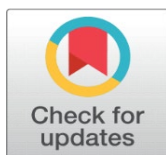
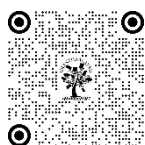


AN IN-DEPTH STUDY OF STATE'S ETHICAL OBLIGATION UNDER INTERNATIONAL LAW

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ABSTRACT

At international level, all States are governed through certain set of norms and rules which are mutually agreed by them in the form of international law. These rules play a significant role in the maintenance of peace and security among all the nations. But the leading aspect of this research paper shall be the implementation of international law by the State parties. It is very important to understand the nature of international law before binding its compliance over the States. Few jurists have viewed it as a perfect law while other group of jurists consider it as not a law at law due to the lack of three organs of the government. Moreover, the advocates of this thought view this law based on moral norms. Hence, the researcher has made a wide study over the concept of law and morality with the help of famous jurists. International law has been further explained in terms of natural law where States are made to conform to international law without any external force. Obligation towards international law is imbibed inside human nature through natural law. States does not require to sign any treaty for complying international law. However, it has been observed that States follow international law for their self-interest while placing other State's interest at stake. States does not feel bound towards the implementation of international law in their respective legal system.

Keywords: International law, States, Moral Obligation

1. INTRODUCTION

International law can be broadly defined as the collection of rules and principles that each member State is obligated to adhere to, both at the international and domestic levels, concerning issues of global significance. It serves as a framework for fostering amicable relations among nations by obligating them to adhere to international standards without conflict. Austin characterizes international law as 'positive international morality.' He posits that law is essentially the command of a sovereign, and due to the ambiguity of sovereignty at the international level and the absence of coercive power, he categorizes international law as simply positive morality (J. Rattan, V. Rattan 8-9). International law is perceived as a mere obligation that lacks external enforcement mechanisms, as there is no overarching authority to oversee its implementation by State parties. The primary means for member States to enforce international law is through the incorporation of international provisions into their domestic legal frameworks, facilitated by treaties and agreements among States.

2. NATURE OF INTERNATIONAL LAW

The absence of enforceability of international norms has led to a questioning of the fundamental nature of international law. Various legal scholars have expressed differing opinions regarding the classification of international law, particularly in determining whether it qualifies as law in the traditional sense.

2.1. INTERNATIONAL LAW IS NOT A PERFECT LAW

The proponents of this perspective argue that international law is deficient in the fundamental components that characterize the three branches of government. An ideal legal framework consists of a legislature to create laws, an executive to implement those laws, and a judiciary to adjudicate disputes arising from legal violations; however, such a framework is absent in international law. Consequently, international law cannot be regarded as a complete legal system. Thinkers such as Austin and Hobbes advocate for the view that international law is inherently non-legal in nature. They assert that it is the sovereign or political authority that establishes and governs the law. Any legal principle that is not sanctioned by the sovereign lacks legitimacy. International law is derived from the interpretations of esteemed legal scholars and is fundamentally based on moral imperatives, lacking any external authority for its enforcement.

2.2. INTERNATIONAL LAW IS A LAW

The followers of this viewpoint assert that international law and domestic law adhere to equivalent standards. Scholars such as Oppenheim, J.L. Brierly, H.L.A. Hart, Keston, Schwarzenberger, and J.G. Starke have extensively critiqued Austin's interpretation of the nature of international law, arguing that international law constitutes a genuine form of law. Oppenheim characterizes law as a collection of rules governing human behavior within a community, which, by the collective agreement of that community, is to be upheld by an external authority. This definition encompasses three fundamental elements: (1) a community, (2) a set of rules governing human conduct, and (3) the community's collective agreement to enforce these rules through external means (Rattan and Rattan 11-12). Each of these elements is also integral to the framework of international law.

According to these legal scholars, Austin's interpretation of international law addresses customary international law, which is articulated as moral principles, while treaties and conventions represent components of contemporary international law. Furthermore, the creation of international organizations, including the United Nations, the International Court of Justice, the World Trade Organization, the World Health Organization, and the International Labour Organization, has significantly contributed to the evolution and governance of international law. The existence of these international entities compels States to adhere to international legal standards. Therefore, it can be asserted that international law qualifies as a legitimate legal framework.

The discussion regarding the existence of international law as a legitimate legal system is not a contemporary issue. The international framework has been extensively examined by numerous scholars and intellectuals. They have sought to explore all facets of international law in conjunction with the domestic legal frameworks of various nations. However, this article focuses on a critical question regarding the essence of international law: do international norms and principles derive their foundation from moral considerations? Despite being established through agreements among States, do these States adhere to such regulations? Is international law inherently binding? To address these inquiries, it is essential to investigate the moral dimensions of international law, which is the primary focus of this paper. Additionally, it is important to explore the relationship and distinctions between 'Law and Morality.'

3. LAW AND MORALITY

Law and morality both aim to uphold order within society and govern human behaviour. Law is characterized as a collection of rules and regulations that every individual must adhere to while participating in societal life. Austin defines law as "a general command of the sovereign individual or the sovereign body issued to those in subjectivity and enforced by the physical power of the state. Law is an aggregate of rules set by men politically superior or sovereign to men as politically subject." (Paranjape 114)

Law is essential for achieving the common good, while morality exerts a comparatively lesser influence on society, primarily operating through personal values and ethics. Morality distinguishes between good and bad, as well as right and wrong. Unlike law, which is enforced by a recognized authority, moral rules lack any formal statutory enforcement. Morality is linked to psychological and social dimensions, encompassing values and norms. According to moral principles, engaging in virtuous actions can evoke feelings of virtue, whereas immoral actions may lead to feelings of guilt. There is no external compulsion to install moral values in individuals; rather, they are cultivated organically through social interactions and everyday experiences.

Although law and morality exhibit differences in certain aspects of their nature, they are interconnected to some extent. The law aims to deliver justice to individuals whose rights have been infringed, while the primary objective of morality is to safeguard the interests of others. A significant portion of legal frameworks is derived from moral principles. Consequently, actions deemed morally unacceptable are typically outlawed. For a society to achieve its moral objectives, it must uphold both order and moral standards. Together, these moral standards and order constitute essential components of the law.

In addition to these perspectives, numerous legal scholars have played a significant role in exploring the connection between law and morality. Alfred Verdross, a prominent figure among natural law theorists, has established a link between legal principles and other normative standards. He asserts that while they possess separate theoretical foundations, they collectively create a complex tapestry. Although law and morality do not overlap, the former is influenced by the latter.

Lon L. Fuller has elucidated the connection between law and morality, categorizing morality into two distinct types: the morality of duty and the morality of aspiration. The morality of duty, often referred to as the external morality of law, encompasses the essential rules that are vital for the survival of a society. In contrast, the morality of aspiration promotes the realization of human potential and ideals, known as the internal morality of law. This aspect emphasizes that the law should not merely be perceived through the lens of static information but should also be derived from the diligent efforts of individuals. Fuller further asserts that legal morality necessitates individuals to act as responsible agents, accountable for their shortcomings (Luksic and Split 339). Jurgen Habermas reinforces the notion of the interdependence of law and morality, positing that they are both integral and complementary, as legal principles are inherently tied to moral considerations, addressing similar issues (Moka-Mubelo 104). Ronald Dworkin similarly supports this view, asserting that law is an extension of political morality, thereby highlighting the intrinsic link between the two (Freeman 609-610).

Hart, in contrast, examines law and morality as separate entities. He acknowledges a relationship between the two to a certain degree. According to Hart, there are instances where law forbids actions that morality deems acceptable, and conversely, morality may condemn actions that are permissible under the law. Morality is viewed as a set of non-legal norms, while the municipal legal system is recognized as a framework of legal norms. Hart connects morality to the customs prevalent in pre-legal societies, noting their shared behavioral patterns. In his exploration of law, he primarily concentrates on municipal law, while also addressing the distinction between international law and municipal law, raising the question of whether international law qualifies as 'law.' Hart employs distinct methodologies to differentiate law from morality; however, his restrictive stance on this separation has faced considerable criticism.

Kelson has reiterated the distinction between law and morality, characterizing them as separate concepts. He asserts that law is established through social facts, while morality exists independently and often stands in contrast to positive morality. Legal norms derive their validity from objectively verifiable facts, in contrast to moral norms, which do not possess this objectivity. Thus, he has entirely separated the realms of law and morality (Bickenbach 69).

4. INTERNATIONAL LAW AS A MORALITY

As previously mentioned in this paper, Austin has asserted that international law is based on moral perspectives, as it lacks the authority for enforcement and does not include provisions for sanctions. International law is established through mutual agreements among States that have consented to adhere to international regulations for their collective benefit. The primary focus of this research is to examine whether States perceive compliance with international law as a legal obligation or merely a moral one. In the context of today's competitive international landscape, do States regard these laws as binding? Addressing these questions necessitates an analysis of the impact and significance of moral principles within the framework of international law.

The primary distinction highlighted in the examination of the moral obligations inherent in international law is the concept of 'enforceability.' Legal statutes possess enforceability, as they are subject to compliance through external coercion, whereas moral principles lack such compulsion. By their very nature, all individuals possess an innate understanding of right and wrong. Moral actions are inherently instilled in humanity, grounded in rational thought. Consequently, natural law is embedded within the consciousness of every individual. While natural law or moral law exerts a binding influence through personal conscience, it remains unenforceable. This perspective is echoed by Hugo Grotius, who articulated that "The law of nature is a dictate of right reason, which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity; and that, in consequence, such an act is either forbidden or enjoined by the author of nature, God" (Grotius 38-39). Furthermore, international law has been associated with natural law, which asserts that states are morally obligated to adhere to international regulations. Sir Thomas Erskine Holland remarked that the law of nature serves as the foundation or framework upon which the modern discipline of International Law was established by Gentili and Grotius (Holland 35).

Various perspectives have explicitly addressed the ethical foundations of international law. It is asserted that the natural principles of international law are directly rooted in nature, specifically in the inherent relationships among States as dictated by the essence of the State, and ultimately derive from the Creator of nature. Just as all States, akin to all individuals, are bound by the laws of nature and the ultimate lawgiver, the natural principles of international law should be viewed as laws in the most rigorous sense of the term (Cronin 63). Positive international law, like positive civil law, is either a more definite declaration of an already existing natural or moral law recognized by reason, or a determination of conditions required for the uniform and general practice of international intercourse and the practical safe guarding of international duties and rights (Brosnahan 1015-1016).

The assertions made by legal scholars unequivocally indicate that international law is grounded in natural law, necessitating that States adhere to these principles diligently for the benefit of all. This body of law resists codification. States possess a moral obligation to comply with treaties and conventions, as international law arises from fundamental human needs. Treaties and conventions do not impose binding obligations on States concerning international law. States inherently have the duty to honour these agreements without external coercion. Likewise, States retain the authority to withdraw from treaties and conventions should they no longer align with their interests.

4.1. STATE'S MORAL OBLIGATION TOWARDS INTERNATIONAL LAW

The primary objective of international law is to foster amicable relations between nations. These rules are universally applicable to all States without exception. International law establishes key goals through international norms and standards that all States are expected to adhere to in order to uphold global peace and security. In instances where a State seeks to disregard these regulations, international law is invoked. Consequently, States have an obligation to comply with these established rules.

The consent of States serves as a fundamental element in obligating them to adhere to international standards and norms. Consent can be defined as the act of granting approval or agreeing to specific conditions regarding a person or matter. Within the realm of international law, consent is the foundation of any treaty or agreement, compelling the State parties to operate in accordance with the established terms of these international accords. As established in the case of *S. S. 'Lotus' France v. Turkey*, commonly referred to as the Lotus case, "International law governs relations between independent states. The rules binding upon them therefore emanate from their own free will." (Permanent Court of International Justice) The consent of State members within a treaty signifies an acknowledgment of the rules mutually accepted by the contracting parties and promotes the effective incorporation of international law into the domestic legal frameworks of the treaty's State parties. The Vienna Convention on the Law of Treaties 1969 explicitly outlines the procedures that negotiating States must follow to express their consent. The expression of consent by the State parties carries legal significance and obligates them to adhere to the treaty's provisions.

The duty to uphold stability and amicable relations among nations is not a novel idea. Historical evidence suggests that rulers in ancient times also recognized a moral responsibility, which subsequently evolved into obligations for individuals. Nevertheless, this notion faced criticism, as the responsibilities of individuals or governments can fluctuate with changes in leadership. Consequently, states are positioned solely as agents responsible for fulfilling international obligations. These duties are executed by the leaders of the states, while the citizens are expected to adhere to these commitments.

It has also been recognized that consent should not be regarded as the only criterion for obligating the State to adhere to its responsibilities under international law. H. L. A. Hart supports this perspective by distinguishing between primary and secondary rules of international law. Primary rules typically govern the actions of States, whereas secondary rules may be enforced even in the absence of State consent. Consequently, international law remains applicable to States regardless of their consent (Hume 542).

The obligation of a State to adhere to international law is examined through the lens of an individual's moral responsibilities. Just as individuals are morally compelled to honour their commitments, States are similarly bound to follow international agreements. While individuals possess autonomy in managing their lives and decisions, States lack the same degree of autonomy. They are constrained by treaties and agreements. The adherence of a State to these treaties can enhance the autonomy of its citizens, allowing them to reap the advantages that arise from such compliance (Hume 191).

5. CONCLUSION

It has been noted that adherence to international law is not perceived as a moral obligation by States, particularly in the current competitive landscape. Furthermore, States typically do not engage in treaties with the intention of enhancing the autonomy of their citizens. Generally, States comply with international regulations and standards primarily out of self-interest and strategic considerations, rather than from a sense of moral duty. International law mandates that States uphold treaties regardless of their internal political structures. Additionally, research indicates that States should align with international norms for their own welfare. On a global scale, international authority consists of representatives from various States who collaborate for the collective benefit of all, treating all States as part of a unified entity. Moreover, these States also aim to promote the welfare of their citizens while entering into treaties. However, this perspective is not universally accepted. It has been observed that, at times, States prioritize their political agendas over the interests of their citizens.

Recently, a new trend has emerged among States in their approach to international treaties and conventions. International law now appears to facilitate cooperation among State parties primarily by advancing their interests at the expense of third States, rather than promoting global welfare. This shift may foster a perspective within international law that obligates States to adhere only to those treaties that serve their public interests, while allowing them to withdraw from agreements that do not align with their priorities. The moral obligation of States to comply with international law seems to have diminished in the current context, as States prioritize their own interests. Adherence to these laws has largely become a matter of choice for States, contingent upon their specific needs. Such practices are often viewed as mutually agreed upon arrangements that favour their own citizens over those of other nations. Consequently, in response to inquiries regarding the moral obligation of States to comply with international law, it can be concluded that such obligations have become minimal in contemporary times. The practices of States and their mutual agreements, lacking a governing authority, are generally less binding. States typically comply with what is necessary for the welfare and interests of their own citizens.

CONFLICT OF INTERESTS

None.

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