

Public International Law

Chapter One

Introduction

Adigrat University, 2016
School of Law
Mussie M. (LL.B, LL.M)

Characteristics of International Law

- Whereas every day newspapers report crimes, it is usually only when a flagrant breach of international law occurs that the media take notice of international law.
- This can give a distorted impression of the nature of international law.
- International law has no ready sanction for its breach.
- Because there is no international police force or army that can immediately step in, international law is often perceived as not really law.
- Yet the record of even the most developed domestic legal systems in dealing with crime does not bear close scrutiny.

Characteristics...

- There are several ways to think about law.
- In the domestic legal system, we think of law as the rules that the government issues to control the lives of its citizens.
- Those rules are generally created by the legislature, interpreted by the judiciary, and enforced by the executive branch, using the police, if necessary, to force citizens to obey.
- What is law for the international community if there is no one legislature, judiciary, executive branch, or police force?

Characteristics...

- In short, a national legal system is a hierarchical legal system.
- In sharp contrast, international law regulates relations between States: it is a horizontal legal system.
- It recognizes that all States are equal and sovereign.
- The international legal system does not have a central legislature nor a court endowed with compulsory jurisdiction to resolve legal disputes.

Characteristics...

- The fact that there is no overall authority to force compliance with the rules does not necessarily mean that there is no law.
- Law still exists in this setting, though it may be practiced and enforced in different ways.
- Consequently, international law is a very different kind of “law” from national law.
- It can therefore be called “real law,” but with different characteristics from the law practiced in domestic legal system settings, where there is a legislature, judiciary, executive, and police force.

Characteristics...

- Of course, when we look at the sources of international law,
 - Its binding force does not come from the existence of police, courts and prisons;
 - It is based on the consent (express or implied) of states, and national self-interest:

Characteristics...

Moreover, there are many motivating factors for compliance, in particular:

- Desire for Order & Predictability
- Consent & Obedience
- Enlightened Self-Interest
- Credibility & Reputation
- Law Habit
- Reciprocity
- World Opinion

Characteristics...

- In addition, a state which violates an international obligation is responsible for the wrongful act towards the injured state, or, under certain circumstances, to the international community as a whole.
- The available remedies include ADR, legal proceeding, self-help, economic sanctions, group sanction such as the UN

International Law as “Law”

- There is an old dispute going back to the early writings of Hobbes, reinforced in the 19th C. by Austin’s influential legal theory, on the issue whether international law may be properly called ‘law’.
- The controversy has focused on the relevance of the lack of sanctions in cases of violation of international norms as compared to municipal law and it has often confused the question of whether international law is ‘law’ with the problem of the effectiveness and enforcement of international law.

International Law...

- Defining law as the command of a sovereign creates a problem for international law.
- Hobbes, for example, concludes that law is possibly only within a state and that relations between states are relations of force, not law.
- John Austin, international law is not a law, but 'positive morality'
- Certainly, the actual role and capability of international law in governing the relations between states must not be exaggerated, in view of the decisive significance of military, economic, political and ideological factors of power.

International Law...

- Its function in structuring the international system has been enhanced because of increasing global interdependence and the self-interest of states in regulating their intercourse rationally on the basis of reciprocity.
- Therefore, disputes between states are usually accompanied by—in a given case naturally often conflicting— references to international law.
- There are also several evidences that qualify international law as a law. These includes...

International Law...

- Foreign ministries, national and international courts and IO's apply it on a daily basis
 1. legal departments giving legal advice on the application of international law
 2. use of legal concepts and language
 3. states consider to be bound to act on a certain manner and from time to time consider some other state not to act in conformity
 4. International Court of Justice renders legal judgments

International Law...

INTL rules are followed systematically in state practice

1. Violations tend to crowd the international publicity rather than the routine everyday practice, illusion of inefficiency although it is a question of deviating from the normal – an exception
2. National legal systems have similar inefficiencies – cannot totally prevent crimes or violations of law
3. Most of the rules of international are followed for the most of the time

International Law...

In all international legal systems there is an established system for solution of disputes concerning points of law and facts

- International law is organized more loosely
- legal bodies for the purposes international disputes: ICJ, international arbitration, war crimes tribunals (Yugoslavia, Rwanda, ICC), WTO
- Regional: ECHR, ACHR

International Law...

Other available evidences:

- States continuously conclude and implement bilateral and international treaties and establish and operate international organizations.
- Serious efforts are being made to codify international law.
- Modern national constitutions usually contain references to international law.
- Spectacular cases of violation of international law, which attract the attention of the media more than regular conduct, are exceptional and should not be confused with the ordinary course of business between states.

General and Regional IL

- General international law' refers to rules and principles that are applicable to a large number of states, on the basis of either customary international law or multilateral treaties.
- For example, the UN Charter, ICCPR, CEDAW
- On the other hand, regional international law applies only to certain groups of states.
- For example, IGAD, AU, EU, COMESA, EAC

Scope of International Law

- Shifts have been recorded from diplomatic relations and war among states, to a universal system of cooperation in numerous fields between quite different entities.
- The increasing global economic and political interdependence and the inability to address problems within a national framework have provided opportunity for the widening scope of international law.
- In particular, in the fields of communications, international trade, economics and finance, environment and development, or the massive problem of refugee flows.

Scope...

- The concept of 'sovereignty' of states, is being diminishing in view of the globalization of the economy and increasing interdependence of states.
- International law now covers vast and complex areas of transnational concern, including traditional topics, such
- State Succession,
- State Responsibility,
- Peace and Security,
- The Laws of War,
- The Law of Treaties,
- The Law of the Sea,

Scope...

- The Law of International Watercourses,
- The Conduct of Diplomatic Relations,
- International Organizations,
- International Economy and Development Law,
- Nuclear energy,
- Air law and Outer Space Activities,
- The Use of the Resources of the Deep Sea,
- International environmental Law,
- Communications, and
- International Human Rights Law.

Scope...

- This development has resulted in increasing specialization in both academia and legal professions in practice.

It is no longer possible for a generalist to cope with the volume and complexity of the various branches of international law. Increasingly, the professional international lawyer, whether practitioner or scholar, is a specialist in a particular branch of the law and each branch develops its own complicated and often arcane doctrine.

Oscar Schachter, IL Scholar