CONTENDING ISSUES IN INTERNATIONAL LAW AND THE CONTEMPORARY REALITY

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ABSTRACT
The spate of argument on the validity of international law in the world system today is increasingly disheartened. The actors in international relations are left with ambiguous issue regarding the authenticity of the international legal system. It is on the basis of this imperative that this paper examines vividly the contending views on the validity of international law. Monist and dualist schools of thought are seen to be the major brains behind the discourse. The researchers were able to delve into contemporary reality to fish-out what is actually obtainable in the world system today. And, it is revealed that law in itself could be said to be a continuous process which changes overtime from the minor rudimentary stage to the more complex one as society changes from flexible to rigid. Various sources of international law are identified in order to buttress the support on the argument that says "International law is a law".

Key words: Law; International Law; International Organizations; Sovereign States.

INTRODUCTION
It is an incontestable fact that rules and regulations are highly important as the behaviours of individuals, corporate organizations and the states would be put on check. It is however important to accentuate that no society could leave without a codified rules and regulations to govern the actions and inactions of individuals, corporate organizations and states in their relations with each other. It is historically noted that the state of nature is not longer feasible in our present complex society. It is only in the state of nature that big fishes are allowed to eat the smaller ones as the survival of the fittest was the order of the day and as a result, life was so

brutish, nasty, solitary, poor and short (Hobbes, 1651).

Moreover, a vast network of international law and dozens of international organizations make globalization possible. Treaties and other types of agreements among countries set rules for international trade and finance, such the GATT to foster cooperation on protecting the environment, and establish basic Human Rights, such as the international convention on Civil and Political Rights. Meanwhile among many international organizations, the United Nations facilitates international diplomacy, the World Health Organization Co-ordinate international public health protection, and the international labour organization monitors and fosters worker's right around the world (Mbah, 2005).

The scope and authority of international law expanded dramatically during the era of globalization. Historically, international law addressed only relations between states in certain limited areas (such as war and diplomacy) and was dependent on the Sovereignty and territorial boundaries of distinct countries (generally referred to as "states"). But globalization has changed international law in numerous ways to address issues among individuals, international organizations and the states (Mbah, 2005). Especially, crimes against humanity as witnessed in the case of Sadam Hussain in Iraq, territorial disputes in the case of Nigeria Vs Cameroon over Bakassi peninsula and lots of others.

CONCEPTUAL MEANING OF INTERNATIONAL LAW

It is truism that the concept of international law is one of the fluid and elusive concepts in the field of international studies that defies a precise definition. And as a result, the concept has suffered a lot of definitional crises from different scholars and authorities. Therefore, we shall conceptualize just few among many:

In the words of Malcolm (2003), international law is the term commonly used for referring to the system of implicit and explicit agreement that bind together Sovereign states in adherence to recognized values and standards. It differs from other legal systems in that it primarily concerns states rather than private citizen.

Mbah (2005), conceptualizes the term international law basically to mean the set of rules that countries follow in dealing with each other. But this

basic definition must be supplemented with three more complex explanations - Is international law really a law, the way the laws of United states enforced by courts and Police are? Are they written down somewhere? Finally, how is international law enforced, if there is no world government? Adeniran (1983) conceptualized international law as a body of rules and principles of action binding sovereign political units, especially modern states, in their relations with one another.

However, the researcher conceptualizes international law to be a codified body of rules and regulations that governs the actions and inactions of not only Sovereign states, but also international organizations and individuals in their interactions with other members of the globe. This stems out of the fact that the international political system is said to be influenced by actions and inactions of number of variables (state, international organization and even individuals) and the operations of this law had happen to extend its tentacle to these variables in recent times.

CONTENDING VIEWS ON THE VALIDITY OF INTERNATIONAL LAW

The validity of international law in the world system has been doubted. Two schools of thought have been contending on the validity of international law, these are monist and Dualist.

The validity of international law has been criticized by the scholars, with the background of the municipal legal system, who conclude that international law is no law. Their views are premised on three main grounds.

In the first place, they attempt a comparism of international law with municipal law thus argued that unlike the municipal law, international law does not have a legislative body empowered to enact and repeal laws. Is criticized for not possessing the law enforcement arm therefore, International law is helpless in a situation where its rules are breached. In other words, International law does not have the power to enforce obedience to its regulations like municipal or national legal system, to that end, International law is not a law.

Thirdly, it is posited that International law right from the days of the League of Nations as represented by United Nations as manifested in the

activities of the international court of Justice, presides over cases only where the state concerned recognizes their jurisdiction. Besides, the verdict of this court is respected or honoured where the parties in dispute consent to it (Ola, 1995).

It is obvious that some weaknesses of the international law is being identified and projected to buttress the objectivist view that international law is not a law. However, these aforementioned objectivists' positions are apparently debunked by the procedures and modus operandi of the international legal system. The erroneous notion concerning international law as held by these scholars, stems from the attempt to compared International legal system with municipal legal system. This is because the 'subjects' or 'persons' who international law is meant for are different from those of municipal legal system. While the national or municipal laws are strictly concerned with the citizens and unlimited liability companies of the state in question. International law recognizes international organizations, states and individuals as her subjects with rights and duties clearly spelt out. Hence the comparism of the two legal systems appears void and shrouded the entire issue in grave confusion (Bowett, 1970).

Furthermore, the basic responsibility of any legal system is to regulate human conduct as are enforceable in public authority. Thus, the fact that International law is a set of rules which regulates human conduct implies that it is a law in every sense (Akehurst, 1977). Besides, international law is a many sided legal system with the basic concept of any legal system embedded in it. These include: property and tort, injury and remedy, status and contract etc. In municipal laws, references are always made to international law. This means that the states recognize international law and are bound by it. International law equally possesses a uniquely different manner by which it sanctions the breach of its rules. These are indeed similar to enforcement as obtained in the municipal legal systems.

The complexities revolving around international relations and politics tend to give credence to the assertion that international law is no law or does not have a binding effect. Hence states, as a matter of fact, do comply with international law. They however, breach the rules of international law whenever their national interest dictates that breaking it is of more benefits than obeying. The implication here is that whether a state would

obey international law or not is determined by such factors as national interest, moral obligation, prestige and the inevitable need to interact with other nations within the international system (Akehurst, 1977).

IS INTERNATIONAL LAW A LAW? A CONTEMPORARY REALITY

International law exists and performs the sacred duty of introducing order into the relationship that exists amongst states, international organizations and even individuals. This is done through the establishment of known and predictable barrier to conduct. International law being a law amongst co-ordinated rather than subordinated entities is equally viewed as a type of international legal system operating with the desire to introduce orderly conduct into relations amongst nation-state through universally acceptable principles and rules.

Specifically, the role of international law can be itemized as follows:

a. Settle disputes amongst actors within the international system.
b. Encourage and enhance interactions amongst states.
c. Regulate states behaviors through emphasizing the responsibility on the part of states to respect the territorial integrity of sovereign states
d. Eliminate or at least minimized conflict and confrontational tendencies amongst states, international organizations and individuals by making sure that every subject knows her rights and limitations (Adeniran, 1983.
e. Contribute tremendously towards the primary objective of promoting international peace and security which is the ultimate motive behind international organization.

The above fundamental and crucial functions performed by international law to the community of nations, international organizations and individuals are enough to gain validity for the international law across the globe.

Despite the weaknesses identified by the antagonists of the international law, of not having an organized body to legislate, execute and adjudicate law within the international system. One can still agree that it has its own way and manner of legislation, execution and adjudication as U.N international Police (Interpol), U.N Army and International Court of

Justice is out there at the international arena to perform these activities.

It is however obvious to accentuate that every law must change over time from flexible to rigid and unwritten to written as societies move from minor rudimentary to the more complex one, depending on the exigency of the moment. Finally, the objection is raised as to international law being a true law on the ground that it does not possess a legislative body to enacts or repeal laws as obtainable in the municipal legal system, there is no doubting the fact that, in an entirely clear sense of legislature as obtained in the nation-states international law does not have a legislative body. Nevertheless, it has its own manner of getting its laws. These sources of international law have made universal headways in terms of acceptance. These are the sources that international law exploit to drive its laws or rules. They are expressly contained in article 38(i) of the statute of the international court of justice. This state inter-alia:

a. International treaties and convention
- Custom and practices
- General principles of law
- Judicial Decisions and the teaching of the most highly qualified publicist
- Precedence and judicial consistence. (U.N charter Pp. 62-578).

CONCLUSION

As discussed earlier, international law has traditionally been based on the notion of state sovereignty, but that idea has been breaking down because of the globalization. Interactions between states have become more complicated, involving a wide array of issues that require them to give up some of their sovereignty in order to have effective relations with each other. Similarly, international law has begun to deal with issues traditionally inside the border of individual state, such as human rights.

However, with time, international law covers a range of issues cut across nation-states, international organizations and individuals as subjects to its operation. It is often criticized for a lack of legitimacy mostly by monist school of thought, and counter-criticized by the group with the dualist point of view to gain legitimacy for international law in the world.

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Article 38(i) of the U.N. Charter, Pp. 562-578.