

# Nature of international law essay sample

Law



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Q: You work for John Keating MP, who is due to give a talk at a Community Centre in his constituency. The talk has been necessitated by calls by another local MP, Bronwyn Bishop, demanding that the UK should concentrate on domestic issues and play a lesser role in international affairs. In a speech in the House of Commons, Ms Bishop as supported her demand with the argument that international law is ineffective, and can hardly be described as law. Mr Keating has asked you to prepare a Brief on the nature of international law for his talk. In particular, he wants you to explain the legal character of international law, how and why it is in fact effective (using examples from real life), and why it is necessary for the UK to obey international law and to continue playing a prominent role in international affairs.

It has often been said that international law ought to be classified as a branch of ethics rather than of law. The question is partly one of words, because its solution will clearly depend on the definition of law which we choose to adopt; in any case it does not affect the value of the subject one way or the other, though those who deny the legal character of international law often speak as though 'ethical' were a depreciatory epithet. But in fact it is both practically inconvenient and also contrary to the best juristic thought to deny its legal character. It is inconvenient because if international law is nothing but international morality, it is certainly not the whole of international morality, and it is difficult to see how we are to distinguish it from those other admittedly moral standards which we apply in forming our judgements on the conduct of states. Ordinary usage certainly uses two tests

in judging the ‘rightness’ of a state’s act, a moral test and one which is somehow felt to be independent of morality.

Every state habitually commits acts of selfishness which are often gravely injurious to other states, and yet are not contrary to international law; but we do not on that account necessarily judge them to have been ‘right’. It is confusing and pedantic to say that both these tests are moral. Moreover, it is the pedantry of the theorist and not of the practical man; for questions of international law are invariably treated as legal questions by the foreign offices which conduct our international business, and in the courts, national or international, before which they are brought; legal forms and methods are used in diplomatic controversies and in judicial and arbitral proceedings, and authorities and precedents are cited in argument as a matter of course. It is significant too that when a breach of international law is alleged by one party to a controversy, the act impugned is practically never defended by claiming the right of private judgement, which would be the natural defence if the issue concerned the morality of the act, but always by attempting to prove that no rule has been violated. This was true of the defences put forward even for such palpable breaches of international law as the invasion of Belgium in 1940 or the bombardment of Corfu in 1923.

But if international law is not the same thing as international morality, and if in some important respects at least it certainly resembles law, why should we hesitate to accept its definitely legal character? The objection comes in the main from the followers of writers such as Thomas Hobbes and John Austin, who regard nothing as law which is not the will of a political superior. But this is a misleading and inadequate analysis even of the law of a modern  
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state; it cannot, for instance, unless we distort the facts so as to fit them into the definition, account for the existence of the English Common Law. In any case, even if such an analysis gave an adequate explanation of law in the modern state, it would require us to assume that that law is the only true law, and not merely law at a particular stage of growth or one species of a wider genus. Such an assumption is historically unsound.

Most of the characteristics which differentiate international law from the law of the state and are often thought to throw doubt on its legal character, such, for instance, as its basis in custom, the fact that the submission of parties to the jurisdiction of courts is voluntary, the absence of regular processes either for creating or enforcing it, are familiar features of early legal systems; and it is only in quite modern times, when we have come to regard it as natural that the state should be constantly making new laws and enforcing existing ones, that to identify law with the will of the state has become even a plausible theory. If, as Sir Frederick Pollock writes, and as probably most competent jurists would agree today, “ The only essential conditions for the existence of law are the existence of a political community, and the recognition by its members of settled rules binding upon them in that capacity”. International law seems on the whole to satisfy these conditions.

As we now know that international law exists, as there are three main sources. These are; treaties, customs, and reasons and authority.

International law is unlike the Malaysian constitution, as it cannot be stored as a single document. It is more like the British constitution, as it is very adaptable and flexible. Unlike the British constitution though, international  
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law does not possess a legislature. This would probably make it weaker than Britain's constitution. But the question of whether or not international law exists, is not really a problem.

States give great importance to International Law. They employ, at great expense, a body of international lawyers, who work within the Foreign Commonwealth Office. Their job is to check foreign policy, and ensure that it falls in line with international law. For example, the North Atlantic Treaty Organisation (NATO), actions in Kosovo was argued to be within international law, as they were upholding resolutions by the United Nations Security Council (UNSC). So if states do not take international law seriously, then why would they spend so much money and effort on it?

International law can also lead to international prestige and trust, if it is upheld by a state. An example of this is the American President, George W. Bush and Britain's Tony Blair, have tried to keep within international law over their attack on Iraq during Saddam Hussein's reign. Going against international law could probably cause a state to lose its prestige, trust and, most importantly, allies. For instance, when Iraq invaded Kuwait, they broke international sovereignty. As a consequence Iraq lost their support from Russia.

As a result, state behaviour on the international level is constrained by international laws even if they are not obliged to, in order to ensure that they receive the benefits of interdependence. This is because these benefits are facilitated by international law because it creates norms and rules that lead to predictable relations between states. Another consequence of the benefits

states accrue from interdependence is the fact that they are less likely to get into conflict with other states in the international system. This is because international law creates procedures through which states can resolve disputes.

Therefore complying with international law is often in a state's best interests and when these laws are no longer beneficial to the state they must continue to comply to accrue the benefits from the other international laws to which they are party to or the whole system of international law will collapse, with a detrimental impact on states. International law is most effective in constraining states behaviour in the international system when it is not imposed upon but initiated by states. Chayes and Franck suggest, "...that voluntary obedience, not coerced compliance, must be the preferred enforcement mechanism" (Barker, pg. 89) to ensure states obey the rules of international law. Also if states initiate laws creating rules and procedures for their behaviour in the international system these procedures become part of a states natural behaviour.

The procedures that states comply to under international law become enshrined in the states behaviour due to repeated participation and as a result states will always follow these procedures when interacting with other states. International law moves " from the external to the internal, one-time grudging compliance with an external norm to habitual internalized obedience" (Barker, pg. 91). Consequentially, international law constrains state's behaviour in the international system because it becomes part of a state's domestic behaviour and therefore states always follow the norms of the law because it is part of their natural behaviour to do so.

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In conclusion, international law does restrict states behaviour in the international system. The arguments proposed by realists that international law will not constrain states because it is not legally binding, lacks coercive enforcement mechanisms and is not in the states interests are invalid. International law does conform to the requirements of law and it is actually in a states interest to obey international law due to the fact that international law facilitates increased interdependence between states. As a result states behaviour is constrained by international law because it creates a framework in which states interests can be pursued and creates a more stable international system. This is due to the fact that states know other states are obligated by international law and international law helps through its norms and procedures prevent conflict by allowing states to settle their differences without resorting to armed force.

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