

# International law vs national law essay sample

Law



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International law and national law are often in a conflict on some certain cases where it is hard to determine whether an international law will prevail or vice versa. On the other hand, many theorists are ultimately concerned with a conflict between the two systems and that they have labored in an effort to assign a paramount rank to one system or the other to avoid the potential clash. Therefore, this paper will highlight three crucial points in order to obtain a great understanding upon international and national law. Firstly, we will examine the definition and mechanism of international and national law in order to distinguish the function of both laws. Secondly, we will identify the relationship between international and national law. Lastly, we will focus on harmonizing both laws and creating a consensus in cases dealing. Keywords: International, National, Enforcement, Court, State

## INTRODUCTION

In the midst of a war involving questions of national existence and, even more important, of the ideals which shall survive and determine the direction of the world's future political and social development, the law of nations has proved itself superior, in the courts of one of the belligerents, to a rule of military expediency promulgated in legal form by that belligerent government. Examining deeper to the current laws that govern our world, the preeminence of national law became questionable due to the existent of international law. In other words, whether international law is a mirror of the national law or it is an assimilation of laws in order to cope with an internal affair. For sure, there are some facts that must be well-defined.

## WHAT IS INTERNATIONAL AND NATIONAL LAW?

Legal dictionary had defined international law as treaties between countries;

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multi-lateral agreements; some commissions covering particular subjects, such as whaling or copyrights; procedures and precedents of the International Court of Justice (“ World Court”) which only has jurisdiction when countries agree to appear; the United Nations Charter; and custom. However, there is no specific body of law which governs the interaction of all nations. Besides, international law according Oppenheim is the body of rules which are legally binding on States in their intercourse with each other.

These rules are primarily those which govern the relations of States, but States are not the only subjects of international law. International Organization and to some extent, also individuals may be subjects of rights conferred and duties imposed by international law. Basically, international law is the set of rules generally regarded and accepted as binding in relations between states and between nations. It serves as a framework for the practice of stable and organized international relations. International law differs from state-based legal systems in that it is primarily applicable to countries rather than to private citizens.

On the other hand, national law may become international law when treaties delegate national jurisdiction to supranational tribunals such as the European Court of Human Rights or the International Criminal Court. Treaties such as the Geneva Conventions may require national law to conform to respective parts. Much of international law is consent-based governance. This means that a state member is not obliged to abide by this type of international law, unless it has expressly consented to a particular course of conduct. This is an issue of state sovereignty. However, other aspects of international law are not consent-based but still are obligatory upon state and non-state actors

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such as customary international law and peremptory norms (jus cogens). To sum up, national and international law involving many actors which lead to the necessity of harmonization along the involvement.

## SOURCES OF LAWS

The important sources of national law arranged in the order of their juridical binding force are statutes, judicial precedents, opinions of experts, customs, ideas of justice, reason, or expediency. This stated that national law that govern every state had an adaptation and integration from numerous sources in order to form one supreme law. However, Wright had mentioned that opinion of experts, customs, idea of justice, reason or expediency are indefinite and courts will generally apply international law in appropriate cases where resort must be made to such sources. Thus, in all states international law is deemed to be incorporated in such sources of law where we may conclude that international law had a correlation with national law.

Moving further, the fundamental sources of international law are also varying. Firstly, major source of international law is the treaty. Treaties are international agreements that govern the way nations deal with one another. The Vienna Convention on the Law of Treaties, which provides basic guidelines for creating international agreements, defines a treaty as an international agreement between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments. A document that meets the elements of a treaty is still a treaty, even if its parties use a different designation.

Treaties may also be created between international organizations (such as the UN or NATO).

A treaty can come into force once a certain number of nations ratify the treaty, as specified in the treaty, or upon signature by the parties. What's more, specific provisions in most international treaties will identify when a treaty becomes legally binding, how compliance will be monitored and measured, how other nations may accede to the treaty (join once it is already in force), how and whether the treaty may be amended or modified; and how and when the treaty will be terminated. After a treaty comes into force as international law, additional steps may be needed to bring the treaty into effect internationally or within a particular nation.

Secondly, Customary International Law (CIL). This source of international law places binding legal obligation on nations according to their patterns of behavior. Over time, nations come to depend on the patterns of other nations' actions, words, and responses, and, if these become reliable, they crystallize into law. CIL derives from nations' actions, as well as from their silence (what they accept without comment) and inaction. Moreover, four key criteria for Customary International Law (CIL) include the principle is widespread; the principle is longstanding; there is a sense of obligation between nations to follow this principle; and acceptance of the practice by others. The International Court of Justice (ICJ) and other international law courts apply CIL as well as the law of treaties.

Lastly, Judicial Opinions and General Principles of Law Recognized by Civilized Nations. The International Court of Justice (ICJ) is the judicial organ of the United Nations (UN). The statute creating the ICJ is part of the UN Charter,

and any country that is a member of the UN is an automatic party to the ICJ. Unlike U. S. courts, however, the ICJ lacks compulsory jurisdiction. A nation comes within the court's jurisdiction only if it accepts the court's jurisdiction through a compromis (an agreement to submit the dispute to the ICJ for resolution) or treaty (specifying the ICJ as the dispute resolution mechanism for treaty-related disputes), or by accepting the ICJ's compulsory jurisdiction (an optional general acceptance of ICJ jurisdiction for all or some international disputes).

Moreover, the ICJ hears cases only between nations; it does not hear suits brought by individual citizens or by international organizations. Also, unlike most U. S. courts, the ICJ can issue advisory opinions. The ICJ is the main international court body, though its influence has been in some respects small because its docket is small and it operates slowly.

Other international tribunals interpret and apply international law rights and obligations. Two courts were created in response to specific crises: The International Criminal Tribunal for the Yugoslavia and the International Criminal Tribunal for Rwanda. Treaties can create additional court systems to apply to specific disputes under the treaty such as International Tribunal for the Law of the Sea.

Besides, several international courts are regional like the European Court of Justice and courts will consider some international law obligations that spring not from tradition law-making processes like treaty negotiations but from circumstances or traditions. Jus cogens, for example, is any principle held to be so basic and fundamental that binds all nations. This narrow category, <https://assignbuster.com/international-law-vs-national-law-essay-sample/>

which prohibits slavery, genocide, war crimes and piracy, is considered binding, though it is not codified or recorded in any written document. In a nutshell, the assimilation of many types of sources which creating national and international law had shown that national body in judiciary have a power in harmonizing the enforcement of national and international laws.

In addition, scholars have long recognized the pivotal role that national courts could play in international law's enforcement and given their advantages of accessible jurisdiction and enforceable judgments. This has resulted in calls for national courts to act as 'guardians' or 'agents' of the international legal order, impartially enforcing international law without regard for national interests. Yet, in the past, many international lawyers have lamented this potential as unrealized due to the tendency of national courts to refuse to apply, or to skew the interpretation of, international law in order to protect national interests. This indicate that the question between righteousness and depravity in laws do not have a constant measurement which eventually lead to societal judgment that lived on that era.

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