

Opinion Article

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2 Is international law really law?**3 Abstract**

4 There has been an ongoing and probably a never ending debate on whether international law is
5 really. Thus, there exists a group of scholars who are of the view that internal law is not a real law
6 whiles another group of scholars on the other hand also argue that international law is real law The
7 article, contributes to the existing literatures on this argument by given a different dimension to the
8 argument. Thus the article situates the argument of whether international law is really law or not, into
9 the Realist and Liberalism theory by outlining the main arguments provided by the two theories in
10 support of their stands on this argument.

11 The methodology adopted for the study is the qualitative approach of which the works of renowned
12 scholars in the field that have focused on debating whether international law is really law were studied
13 which aided in a comprehensive analysis of the arguments surrounding this debate and eventually
14 leading to an objective conclusion. Materials used includes information from the internet, journal
15 articles, policy documents as well as all other important reading materials such as the dailies, press
16 releases, news items and official reports.

17 The article finally concludes by stating that international law is really law because enforcement is not
18 entirely the only hallmark of what constitute law and even domestic law in a broader sense does not
19 possess full enforcement as argued by scholars who are of the view that international law is not really
20 law.

21 *Keywords: (International law, Realism, Liberalism, Real law, Domestic law)*

22 INTRODUCTION

23 The question whether international law is really law is one of the controversial questions in the study
24 of international law that has captured the attention of many scholars of international law. In a general
25 sense, there are two schools of thought engaged in this argument. Thus, in the view of one school of
26 thought, international law is not really law and to the other school of thought international law is really
27 law. It must however be noted that both scholars or school of thought advance various reasons to
28 support their arguments and this article looks at the argument advanced by both schools and then
29 draws a conclusion in that regard.

30 To understand what international law is and to attempt to answer the question whether international
31 law is really law, it is important to understand some of the basic concepts of what constitute law so as
32 to be able to place it in the international context and that will help us to comprehensively understand
33 the nature of internal law and present our argument in an objective manner.

34 Definition of law

35 Perhaps the difficulty to answer the question as to whether international law is really law or not stems
36 from the fact that the concept of law itself is quite a difficult and controversial concept to define. Thus
37 law has been defined in various different ways by different scholars and there is no universally
38 accepted definition of what law is.

39 John Austin, an English philosopher defined law as "A rule laid down for the guidance of an intelligent
40 being by an intelligent being having power over him" cited in (Bingham, 1912). From this definition, it
41 can be deduced that according to Austin, law consists of rules and principles that are formulated and
42 enforced by a sovereign and recognized authority.

43 Professor Hart in his book the "The Concept of Law" described law as a system that is made up of
44 primary and secondary rules made to regulate behavior in a society or community (Hart, 2012). That
45 is to say that, laws are made to guide the behavior of individuals so that individuals are aware of what
46 is expected from them and the likely consequences of their actions if they go contrary to the
47 established laws.

48 St Thomas Aquinas defined law as "Nothing else than an ordinance of reason for the common good,
49 made by him who has care of the community, and promulgated" (Donnelly, 1980). Law in this sense is

50 seen as something that is prescribed by a recognized authority for a group in a particular society so
51 as to promote the common good. That is to say that, there exist a sovereign authority that prescribe
52 these laws so as to promote the common good and in that sense, the people to whom the law is
53 made for are obliged to abide by those laws.

54 In the view of Max Weber, Law...exist if an external body or authority is given the mandate to enact
55 rules and principles and compel compliance by coercion, either physical or psychological if the need
56 arises so that the accepted standards will be followed by all or avenge acts of infringement or breach
57 of the rules and principles (Six Form Law, 2008).

58 Law in its simplest form could define as recognized legitimate standards of behavior that binds a
59 community together. The use of the word recognized standards of behavior in the definition of law
60 means that, for certain standards of behavior to rise up to the status of being called law, it should
61 achieve some form of recognition. There are scholars who argue that standards of behavior that are
62 recognized by the authorities of the state or a country is what is referred to as law and there are other
63 scholars who also argue that such standard of behavior should be recognized by both the authorities
64 of the state as well as the individuals or the citizens of the country before it could be regarded as law.
65 Most of the scholars that argue that standards of behavior should be recognized by both the states
66 and its citizens before it could be regarded as law are natural law scholars who believe that the law
67 should be just and should serve the interest and well being of the people and as such citizens have
68 the right to revolt and reject any law that is not just.

69 Law contains rules and principles that are to be obeyed by members of a community with the
70 objective of regulating behavior and binding a community together to achieve a common goal or
71 purpose. Law has some basic characteristics among which include: it has universal application, it is
72 coercive and also it is permissive.

73 **Universal application:** this means that law has a universal application to all persons and individuals
74 within a particular framework (Makodia, 2009,). The universal application of law should be done
75 without any discrimination to any individual with respect to their status in society, race, colour, religion,
76 etc. This is what is normally referred to as the concept of rule of law where the law is seen as
77 supreme and applied to all people in an equal manner.

78 **The law is coercive:** law, possesses some coercive force which punishes violators (Lamond, 2000).
79 In a society, community, etc. there will always be people who will not abide by the accepted legitimate
80 standards of behavior of the community or society and these people must be forced to obey by
81 punishing them when they deviate from the accepted standards. In this sense law is coercive and in
82 most cases it has a coercive agency to ensure conformity and compliance.

83 **Law is permissive:** while law is coercive to a large extent, it is also permissible. Individuals can
84 establish their own relationship within the larger framework of the law (Fox, 1998). Thus, individuals
85 have the liberty to also form their own contracts or laws within the larger framework provided these
86 contracts do not conflict or contradict that of the larger community. For example, signing of personal
87 agreements between two or more people on how to operate or establish their business is permitted in
88 most domestic laws only if the contract does not conflict or breach any provisions in the domestic law.

89 **Why the need for law?**

90 There are several reasons why a community or society needs laws, however; this article looks at only
91 the basic reasons why law is needed:

92 **To regulate behavior:** Society needs rules to regulate behavior and perhaps avoid chaos (McAdams,
93 2000). Without laws to govern behavior and regulate the relationship among persons, there is always
94 the possibility of violence and chaos. Individuals without laws or rules to govern behavior will be living
95 in a state of fear with constant violence against all which could be equated to what Thomass Hobbes
96 refers to as the state of nature where the life of man is solitary, short, brutish and nasty. To avoid such
97 situation, laws are needed to govern and regulate behavior of persons, protect life and property in a
98 community. It is also important to note that the laws should have an enforcing agency to ensure
99 compliance and punish deviants.

100 **Law makes things easier:** with the availability of laws in a community or society, things are easier
101 and more convenient. This is to say that, each and every person in the society knows what the laws
102 are because the laws specifies what a person can and cannot do as well as the likely punishments
103 associated with breaking the laws. This in a way creates some form of certainty and makes things
104 quite easier for the individuals. One can make long-term decisions with others, both far and close due
105 to the fact that they know the rules and that if one party breaches his part of the agreement the other
106 party can seek for redress at the court. There is someone to enforce the law: whenever there is any

107 disagreement between two parties, one is always certain as to what to do to seek justice thus by
108 taking the case to court for the court to enforce the law.

109 **What is international law?**

110 International law at its initial stages of development was referred to as the laws of national thus a
111 body of rules and principles that governed the relations among civilized states in the dealings with one
112 another. This definition of international law is very narrow and viewed as the traditional definition of
113 international law (Eville, 2004). Obviously there are a lot of gaps in this definition as it is difficult to
114 determine which state is civilized and which state is not and more important, the scope of international
115 law has widened to govern the relations not only among states but other entities as well.

116 With the growth of Non-Governmental organizations (NGO's) most probably after the WWII as well as
117 the business transactions, agreements and contract among persons, the scope and definition of
118 international law has widened to cover, NGO's and even persons as well. The modern definition of
119 international law is thus defined as a body of rules and principles that governs the relations among
120 States, International Governmental Organizations (IGO's), NGO's as well as individual persons in the
121 relations among each other (Egede & Sutch, 2013). This definition of international law is mostly
122 referred to as the modern definition as it expands the scope and focus of international law.

123 **Characteristics of international law**

124 International law has certain specific and unique characteristics that distinguish it from domestic law:

125 Firstly the subject matter: The primary subjects of international law are sovereign states (Acquaviva,
126 2005), although in recent times some scholars argue that International Governmental Organizations,
127 Non-Governmental Organizations and even individuals could also be subject of international law. . In
128 a much broader sense, the assertion that IGO's, NGO's and individual persons are also subjects of
129 international law is true in the sense that their actions and activities are regulated by international law
130 and as such they work within the larger framework of international laws and tries not to infringe or
131 breach any international law

132 Secondly the source of international law: There is no unique or single and legally authorized source of
133 international law as there is in the case of domestic law. According to article 38 of the statute of the
134 international court of justice, there are five sources of international law, namely: Treaties, Customs,

135 General principles of law recognized by civilized States, Judicial decisions Jurist work/ Opinions of
136 experts in international law. That is to say that unlike domestic law where the source could mostly be
137 traced to one single, legally recognized institution or body which in most cases is the legislature of the
138 country, international law does not possess this quality.

139 Again, international law lacks strong enforcement machinery: The enforcement mechanism backed by
140 international law is not very strong as compared to that of domestic law. There is no universal
141 policeman or institution at the international level that ensures compliance and enforces international
142 law, unlike domestic law. Compliance with international law is a mutual consensus among member
143 states and to a large extent, the willingness to abide by such laws because of the belief that it will
144 serve a good purpose for all.

145 Furthermore, the law-making processes of international law are different from that of domestic law.
146 One of the main and perhaps the most effective way of making international law is through law
147 making treaties (Reyes, 2006). The basic elements of a treaty are: treaties are mostly formal written
148 documents even though in some case it can be unwritten, these formally written documents are
149 signed and ratify by member states through a formal legal accepted and approved procedures, and
150 final agreements made in the treaty are binding on member states: a concept known as “Pacta sunt
151 servanda”

152 **METHODOLOGY**

153 The methodology adopted for the study is the qualitative approach. This is due to the fact the
154 qualitative approach is much suitable for explanatory and descriptive studies (Babbie, 2015). Adopting
155 this approach enabled the researcher to dwell on the works of renowned scholars in the field that
156 have focused on debating whether international law is really law which aided in a comprehensive
157 analysis of the arguments surrounding this debate and eventually leading to an objective conclusion

158 The study primarily relied on secondary sources of information such as documents from the internet,
159 journal articles, policy documents as well as all other important reading materials such as the dailies,
160 press releases, news items and official reports

161 **Is international law really law?**

162 With a little background of what law is and what international law constitute, it will thus be interesting
163 to attempt to answer the question if international law is really law. To be able to comprehensively
164 address this question, we shall look at the main arguments advanced by the two schools of thought
165 that debate this question and for the purpose of this article; we shall situate the main arguments of the
166 two schools of thought into the school of realist or realism and the Liberals or liberalism.

167 **Realist/ Realism**

168 According to realism or the realist school of thought, international law is not really law. Thus the realist
169 regards domestic law as real law, but international law on the other hand cannot be regarded or
170 treated as real law. The realist advances a number of arguments to support their arguments among
171 which include:

172 To begin with, this school of thought argues that ***National interest is paramount to every state:***

173 According to the realist, states are the major players in international law and states will never
174 compromise their National interest for any international law. In other words, to the realist, if there is a
175 clash between the National interest of a country and an international law, almost all states will choose
176 their National interest above International law without giving any recognition to International law. The
177 argument being advanced by the realist here is that National interest is the driving force behind a
178 countries foreign policy and as such states will only abide by an international law only when it is in
179 accordance with their National interest, but in a situation where there is a conflict between a Countries
180 National interest and international law, all countries are likely to choose their National interest above
181 international law. In short the realist believes that a real law should supersede all interest and compel
182 compliance regardless of whether it is in one's interest or not, but since national interest supersedes
183 international law in the relations of countries among others then international law is not really a law.

184 Secondly, ***International law lacks the coercive power that is backed by real law as in the case of***

185 ***Domestic law:*** To the realist, International law has a loose set of framework as compared to domestic
186 law because it lacks the coercive power that is backed by a real law like domestic law. This is to say
187 that in the view of the realist, international law is not able to enforce and compel compliance as a
188 domestic law does. This is probably due to the fact that, there is no international "police man" to
189 enforce international law as in the case of domestic law where there is a recognized court and police

190 to ensure compliance by all persons. A real law in the view of the realist should be backed by a
191 coercive power that should force compliance by all individuals regardless of their status or power in a
192 society, but international law in the view of the realist does not command such coercive force as
193 powerful countries always have their way out even if they breach international laws and go
194 unpunished.

195 Again, ***the quest for power in international relation is important to every state***: According to the
196 Realist, countries will do anything to make themselves powerful rather than giving recognition to
197 international law. All countries strive to outweigh one another in the international system and that is
198 more important to states than submitting their quest for power to the recognition of any international
199 law. In the view of the realist, power is an important element in the international system and that
200 explains the reason why countries will do everything within their possible means to be powerful
201 because the more powerful you are as a country, the more influential you become in the international
202 system and as such countries will not compromise their quest to be powerful for the recognition of any
203 international law or convention. It is only when international law will aid countries in the quest for
204 power that countries will abide and give recognition to such laws, but in a situation where international
205 becomes a standing block to a country's quest for power, a country will not give any recognition to
206 that international law but will rather carry on with their actions and ambitions to be powerful and
207 influential in the international arena.

208 Furthermore, ***there is no legislature to enact an international law as in the case of domestic law***:
209 The argument of the realist here is that, a real law should have a recognized authority or institution to
210 enact those laws, but in the case of the international law, there is no universally accepted authority or
211 institution vested with the power of enacting international laws and this does not make international
212 law real law. The absence of a legislature creates a vacuum in international law as it becomes unclear
213 where international laws are coming from and whether those who enact international laws have the
214 full mandate and authority of all states to enact such laws as compared to domestic laws where there
215 is full consent and authority vested in a recognized legislative body to enact the laws.

216 **Liberalism/ Liberals**

217 According to the liberalism the other hand, international law is real law and the school of thought
218 advance the following reasons to support their assertion:

219 Firstly, this school of thought argues that ***all states to some extent give recognition to***
220 ***international law***. Almost all states in the world agree to some extent that, there exist some form of
221 laws that governs relations of countries, NGO's, IGO's and persons and all the subjects of
222 international law try to do their best to abide by these international laws. The argument of the liberals
223 here is that, even though international law is frequently violated by some powerful states, it does not
224 render international law invalid in its true sense because all states acknowledge the existence of
225 international law to some extent and try their possible best not to violate these laws. Even the
226 powerful countries like the United States (USA) of America, Russia and China try to abide by these
227 international laws and conventions. For example, in 2003, before the USA invaded Iraq, it went to the
228 Security Council of the United Nations to seek for a resolution, even though the USA was not granted
229 that resolution by the UN. The point, therefore is that the USA as a world super power could have
230 simply gone to Iraq without going to the UN in the first place, but the fact that the USA went to seek
231 approval which was not granted confirms the fact that even powerful countries gives recognition to
232 international law and tries their best to comply by them. Again, after USA invaded Iraq, there have
233 been several occasions where the USA has been criticized of breaching International law by some
234 scholars and the USA in most cases also tries to respond to such criticisms and justify their actions.
235 The point here again is that a country like the USA could decide not give any response to any
236 criticism by any writer or scholar, but the fact that the USA comes out to defend its stand against the
237 breach of International law goes a long way to support the fact the powerful countries, even give
238 some recognition to the law and tries not to breach these laws which in the argument of the Liberals
239 makes international law real law.

240 Secondly, ***one of the elements of law is that those who breach it are punished***: The liberals
241 believe that international law, possesses the element of punishing those who breach it. We have seen
242 several situations where Countries or people who have breached international laws and conventions
243 are punished in one way or the other. The Liberals will accept the fact that, there are some situations
244 where international law has been breached, but the offenders get away with the act without being
245 punished but this is only on some few occasions. According to Roger Fisher, even in the domestic
246 setting not all the laws are enforceable as there are powerful individuals who breach the law in one
247 way or the other and still have their way around the law without being punished (Fisher, 1960). For
248 instance, if a private individual or party wins a case against the State in court, the state in this case

249 decides to abide the ruling of the court only because it wants to do so and the state will decide to act
250 according to the ruling of the court on its own will because the private individual cannot put a gun on
251 the head of the state to act immediately. In most cases, however, those who violate international laws
252 are being tried and if they are found guilty, they are being punished to serve as a lesson or deterrent
253 to other states. Not only are individuals of a country punished for breaching international laws and
254 conventions but even economic sanctions are sometimes imposed on a whole country or state to
255 ensure compliance or as a way of punishing those countries that breach international laws and
256 conventions.

257 Additionally, ***the General Assembly and the Security Council serve as the parliamentary body of***
258 ***international law***: According to the Liberals, there are institutions like the General Assembly and the
259 Security Council of the UN who perform similar functions as the legislative body of any given country
260 in domestic law. These institutions could thus be equated to the legislature in the domestic setting as
261 they perform the same function as the legislature of a country. These institutions ensure the
262 enactment of conventions and treaties just like the legislature in domestic law as they make sure that
263 these treaties pass through due process of deliberation and discussion before being accepted or
264 endorsed. Some scholars, even go to the extent of arguing that at the international level, treaties and
265 conventions are enacted by global experts who make quality inputs as compared to the legislature of
266 some countries which just rubber stamp rules in the favour of their party.

267 Lastly this school of thought argues that, the peace and relative stability that has been achieved in the
268 international arena is as result of the fact that there exist some laws that governs and regulate
269 behavior of States, NGO's, IGO's etc in their relations with one another and that without such laws,
270 there will be no way by which such peace and understating in the relation among States in their
271 interaction with one another could be achieved and that confirms the fact that international law is real
272 law. International law has governed the way countries or states should trade among themselves to
273 ensure peaceful coexistence and harmony and as such there is no justification that international law is
274 not a real law as argued by some scholars.

275 **CONCLUSION**

276 In conclusion, I will like to state that, the two schools of thought have all made good points to justify
277 their stand with regards to debating whether international law is really law and this debate will

278 continue to exist partly due to the fact that there is no universally accepted definition of what law is
279 and as such one judgement on whether international law is law will be influenced by what the
280 individual thinks and believe constitute the definition of the concept of law.

281 This notwithstanding, however, international law to a large extent is really law because in every
282 situation, there are exceptions and the exceptions should not be used to generalize on the issue.
283 This is to say that in the general sense all States, NGO's and even persons give recognition to the
284 existence of international law and the fact that there are exceptional situation where some few
285 powerful countries have breached one international law or the other without being punished cannot
286 invalidate international law. Also, even domestic law sometimes do not possess hundred percent
287 coercive force in some situations because even in the domestic settings there are some powerful
288 individuals that breach or violate the law in some situations and go unpunished but such exceptions
289 cannot be used to generalize that domestic law is not real law.

290 In some occasions, States or individuals may break the law for their selfish interest or desires, but that
291 is not to say that there exist no laws in the first place. Also the sources of domestic law and
292 international law are different and as such the two laws can not be compared.

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