

The Role of International Law in Conflict Resolution: A Compliance Case Study of the Bakassi Peninsula and China vs Philippine Case

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Abstract: International Law and its institutions are aimed at ensuring there is world peace and security. International law has its intrinsic values and norms that favour interdependence and most nations see this as encroaching Western values that are a threat to the national values of states. The aim of this paper is to show how international law together with its underlying assumptions can be used to resolve conflict among states by ensuring compliance so as to promote peace and prosperity in the world. It argues that the formation and sustenance of a solid framework of international law can lead to world peace and security. International law can affect a state's behavior because states want to uphold their reputation and avoid sanctions by complying to the rules and regulations of international law. After the failure of the League of Nations in preventing another war, there was a strong desire to put in place a formal structure that would regulate and solve disputes among nations. Thus, the International Court of Justice was birthed as the judicial arm of the United Nations. By comparing a compliance case study between the Bakassi Peninsula case and China vs Philippine case, this paper aims to explain the role of international law in conflict resolution.

Keywords: International Law, Bakassi Peninsula case and China vs Philippine case.

1. INTRODUCTION

Guzman (2002) in his journal article *A Compliance Based Theory of International Law* explains that international law can be defined as a system of rules and principles that govern the international relations among sovereign states. He also explains that compliance is the main tenet in international law's role in resolving conflicts between states. Early examples of international law include the European battle against international piracy during the 16th and 18th century where France and England joined hands in fighting piracy in the high seas. Developments of international law can be traced back to the Peace of Westphalia in 1648 that ended the Thirty Year's War and brought peace to a ravaged Europe. The treaty led to the creation of sovereign nation states where intervention in domestic matters was not acceptable. Philosophers such as Grotius, Hobbes and Rousseau emphasized that the state was an independent actor and can only answer to international institutions only if the state was willing to do so.

Crawford (2012) in his book *Brownlie's Principles of Public International Law* posits that international law is more diffuse than domestic law and has different sources which are customary law, general principles, court decisions, scholarly commentary and treaties. Customary law is the law created by state practice and this practice includes national laws, physical acts and declarations made by the state. An example would be the rules of diplomatic protocol where diplomats from one country are considered immune to arrest in another country and the Common Heritage of Mankind where terrestrial resources are protected from exploitation under international law.

General principles are legal principles that are common and are considered as part of law. Court decisions form international law from legal precedence while treaties are analogous to contracts between individuals and states covering agreements on actions during war, boundaries, fishing and navigation rights. Scholarly commentary refers to writings from scholars that are considered to be as good as law.

Other than resolving disputes through litigation, international law makes use of negotiation, mediation, inquiry and conciliation as alternative dispute settlement mechanisms. Negotiation entails the direct engagement of involved parties in a discussion with an attempt of resolving the dispute amicably. Mediation involves the use of a third party who makes suggestions that might be agreeable to both sides voluntarily. Inquiry is the process of involving an impartial third-party to investigate the facts arising from the dispute to mediate between the conflicting parties. Conciliation is the process of reaching a solution through an impartial conciliator who listens to both parties and restores the relationship by resolving the dispute.

Eze (2007) in his article *Nigeria and Cameroon before the International Court of Justice* contends that the ICJ, herein the International Court of Justice, plays an important role in the resolution of border conflicts among nations. In addition to the Bakassi Peninsula case, he makes reference to certain cases adjudicated by the court which brings out the crucial role of international law in the settlement of disputes. An example would be Netherlands vs Belgium 1957 case, the Beli River territory between Mali and Burkina Faso in 1983 and the Gulf of Forsenca between Honduras and El Salvador of 1986 where compliance was observed after the final ruling of the court.

Lange (2011) in his article *The Responsibility to Protect : Kenya's Post Election Crisis* explains that the 2007-2008 Post-Election violence in Kenya led to the death of over 1000 civilians and almost 600,000 internally displaced persons (IDP's). The ethnic tensions between the ethnic groups were fuelled by the presidential campaign which pitted the supporters of Mwai Kibaki with those of the opposition leader, Raila Odinga. Hence, Kenya suffered a humanitarian crisis which was an issue to the United Nations Secretary General Ban Ki Moon who characterized the violence as an issue that needed to be addressed by the Responsibility to Protect (R2P) principle, a new norm of international law. Responsibility to Protect norm is designed to prevent war crimes, crimes against humanity, genocide and crimes of aggression. The Kenyan crisis rose to the level of crimes against humanity therefore international law had to come into action through the R2P principle by sending the Panel of Eminent Personalities led by Kofi Annan to lead mediation efforts that brought forth compliance to a shared peace deal between the two rivals.

Gambari (2007) in his conference paper *A Keynote Address* argues that a state that has violated an international obligation to do something can be induced to accept a sanction voluntarily. However, he notes that sanctions applied when international law is violated are usually not optimal. This is because according to his research, sanctions are deemed to be too weak to attain optimal compliance as they consist of military and economic punishment that states do not take seriously. This paper seeks to examine the role of international law in resolving conflict by ensuring compliance among states.

2. THEORETICAL FRAMEWORK

2.1 Liberalism:

According to these theorists, the values underlying international law are liberalistic values which include human rights, the rule of law, democracy and capitalism. Liberalism has its key underlying assumptions that foster compliance which are discussed in this paper. Liberalists focus on the domestic politics and institutions in the state which can or cannot lead to compliance with international law (Egede & Sutch, 2013). In 1625, Hugo Grotius, a liberal scholar, maintained that there was a law of nations that governed individual states. This law of nations was seen to be an idea of an international society where the individual sovereign states were bound by a body of laws. From this law of nations, international law came into being when Jeremy Bentham coined the word in 1789.

Liberalists start from the premise that war is preventable. The balance of power of the 18th century had failed and led to conflict in the international system. Scholars such as Woodrow Wilson advocated for the establishment of democratic institutions agreed upon by actors in the international system such as sovereign states which is the key foundation for preventing conflict in the international system. Secondly, they argue that institutions so established must be driven and maintained by normative and legal values that promote peaceful co-existence.

Thirdly, these normative and legal values are based on continuous acquiescence by the sovereign states for purposes of protection of the sovereign rights of these states. Fourthly, peaceful co-existence is driven by collective security centralized within an established international organization that promotes security and peace. John Locke emphasized that the right of an individual was to live in a democracy where the individuals would keep the fruit of their hard work therefore cultivating capitalism and the right to own property. Through colonialism and imperialism, these values were spread to the rest of the world especially in England or France.

The liberalist thinkers were challenged by the onset of World War I where the economic and political system was destroyed in Europe. By signing the Versailles Treaty in 1919, International law came into play to help resolve this conflict and avoid another war which led to the formation of the League of Nations as the first international institution created to thwart conflict in the international system. The League however failed due to a number of reasons one of which is that the United States which was the most powerful state at that time did not ratify the covenant of the institution hence was not a member. The League also failed in addressing other conflicts that needed the support of the League for example the Japanese invasion of Manchuria and Italy-Abyssinia conflict.

International law as a profession was dominated by male and white governing classes therefore the ideologies themselves were also male and white, mostly European. Peace was therefore short-lived and the world succumbed to yet another war, World War II which paved the way for the Cold War which was a period of hostilities between the United States and USSR. Despite the demerits of the WWII, the formation of the United Nations in October 1945 was a key milestone into achieving global peace and security. The Universal Declaration of Human Rights of 1948 emphasized the ideologies of liberalism through the recognition of innate and equal rights of individuals otherwise known as human rights today. The liberal theory assumes that states are not the main actors in international relations therefore focuses on the domestic politics of the state and its institutions. Examining compliance within this theory is therefore an examination of the domestic politics of the state which dictate whether the state will comply or not.

2.2 Consent-based Theory:

This theory starts from the premise that states will only oblige to what they have consented to. Once a state ratifies a treaty then it has an obligation to obey that treaty. Therefore, a state's consent to a particular rule or law generates a legal obligation to comply.

2.3 Transnational Legal Process:

Transnational legal process theory explains how state and non-state actors interact in both international and domestic levels to form patterns of behavior and norms that are internalized. Through this process of continued interaction and internalization of legal norms that are consistent with international law, compliance eventually takes place.

2.4 The Managerial Model:

This legal theory of compliance states that the coercive model of compliance should be replaced with a managerial model which relies on problem-solving and cooperative procedures. States will comply with international law basically because of three factors. First, because compliance prevents a state from recalculating the cost and benefits of a decision and saves the state from transaction costs that it would have incurred. Second, treaties are deemed to be consent-based tools that serve the interests of the involved states and finally a general norm of compliance generates a compliance pull that furthers state compliance. The norm itself generates some sort of compliance pull towards decisions made through international law.

2.5 Neorealist Theory:

Neorealist theory assumes that states are the main and unitary actors in the international system. States are driven by a thirst for power and security. According to these theorists, states will comply with international law only if it is in the interest of the particular state.

2.6 Institutional Theory:

Institutionalist theorists bear the same thoughts as neo-realists that states are the main actors in the international system and they are rational. Institutionalists posit that international institutions play a role in enhancing cooperation among

sovereign states therefore leading to compliance. Institutions according to institutionalists facilitate the repeated nature of interaction and reduce the costs of punishing cheaters.

3. METHODOLOGY

In order for me to show the role of international law in conflict resolution by ensuring compliance in the international system, I used qualitative research strategy that focused on secondary data as the method of data collection. This included published books, scholarly articles, presidential speeches, case studies, government reports and online journals. These methods were chosen since the short time given to do the research was impossible for one to travel and collect primary data. There was also insufficiency of information on the topic therefore the literature had to be supplemented by secondary data.

4. CASE STUDIES: THE BAKASSI QUESTION

The Bakassi question is one of the case studies used in this paper. Cameroon and Nigeria have bitter relations because of the dispute over their shared territory border. The two countries have conflicted over a clear and acceptable delineation of the boundary including rights over the oil-rich Bakassi peninsula. Both countries make claims over the right of ownership of the peninsula. In 1981, both countries were at the brink of war due to escalating tensions due to ownership of the peninsula which led to Cameroonian and Nigerian troops to clash in the 1990's prompting Cameroon to start proceedings in 1994 against Nigeria at the International Court of Justice.

4.1 Origin of the dispute:

In the 18th and 19th century, Africa went through colonial demarcation of its land and territories. The Cameroonians were divided between France and Britain after they took over the German territories according to the provisions of the Versailles Treaty. Nigeria claims that she inherited the original title of Bakassi on claims of the treaties between the British and the indigenous Kings and Chiefs at the time of her independence in 1960 from Britain. On the other hand, Cameroon claims that the Anglo-German Treaty of 1913 gave her rights of ownership. Also, she claims that two agreements that she signed in 1970 with Nigeria in the form of Yaounde II Declaration of 1971 and Maroua Declaration of 1975. The settlement line drawn placed Bakassi on the Cameroonian side.

4.2 Adjudication by the ICJ:

In 1993, Nigerian troops invaded and occupied areas of the peninsula. This provoked shootings from both sides leading to loss of lives. On 24th March 1994, Cameroon unilaterally filed a suit against Nigeria at the ICJ claiming Nigeria had committed acts of aggression under Article 36 of the ICJ'S statute. Eight years later in 2002, the court ruled that sovereignty over the peninsula rested with Cameroon, which Nigeria rejected. President's Obasanjo's government did not accept the ruling of the court on grounds that the federal government cannot give up the Bakassi territory without the input from the states and national assemblies of the federal government to amend the constitution since all land and territorial makeup of the country is vested in the constitution. An official statement made by President Obasanjo was released by the office of the special assistant to the president on National Orientation and Public Affairs where he stated at no cost will the interests of Nigeria be undermined.

4.3 Significance of the Law:

Nigeria was expected to withdraw her civilian and about 3000 police forces from the peninsula but she refused. There was reluctance on the part of Nigeria to implement the judgement as ruled by the court (Bekker 2003). Nigeria accepted parts of the decision that she deemed favourable and rejected the unfavourable parts. Diplomatic efforts then began led by United Nations Former Secretary General Kofi Annan to reach an agreement between the two conflicting parties. The Greentree Agreement was brokered in Newyork in 2006 as a panacea for resolution of the conflict. It was meant to oversee the withdrawal of Nigerian troops from the peninsula and ensure Cameroon received ownership in accordance with the ICJ ruling. (Gambari 2007). All negotiation and mediation efforts followed the directives of the court's ruling. The law was the primary reason for the eventual peaceful resolution of the dispute despite Nigeria's reluctance to compliance.

5. SOUTH CHINA SEA DISPUTE: PHILIPPINES VS CHINA

5.1 Origin of Dispute:

The South China Sea bears one of the primary routes for international trade. There are two islands in the sea that are grouped into: The Paracel islands in the North West and the Spratly islands in the South East region. In 1955, China and Taiwan captured the Spratly islands and some parts of the Paracel islands as they were not seen to be of value by the other claimants. Sean Mirski (2015) explains that in the 1970's, the scramble for the islands was spurred by oil discovery in the sea and Philippines was the first to move in followed closely by China. In the Paracel islands, China invaded and took over from the Vietnamese control and sank their ship killing a dozen Vietnamese citizens. In 1988, China invaded the Spratly islands and conducted forceful occupation at Johnson Reef. China submitted a map referred to as the infamous nine-dash line that intermittently snakes around the edges of the South China Sea. Beijing claims that it has historic rights and sovereignty over all the waters and islands as well as the seabed and subsoil covered by the nine-dash line. In 2012, China took over Scarborough Shoal from the Philippines and Chinese fishermen began practicing illegal poaching in the area. Later on both parties agreed to withdraw from the Scarborough. Manila did. Beijing did not.

5.2 Violation of UNCLOS:

The treaty was adopted in 1982 by the United Nations to define the rights and responsibilities of the member states in respect to the management of maritime resources and the oceans. The UNCLOS states three types of maritime features that a country can claim as part of its territory. These are islands; where a state has sovereignty over 12 nautical miles territorial sea from the coastline. The state is also entitled to a 200 nautical mile exclusive economic zone where the state has sovereignty over the waters, fish, minerals and oil reserves. The Scarborough Shoal which is a submerged coral reef is within the exclusive economic zone of the Philippines but has been under the control of the Chinese. The Paracel islands is being disputed by China and Vietnam while the Scarborough Shoal is being disputed by China and Philippines. The Spratly islands is disputed by China, Vietnam, Philippines, Malaysia, Brunei and Taiwan. None of the occupations by China is entitled to a 200 nautical miles exclusive economic zone. China therefore violates the UNCLOS through its occupation and control of the maritime features using the nine-dash line.

5.3 Adjudication by the International Permanent Court of Arbitration:

China has continued to infringe and deny Philippines to enjoy and exercise its sovereign rights of its own exclusive economic zone by occupying and controlling the Shoal. Manila filed an arbitration case on based on fourteen claims against Beijing in the Permanent Court of Arbitration at the Hague against Beijing in January 2013 claiming that Beijing had violated the United Nations Convention on The Law of the Sea (UNCLOS). Philippines claims are based on maritime law issues although China contends that territorial matters have to be resolved first therefore, China has refused to partake in the proceedings and claims that the court has no jurisdiction over the matter. This has been interpreted by other states as an arrogant refusal of China to abide by international law. The tribunal has rejected some of China's argument and stands its ground that China's refusal to partake in the proceedings does not inhibit the jurisdiction of the tribunal.

6. ANALYSIS

International law emanates from the premise that all sovereign states are equal. Some states which are militarily strong tend not to comply with international law as they hide behind sovereignty to continue with their unlawful acts. The empirical analysis conducted in this paper has shown that states are reluctant to consent to the adjudication of disputes by the courts through international law. International law is seen to have little or no impact on the behavior of states as its content is largely controlled by the self-interest of powerful states. (Chan, 2015). In the South-China Sea dispute between China and the Philippines, China did not comply with the directives of the court and the international community saw this as non-compliance on the part of China. International law therefore is merely an epiphenomenon.

Article 41 of the ICJ Statute states that states are bound to comply with orders that are determinate (Llamzon, 2008, pp.821). The ICJ has been criticized to have a flawed jurisdictional structure that is entirely based on consent. This means that if the defendant state does not consent in a given case it leads to serious cases of non-compliance as seen in the above case study where China refused to consent to the jurisdiction capability of the Permanent Court of Arbitration. Cases unilaterally filed by Applicant states to the court usually end up having the Respondent state vehemently reject the directives of the court and in the long-run this would lead to non-compliance which has repercussions on the dignity of

the court and international law. Cameroon filed a suit against Nigeria unilaterally which saw Nigeria reject the ruling of the court in 2002. The United Nations Charter Article 94(1) states that each member of the United Nations has a legal obligation to comply with the rulings of the International Court of Justice in any case to which it is a party. The Security Council ensures compliance only if the Respondent state refuses to comply. Recognition is one thing, compliance is another. Nigeria later on recognized and acknowledged the decisions of the court but after a few years after the peace deal, reports emerged that there was still continued occupation of the peninsula by Nigerian forces.

Reflecting on the Consent-Based Theory explained earlier on in this paper, consent is not enough to bind a state to a legal obligation. This is because consent itself does not provide states with an incentive to abide by the law. China and Nigeria had no incentive to comply with the rulings of the court therefore ended up being non-compliant. Liberal theory has been found to be too complex to explain the compliance of states and transnational legal process does not provide a clear explanation of why and how legal norms are internalized. The outlined theories do not provide a concrete understanding of compliance as some theories explain compliance and not violation while others explain violation and not compliance. This paper is geared to provide a sound theory of compliance which explains both ways of compliance and non-compliance.

6.1 Reputation Theory:

The theory being advanced in this paper is the Reputation Theory. Suppose two states have agreed and ratified a treaty on the non-proliferation of nuclear weapons. These states can choose either to comply with international law or not to comply. By application of the prisoner's dilemma in the diagram below, each country is seen to be better off if it violates the treaty while the other state complies, and both countries are better off if both of them comply than if they don't comply.

		Country B	
		Comply	Violate
Country A	Comply	4,4	3,5
	Violate	5,3	2,2

If both countries violate the treaty, they are both worse off and if they comply they both enjoy the maximum payoff. This is a proof that compliance is the dominant strategy for both states. This theory helps us understand why Nigeria at first refused to comply with the ruling of the ICJ but later on changed her mind and decided to comply. International law brings forth a solution to the prisoner's dilemma by charging a penalty against the unwilling party. Sovereign states that violate international law agreements are sanctioned. Sanctions include punishment by other states and international bodies, trade sanctions, diplomatic sanctions and reputational costs that diminish a state's credibility in the international system (Damrosch, 1997, pp. 98-156). When a state conducts its rationality analysis and finds out that the reputational costs and direct costs of not complying with international law are outweighed by the benefits, then the state will violate international law. This explains China's reluctance to comply with the law in the South-China Sea Dispute.

States strive to maintain a good reputation in the international system. A country that has a good reputation will freely enter into international agreements with other states as it is seen to be a reliable partner because it is known to honour international agreements (Guzman, 2002). Consequently, a state's decision to violate international law will only benefit the state in the present but suffer in the future. When a state enters into an international agreement, the state offers its reputation as a form of collateral to uphold the agreement. A treaty between Britain and the United States is characterized by a high level of trust and commitment therefore the two countries cannot afford to breach an agreement as this would have a negative effect on future engagements between the countries. A treaty between Iraq and the United States on the other hand is characterized by lower levels of reputational collateral because Saddam Hussein is not considered as a reliable treaty partner because of a bad reputation of violating the United Nations Security Council resolutions. A state that has a reputation for compliance projects itself to other states as a cooperative partner thereby enabling the state to enjoy durable relationships with other cooperative states. This theory is a clear indication of why states will abide by international law despite its challenges and also why states sometimes choose not to abide by the law.

7. CONCLUSION

The heart of international law lies in maintaining a system of rules that govern the interactions between states so as to promote peace and security in the international system. One of the challenges that international law has faced is lack of enforcement mechanisms; which hinders the success of the law. Pessimism regarding international law is completely unwarranted. Most disputes occurring in the international community will continue to function despite the many challenges that international law has faced, as an important angle of resolving international disputes. The Reputation Theory advanced in this article is seen to provide an understandable and more realistic paradigm of understanding both aspects of compliance and non-compliance in which the role of international law can be easily comprehended in an anarchic system.

End Notes:

Nwannekanma (2002) states President Obasanjo's speech:

Having studied the judgement as entered by the Court, it is apparent that a lot of fundamental facts were not taken into consideration in arriving at their declaration. Most disturbing of these being the difficulties arising from the Orders contained in the judgement, particularly, the order relating to Nigerian communities in which their ancestral homes were adjudged to be in Cameroonian territory but which are expected to maintain cultural, trade and religious affiliations with their kith and kin in Nigeria. Nigeria takes cognizance of these serious implications and therefore appeals to all her citizens at home and abroad to remain calm, positive and constructive until we can find a peaceful solution to the boundary issue between Nigeria and Cameroon. We appreciate and thank the Secretary General of the United Nations for brokering meeting at the highest political level between Nigeria and Cameroon before the judgement was delivered and for offering his good offices to broker a similar meeting now that the judgement has been delivered with a view to effecting reconciliation, normalization of relations and good neighborliness. Nigeria thanks all leaders of the international community who have expressed concern over the issue and re-assures them that she will spare no efforts to maintain peace between Nigeria and Cameroon and indeed in the entire region. However, Government wishes to assure Nigerians of its constitutional commitment to protect its citizenry. On no account will Nigeria abandon her people and their interests. For Nigeria, it is not a matter of oil or natural resources on land or in coastal waters; it is a matter of the welfare and well-being of her people on their land. We assure the people of Bakassi and all other communities similarly affected by the judgement of the International Court of Justice on the support and solidarity of all other Nigerians. Nigeria will do everything possible to maintain peace in Bakassi or any other part of the border with Cameroon and will continue to avail itself of the good office of the Secretary-General of the United Nations and other well-meaning leaders of the International community to achieve peace and to maintain harmony and good Neighborliness (pp.7-8).

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