Nearly always, the first question asked about international law is, How can it be law if it cannot be enforced? To experienced international lawyers it is an old and rather tiresome question, not only because it is asked so often, but also because of the crucial assumption it contains. The assumption, of course, is that international law cannot be enforced.

The assumption seems to be based on the absence of a direct international counterpart of the federal marshal, county sheriff or state/local police officer. There is currently no standing body of international law enforcement officers, nor is there strong political support for creating such a body. How then can international law be enforced, if at all?

The enforcement mechanism most in the news in recent years is the United Nations Security Council, acting under Chapter VII of the UN Charter. Under the provisions of that Chapter, the Security Council may determine the existence of any threat to the peace, breach of the peace or act of aggression, and may impose mandatory sanctions to try to rectify the situation. The sanctions may be economic (such as a trade embargo against a country threatening the peace), diplomatic (such as severance of diplomatic relations) or military (the use of armed force to maintain or restore international peace and security).

A trade embargo may be comprehensive (designed to halt all inward and outward-bound trade except for humanitarian items) or selective (for example, an embargo only on trade in goods having military uses). In recent years, the Security Council has imposed some form of trade sanctions on Angola, Haiti, Iraq, Liberia, Libya, Rwanda, Somalia and the countries of the former Yugoslavia.

Trade and diplomatic sanctions are slow to work. Moreover, their burden often falls most heavily on the segment of the sanctioned population--ordinary civilians--that is least able to influence the government's behavior. Nevertheless, as the economic sanctions against Serbia have recently demonstrated, they can influence political leaders toward moderation if the sanctions are given time to have some bite. Of course, the more such leaders are subject in their domestic politics to the wishes of a broad-based electorate, the more likely they are to respond to these sanctions. The more insulated they are from their own people, the more insulated they are from the sanctions.
Security Council sanctions involving armed force have never been used in quite the form contemplated by the UN Charter. As drafted in 1945, it set out a system by which member states would agree to hold armed forces and facilities ready to respond to the call of the Security Council. If the Council decided to use armed force, it would call on those forces in accordance with the agreements. No such agreements have ever been entered into. Thus, when the Security Council has authorized the use of armed force to counter an act of aggression—as in Korea and the Persian Gulf—it has simply authorized member states to "use all necessary means to restore international peace and security." In the case of Iraq's invasion of Kuwait, the authorized use of force by the United States and others was quite effective.

The Security Council's enforcement powers are troublesome to many UN member states because the Council is not regarded as an adequately representative body. Its five permanent, unelected members—China, France, Russia, the United Kingdom and the United States—can veto any substantive measure. One of them—the United States—has dominated the Council in recent years. To the extent that law enforcement finds its legitimacy in democratic institutions, the Security Council is vulnerable to criticism. This, of course, is not so much a question of the effectiveness of international sanctions as it is a question of the legitimacy of the institutions that administer them. Yet the two questions are interrelated.

Chapter VII sanctions are intended only for situations that are out of hand or threaten to be so. Situations of that kind are the most difficult for any law enforcement system—domestic or international—to handle. To take a domestic analogy, municipal law enforcement officers are hard pressed to prevent riots or bring them to a quick end, once the spark has been lit. It is little wonder that the Security Council, made up of members with often-conflicting political agendas, usually cannot effectively use its sanctioning powers to prevent wars or to stop them quickly.

Legal institutions function best when vital interests are not at stake. Again, this is so whether the legal institutions are domestic or international. One thinks on the domestic scene of the myriad legal rules and processes that affect daily life—rules having to do with the creation and performance of contracts, the existence of property rights, the Uniform Commercial Code, and so forth. Most of the time they take care of themselves, without the need for intervention by courts, sheriffs or other governmental agencies. That is true as well when international rules and processes relate to ordinary relationships. One thinks on the international scene of the creation and performance of ordinary treaties—tax or commercial treaties, for example—or compliance with "rules of the road" set by the International Maritime Organization or International Civil Aviation Organization for safe navigation at sea or in the airspace above the high seas. Rules of this sort tend to be self-enforcing, simply because all the actors recognize that it is in their self-interest to comply if they want other actors to comply—the same reason why most of the relatively mundane domestic rules are self-enforcing.

In those instances where international rules turn out not to be self-enforcing, international law recognizes various enforcement mechanisms short of Chapter VII sanctions. The classic—and most problematic—mechanism is self-help, which in its most severe form involves reprisals against the government that is thought to have breached its legal obligations. One thinks of vigilante justice as the domestic counterpart. But international law has developed to the point where reprisals involving the use of armed force are no longer permissible in the absence of Security Council authorization. Thus, lawful reprisals are things like economic countermeasures to bring pressure on another government to change its ways. The countermeasures should not have effects that are greatly disproportionate to the gravity of the offense. In this form, self-help on the international scene looks less like
vigilante justice than it may have before the advent of the UN Charter and the Geneva Conventions on the use of armed force.

Not all of the international enforcement mechanisms short of Chapter VII are unilateral. International organizations—not just the UN, but also its Specialized Agencies and regional organizations—have developed procedures that allow pressure to be brought against governments that do not comply with recognized standards of conduct. Noteworthy in this regard are the "mobilization of shame" and the application of pressure. Several important multilateral treaties, particularly in the human rights field, require states parties to report on their compliance and to send representatives to appear before treaty-monitoring bodies to explain how they have complied or why they have not. This procedure gives the monitoring bodies opportunities to apply pressure for compliance. Sometimes this is done informally, sometimes more formally in writing.

Many international organizations have a club like atmosphere for the national representatives to them. If their governments behave in such a way as to hinder the attainment of the organizations' goals, other members can make club membership uncomfortable for them in various ways. The most extreme would be suspension or expulsion from membership, as could occur in the United Nations under certain circumstances set forth in Articles 5 and 6 of the Charter. But much more common is the subtle or not-so-subtle expression of disapproval. That can affect a member state's conduct, especially if maintained over a period of time.

To give an example from the 1970s, the then-Soviet Union was a party to the Forced Labor Convention, a multilateral treaty administered by the International Labor Organization (ILO). The Convention requires each party to suppress the use of forced or compulsory labor, subject to some exceptions—including an exception for any service that forms part of the normal civic obligations of citizens. The Russian Republic had issued a decree authorizing an official body to direct to specific employment any person "evading socially useful work and leading an anti-social, parasitic way of life." The ILO's enforcement bodies—a committee of nonpolitical experts and a separate, more political, committee of the International Labor Conference—took the position that the Soviet Union, through the decree of the Russian Republic, had violated the Forced Labor Convention. The Soviet Union maintained that it was simply enforcing a normal civic obligation of its citizens. Nevertheless, over a period of years the committee of experts called the Soviet representatives on the carpet, and slowly the Russian Republic loosened its rules on "parasitic lifestyles." Then came the end of the Soviet Union and a new political system in Russia that made the matter moot. It was a case of partially effective enforcement through the mobilization of shame—about all that could be expected when the respondent state was one of the superpowers.

The Specialized Agencies also use a more positive compliance strategy. Quite often, the reason for a member state's noncompliance with an agency norm is not willful disobedience; rather, it is a lack of technical capacity to comply. In such cases, agencies usually try to supply technical assistance or advice. Their ability to do so depends, of course, on the extent of their financial and technical resources and the severity of the technical shortfall in the member state. If the resources are available, this can be an effective compliance device. When the circumstances call for it, the technical assistance can be combined with some persuasion to generate the will to comply as well as the technical ability to do so.

Of course if the agency has money or other valuable benefits to distribute to members, and has the discretion to withhold some or all of the benefits from uncooperative members, a potentially effective enforcement mechanism is available. The International Monetary Fund and the World Bank
are the obvious cases in point, but other organizations upon which states depend for assistance can exert some leverage over members' conduct as well. But because this remedy usually makes it more difficult for the uncooperative member to fulfill its obligations to the agency (especially obligations to repay money), the remedy is used sparingly.

The constitutional instruments of many international organizations provide a specific sanction for failure to pay assessed dues. In the United Nations, a member that is in arrears is to have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of contributions due from it for the preceding two years. This sanction has been applied to several delinquent states, but it has not been used consistently. Thus, when the Soviet Union and France refused to pay their assessments for peacekeeping expenses in the 1960s, an impasse was reached. Ultimately they were allowed to participate normally in the General Assembly even though they remained delinquent. More recently, the United States has become the member with the largest delinquency, but the amount of its arrears has not yet reached the point at which its vote in the General Assembly would be immediately at risk.

The loss-of-vote sanction has been regarded as one of the most problematic enforcement mechanisms in practice, because of its uneven application. The same thing has been said about the withholding-of-benefits sanction mentioned above.

The enforcement tools of international law are thus imperfect. Not only are they applied unevenly in some cases, but they frequently work slowly if at all. The bodies that apply them are not necessarily fully representative of the international community. Despite all this, there are international enforcement mechanisms that do work in ways that may not always be obvious. In particular, the international community, no less than domestic society within any nation-state, conducts much of its daily business on the basis of self-enforcing norms that never make the headlines. Enlightened self-interest makes those norms effective.