the necessity of both consistent state practice and *opinion juris*. This decision underscores the methodological rigor underlying international legal norms .

Further affirmation of the supremacy of international obligations can be found in Article 103 of the Charter of the United Nations , which provides that obligations under the charter prevail over conflicting international agreements .This provisions reflects a hierarchical dimension within international law , countering the argument that it is entirely decentralized and non – binding .

ENFORCEMENT AND COMPLIANCE IN INTERNATIONAL LAW

A central criticism of international law concerns the absence of a coercive enforcement mechanism .However , this critique overlooks the multifaceted nature of compliance . While international law does not rely on a centralized police force , it employs alternative mechanisms such as diplomatic pressure , economic sanctions , and collective security measures under Chapter VII of the UN Charter . The Security Council possesses the authority to impose binding measures , including sanctions and the use of force ,there by providing an institutional framework for enforcement .

Moreover , compliance with international law is often driven by reciprocity ,reputation , and the practical necessity of cooperation . States adhere to legal norms not merely out of fear of sanctions but because of the benefits derived from a stable and predictable international order .

EXPANSION INTO INDIVIDUAL RESPONSIBILITY

The evolution of international criminal law has further strengthened the legal character of international law . The establishment of the International Criminal Court marked a significant

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

shift from state – centric responsibility to individual accountability .Crimes such as genocide , war crimes , and crimes against humanity are now subject to prosecution under international law , demonstrating its capacity to impose direct legal obligations on individuals.

CRITICAL EVALUTION

The assertion that international law is not “ true law “ resets primarily on its structural differences from municipal legal systems. However , such comparisons are inherently flawed , as international law operates within a fundamentally different context characterized by sovereign equality and decentralization . The absence of a central authority does not negate the existence of law ;rather , it reflects an alternative model of legal ordering based on consent and coordination .

The jurisprudence of the ICJ and the consistent practice of states indicate that international law performs essential legal functions , including the regulation of conduct , resolution of dispute , and maintenance of order. Its normative force is evident in the widespread acceptance of legal obligations and the mechanisms developed to ensure compliance .

CONCLUSION

International law , though lacking the centralized enforcement mechanism of domestic legal systems, possesses the essential attributes of law . It is grounded in recognized sources , supported by judicial authority , and sustained by consistent state practice . Theoretical objections, particularly those rooted in Austin’s command theory , fail to account for the evolving and complex nature of legal systems .

Accordingly, international law must be regarded as “true law”, albeit within a decentralized and consensual framework. Its legitimacy lies not in coercion alone but in its capacity to structure international relations and promote global order .

REFERENCES

Austin, J. (1832). *The Province of Jurisprudence Determined*. John Murray.

Hart, H. L. A. (2012). *The Concept of Law* (3rd ed.). Oxford University Press.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

Kelsen, H. (1967). *Pure Theory of Law* (M. Knight, Trans.). University of California Press.

Shaw, M. N. (2021). *International Law* (9th ed.). Cambridge University Press.

Brownlie, I. (2008). *Principles of Public International Law* (7th ed.). Oxford University Press.

Dixon, M. (2013). *Textbook on International Law* (7th ed.). Oxford University Press.

Statute of the International Court of Justice, 1945, 33 U.N.T.S. 993.

United Nations. (1945). *Charter of the United Nations*.

CASE LAW REFERENCES

S.S. Lotus (France v. Turkey), PCIJ Series A No. 10 (1927).

North Sea Continental Shelf (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands), ICJ Reports 1969, p. 3.

Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), ICJ Reports 1986, p. 14.

Corfu Channel (United Kingdom v. Albania), ICJ Reports 1949, p. 4.

Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), ICJ Reports 1970, p. 3.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>