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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 [1]. From this definition, it can be
41 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 [2]. That is to say
45 that, laws are made to guide the behavior of individuals so that individuals are aware of what is
46 expected from them and the likely consequences of their actions if they go contrary to the established
47 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" [3]. Law in this sense is seen as

50 something that is prescribed by a recognized authority for a group in a particular society so as to
51 promote the common good. That is to say that, there exist a sovereign authority that prescribe these
52 laws so as to promote the common good and in that sense, the people to whom the law is made for
53 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 [4].

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 [5]. The universal application of law should be done without any
75 discrimination to any individual with respect to their status in society, race, colour, religion, etc. This is
76 what is normally referred to as the concept of rule of law where the law is seen as supreme and
77 applied to all people in an equal manner.

78 **The law is coercive:** law, possesses some coercive force which punishes violators [6]. In a society,
79 community, etc. there will always be people who will not abide by the accepted legitimate standards of
80 behavior of the community or society and these people must be forced to obey by punishing them
81 when they deviate from the accepted standards. In this sense law is coercive and in most cases it has
82 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 [7]. Thus, individuals have the
85 liberty to also form their own contracts or laws within the larger framework provided these contracts do
86 not conflict or contradict that of the larger community. For example, signing of personal agreements
87 between two or more people on how to operate or establish their business is permitted in most
88 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 [8]. Without
93 laws to govern behavior and regulate the relationship among persons, there is always the possibility
94 of violence and chaos. Individuals without laws or rules to govern behavior will be living in a state of
95 fear with constant violence against all which could be equated to what Thomass Hobbes refers to as
96 the state of nature where the life of man is solitary, short, brutish and nasty. To avoid such situation,
97 laws are needed to govern and regulate behavior of persons, protect life and property in a community.
98 It is also important to note that the laws should have an enforcing agency to ensure compliance and
99 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 [9]. Obviously there are a lot of gaps in this definition as it is difficult to determine
114 which state is civilized and which state is not and more important, the scope of international law has
115 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 [10]. This definition of international law is mostly referred to as the modern
122 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 [11], although
126 in recent times some scholars argue that International Governmental Organizations, Non-
127 Governmental Organizations and even individuals could also be subject of international law. . In a
128 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 [12]. The basic elements of a treaty are: treaties are mostly formal written documents
148 even though in some case it can be unwritten, these formally written documents are signed and ratify
149 by member states through a formal legal accepted and approved procedures, and final agreements
150 made in the treaty are binding on member states: a concept known as “Pacta sunt servanda”

151 **METHODOLOGY**

152 The methodology adopted for the study is the qualitative approach. This is due to the fact the
153 qualitative approach is much suitable for explanatory and descriptive studies [13]. Adopting this
154 approach enabled the researcher to dwell on the works of renowned scholars in the field that have
155 focused on debating whether international law is really law which aided in a comprehensive analysis
156 of the arguments surrounding this debate and eventually leading to an objective conclusion

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

160 **The aim of the article is to contribute to the ongoing debate on whether international law is real law**
161 **and in order to make a comprehensive analysis of all the arguments surrounding this debate, the**

162 researcher placed the debate into the realist and liberal school of thought and thereby drawing an
163 unbiased conclusion.

164 **Discussion on whether international law is really law?**

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

170 **Realist/ Realism**

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

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

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

187 Secondly, ***International law lacks the coercive power that is backed by real law as in the case of***
188 ***Domestic law:*** To the realist, International law has a loose set of framework as compared to domestic
189 law because it lacks the coercive power that is backed by a real law like domestic law. This is to say
190 that in the view of the realist, international law is not able to enforce and compel compliance as a

191 domestic law does. This is probably due to the fact that, there is no international “police man” to
192 enforce international law as in the case of domestic law where there is a recognized court and police
193 to ensure compliance by all persons. A real law in the view of the realist should be backed by a
194 coercive power that should force compliance by all individuals regards of their status or power in a
195 society, but international law in the view of the realist does not command such coercive force as
196 powerful countries always have their way out even if they breach international laws and go
197 unpunished.

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

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

219 **Liberalism/ Liberals**

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

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

243 Secondly, ***one of the elements of law is that those who breach it are punished***: The liberals
244 believe that international law, possesses the element of punishing those who breach it. We have seen
245 several situations where Countries or people who have breached international laws and conventions
246 are punished in one way or the other. The Liberals will accept the fact that, there are some situations
247 where international law has been breached, but the offenders get away with the act without being

248 punished but this is only on some few occasions. According to Roger Fisher, even in the domestic
249 setting not all the laws are enforceable as there are powerful individuals who breach the law in one
250 way or the other and still have their way around the law without being punished [14]. For instance, if a
251 private individual or party wins a case against the State in court, the state in this case decides to
252 abide the ruling of the court only because it wants to do so and the state will decide to act according
253 to the ruling of the court on its own will because the private individual cannot put a gun on the head of
254 the state to act immediately. In most cases, however, those who violate international laws are being
255 tried and if they are found guilty, they are being punished to serve as a lesson or deterrent to other
256 states. Not only are individuals of a country punished for breaching international laws and
257 conventions, but even economic sanctions are sometimes imposed on a whole country or state to
258 ensure compliance or as a way of punishing those countries that breach international laws and
259 conventions.

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

270 Lastly this school of thought argues that, the peace and relative stability that has been achieved in the
271 international arena is as result of the fact that there exist some laws that governs and regulate
272 behavior of States, NGO's, IGO's etc in their relations with one another and that without such laws,
273 there will be no way by which such peace and understating in the relation among States in their
274 interaction with one another could be achieved and that confirms the fact that international law is real
275 law. International law has governed the way countries or states should trade among themselves to

276 ensure peaceful coexistence and harmony and as such there is no justification that international law is
277 not a real law as argued by some scholars.

278 **Justification of international law as real law**

279 The most advance argument used by scholars who are of the view that international law is not a real
280 law is the enforcement argument. Thus, international law is mostly criticized on the basis that it cannot
281 be enforced to the fullest as in the case of domestic law.

282 This assertion to a large extent is debatable and in fact, not true in all situations because even the
283 domestic law cannot be fully enforced at all times. For example, in the domestic setting, if an
284 individual wins a case against the state, the individual is at the mercy of the state to comply with the
285 ruling because the individual cannot hold a gun to the head of the state in order to compel the state to
286 comply with the court's ruling. Thus, it can be argued that in the domestic setting, states abide by the
287 rulings of domestic court mostly to protect their image or reputation at the international level as a law-
288 abiding state that ensures the rule of law or probably because they just want to do so due to the fact
289 that in the actual sense nobody can compel a state to abide by a domestic court decision.

290 Moreover, international law to a large extent is enforceable in the international system and there are
291 many cases where powerful countries like the USA, China, Russia, etc. have been sanctioned for
292 breaching some international laws for which these countries have complied and acted according to
293 the rulings of international tribunals.

294 For example, in 2014, the European Union imposed economic sanctions against Russia, targeting its
295 oil industry, defence, dual-use goods and sensitive technologies. This sanction was a result of the fact
296 that Russia was accused of supplying air missile to Ukrainian separatist, which was used in the
297 shooting down of Malaysia Airlines flight MH17 over eastern Ukraine and this act was considered as a
298 breach of international law [15]. Again in July 2014, Russia was again found guilty of breaching
299 international law and as a result was made to pay a compensation of \$50bn (£29.4bn) to
300 shareholders of Yukos, the former defunct oil company that was broken up a decade ago after its
301 boss fell foul of Vladimir Putin [16]. In the judgement, a tribunal in the Hague ruled that the Russian
302 state had intentionally sought to bankrupt Yukos, confiscate its assets and use all measures possible
303 to prevent the owner of the company who is in the person of, Mikhail Khodorkovsky, from entering into
304 politics

305 Additionally, on the 3rd of July 1998, a USA Navy ship called the Vincennes shot down the Iran Air
306 Flight 655 killing all the 290 members and the crew on board [17]. This was a terrible incident and was
307 considered a breach of international law. In fact, Iran sued the United States in the International Court
308 of Justice in The Hague to seek compensation for Iranian families that lost their loved ones as a result
309 of this act and in the lawsuit, Iran argued that the United States had violated the 1971 treaty which
310 sought to prevent acts of violence against civilian airliners. After the ruling of the court, the USA
311 agreed to pay a compensation of \$100,000 to \$250,000 to the families of people killed when the Iran
312 Air Flight 655 was shot down by the American Navy Ship [18].

313 Finally, in the late part of 2015, China arrested and jailed three Christian church leaders Hu Shigen,
314 Zhou Shifeng and Xie Yang without fair trial and this action was seen as a violation of the rights of
315 these people as stated in international law and as such the United Nations in the year 2017
316 demanded the Chinese government to immediately release these people and pay them the necessary
317 compensations. This case was reviewed by the UN's working group on arbitrary detention, and upon
318 careful analysis, the group rejected the claim by the Chinese government and said that the detentions
319 of these people were "made in total or partial non-observance of the international norms relating to
320 the right to a fair trial" [19]. Even though the decision of the UN's working group on arbitrary detention
321 is not legally binding on China, the Chinese government complied with the ruling and acted
322 accordingly.

323 The above mentioned are just a few of the many cases where powerful countries in the world have
324 been sanctioned for breaching international laws to which these countries have complied and acted
325 according to the ruling of an international tribunal. It is, however an undisputed fact that, in some
326 situations, powerful countries or states have breached one international law or the other without being
327 punished or in some cases refuses to abide by the rulings of international tribunals but comparatively,
328 the number of times states abide and give recognition to international law is much higher than the
329 number of times they breach international law without being punished.

330 **CONCLUSION**

331 In conclusion, I will like to state that, the two schools of thought have all made good points to justify
332 their stand with regards to debating whether international law is really law and this debate will
333 continue to exist partly due to the fact that there is no universally accepted definition of what law is
334 and as such one judgement on whether international law is law will be influenced by what the
335 individual thinks and believe constitute the definition of the concept of law.

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

345 In some occasions, States or individuals may break the law for their selfish interest or desires, but that
346 is not to say that there exist no laws in the first place. States to a large extent do comply with
347 international law for lots of reasons such as reputational reasons, reciprocity reasons, market reasons
348 and so on. Thus, states will like their national in foreign countries to be treated well and as such, they
349 mostly ensure that other foreign nationals are treated well in their territory. Additionally, a state that is
350 tagged for constantly breaking international laws and not respecting foreign investors will in turn not
351 attract and any more foreign direct investments and will be stuck economically. For these reasons and
352 others, states comply with international laws and obey them making international law real laws that
353 can be enforced.

354 Also the sources of domestic law and international law are different and as such the two laws can not
355 be compared.

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