

# **WITHOUT CONSENT, THERE CAN BE NO INTERNATIONAL LAW, CONSENT IS THE BEGINNING AND THE END OF INTERNATIONAL LAW**

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## **Abstract**

This Article is intending to challenge the traditional understanding of international law, that states cannot be bound by a legal rule against their will. In another words, it intends to analyze if the consent is the beginning and the end of international law. It argues that existing commitment to consent is excessive and that better outcomes would result from greater use of non-consensual forms of international law. Unlike in domestic democratic systems, where individual freedom can be restrained by majority decisions of a representative body, there is no majoritarian decision making mechanism in international law that could restrain the freedom of a state against the will of its representatives. This contribution analyzes the role of consent in the formation of customary law. It will challenge the assumption that customary norms cannot bind states against their will. Relying on game theory, it will distinguish between different situations and argue that the role of consent differs according to the structure of the social problem that a potential norm is supposed to address.

**Key words:** Consent, Custom, Treaty and International Law