

**THE ROLE OF INTERNATIONAL LAW AND DIPLOMACY IN THE
PRESERVATION OF PEACE AND SECURITY IN THE POST COLD WAR
INTERNATIONAL SYSTEM**

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ABSTRACT

The world plays host to enduring conflict between nations around the globe. In order to suppress anarchy and prevent it escalating into conflict, there has to be some kind of global governance and means to maintain order. A person cannot post a letter, travel abroad, receive an inoculation, refuel a car, purchase groceries, or use a telephone but for the fact that international law is smoothly working behind the scenes, attending to and regulating the transactions relevant to these services. It can be noted that although international law and diplomacy is sometimes undermined, they are by no means powerless and wield perhaps the most power in international society. While no one would deny the importance of diplomacy and international law, it is international organisations which bring them into being and sustain them. As the international system is not governed by any real and tangible global governance, compliance with laws and diplomacy is voluntary and largely unenforceable. Attempts to make the international system less anarchic by providing some laws and groundwork for relations between states will only ever be successful if a way is found of enforcing the laws that are made. Until then, the utopia of international order remains a distant dream. However, the successes and failures of international law and diplomacy are similar to that on a domestic level; some nations will obey through a sense of morally responsibility whilst others disregard it without thinking about the repercussions. It appears that international law and diplomacy is unable to maintain international order completely, but can keep nations more in order than they would be without any law. Nevertheless, as it is in their interests, most states do in fact obey international law and diplomacy.

Key Words - *Role, International Law, Diplomacy, Preservation, Peace, Security, Cold War, International Systems*

1.0 Introduction

The world plays host to enduring conflict between nations around the globe. In order to suppress anarchy and prevent it escalating into conflict, there has to be some kind of global governance and means to maintain order. However, large, independent states with different ideologies and statecraft make this governance a problem. The advance of globalisation in the last fifty years

has made possible and necessary a greater degree of international order. In response to this international law and diplomacy have had wide spread use in the preservation of peace and security in the post cold war international system. Some would argue that the strength and power of these international law and diplomacy has become great enough to maintain order among international society though others disagree. The basis of this paper is therefore to analyse the role of international law and diplomacy in the preservation of peace and security in the post cold war international system.

2.0 Theoretical Framework

International Legal Theory

Theorists have long debated the philosophical basis of law as either positivist or naturalist and, in many areas of law, these alternatives adequately fuel scholarly discourse. Rules and judgment are evident in law, reflecting intrinsic competing needs for objectivity/ predictability and flexibility/ fairness (Folker, 2013). A rule-based, largely binary procedure defines relevant evidence and governs decision, while a highly subjective process selects a remedy that fits the entire situation. Positivism contributes the rules while a naturalist perspective lends judgment to inject circumstance into selection of a remedy. Various legal scholars have propounded arguments supporting positivism or naturalism as the basis for all law and these arguments are often plausible, until they are applied to international law (Matlasa, 2007).

The sources of international law are characterized by contrasting elements of objectivity and subjectivity that preclude application of any theory that adheres too closely to either positivism or naturalism. Treaty, alone, stands solidly within the realm of positivism, although persuasive arguments could be deployed for inclusion of some unwritten sources that might qualify as objective, e.g., custom and jus cogens (Pease, 2011). At the other extreme, sources such as equity and natural law, offer a normative view and exhibit the lack of uniformity that accompanies subjectivity. International law also embodies sources that are dynamic and assume many philosophical directions. The writings of publicists and the decisions of national courts vary with time and circumstance and this variety assures substantial inconsistency among these elements. This incoherence obstructs the positivist's search for tangible rules and frustrates the naturalist's desire for a broad consensus based upon unwritten principles (Powell, 2013).

Thus, both positivist and naturalist theories are wanting as means of explaining the origins and force of international law. Positivism does not address the intangible sources that are inevitable in a system of law that aspires to govern equal sovereigns: naturalism lacks the visibility and uniformity necessary to define what the law really is, especially across highly diverse cultures and national legal systems (Wallestein, 2002). A hybrid theory has been proposed, combining rules with flexible interpretation and application. This compromise is motivated by the inability of either positivism or naturalism to treat the entire domain of international law. Consolidation attempts to force a union of genuine opposites and has little to recommend it beyond the claim that it yields one perspective to apply to all sources of international law. As such, it reflects the weaknesses of each and offers too little synergy to overcome them. If a legal theory of international law is to be developed, an alternative to this limited traditional menu is needed (Kirch, 2006).

Viewed as a voluntary commitment, international law may be analyzed as a contract between nations. Treaties are actual contracts and consistent behavior can be regarded as performance exchanged for reciprocal behavior by other nations. Jus cogens, the most unusual source of international law, might be analogized to quasi-contract (Burton, 2012). A contractual perspective aids understanding of behavior by emphasizing notions of reciprocity of obligation, the existence of specific conditions, and a cost exchanged for a benefit. The analogy is good but not perfect, particularly with respect to highly diverse sources, such as the writings of publicists, decisions of national courts, and natural law (which varies among different cultures). Contract analogy is a useful way of examining international law and it yields insight on issues related to mutuality (William, 2001). Efficiency is a broader perspective that can be usefully applied to inquiry on why international law exists and how it performs its function. Treaties enable nations to increase their economic efficiency by entering agreements that make the behavior of signatories predictable and economically exploitable.

Customary law and other unwritten forms of international law also serve the same function, although with less certainty. If efficiency is used as a conceptual framework for international law, it is able to explain and predict a significant amount of national behavior, such as when nations will abide by the various forms of international law and when they will forsake their commitments. The indifference of an efficiency perspective to the form of international law is an

advantage not available in a positivist-naturalist construction wherein some sources of international law are conspicuously mismatched with one of these perspectives (Bjorn, 2005). The economic framework allows each nation to assess the effects of international law and to structure its behavior in ways that maximize benefits and minimize costs. The incentive to resort to strategic behavior during the development of an international law is discounted by the ability of each nation to assess other participants' incentives and concerns and form an independent estimate of the potential rewards and costs involved in compliance with the law, whatever its form (Akande, 2010). Efficiency, however, does not provide significant insight into moral, political, or cultural considerations.

3.0 History of International Law and Diplomacy

Many great wars caused the evolution of the rules and discipline of international law. Modern international law first took shape in 1625 during the 30 years war when Hugo Grotius, a Dutch diplomat, produced his great work, "On the Law of War and Peace" (Wolff, 2011). Grotius saw that the old order in Europe was breaking down and the allegiance to the Pope and the Emperor was losing its grip over numerous states. With numerous states being released from the authority of the Pope and the Emperor, Grotius feared there would be little restraint among society and lawlessness would prevail. To avoid this, Grotius created a set of principles for the newly released states to obey in their dealings with each other. Hence, modern international law emerged (Powell, 2013).

In 1648, with the Peace of Westphalia many new nations large and small emerged and the smallest states would have had no chance of survival if there were not a rudimentary international legal system (Beuno, 2011). Grotius' ideals were admirable, but the world of power and real politik did not pay sufficient attention to them, resulting in other great wars. There was also the race for empires which began after the discovery of America and the evolution of maritime routes to Africa and the East. There were also revolutionary wars such as those accompanying the French Revolution (Aloisi, 2013).

Through all this dismal history of fighting, the philosophers were still straining to achieve recognition of a world order free of war. After the carnage of the French revolutionary wars

ended in 1815, a great effort was mounted to establish a peaceful world at the Congress of Vienna (Burton, 2012). This did not succeed, but the momentum for peace kept growing. In the 19th century there were around 400 peace societies around the world. However there was a great gulf between the world of the philosopher and the world of power and those who commanded real power tended to smile superciliously at the apostles of peace, viewing them as visionaries, day dreamers and utopians who did not understand the politics of power (William, 2003).

The 1899 Peace Conference sought to achieve a means for the peaceful settlement of disputes, rejecting the principle widely believed in at the time that war was the natural means of resolving international disputes (Kirch, 2006). A proposal was made for the establishment of a Permanent Court of International Justice which would settle disputes between nations. At the time this was not achieved owing to resistance by the great powers (Matlasa, 2004). Rather, a Permanent Court of Arbitration was established making available a panel of experts in international law for countries to settle their disputes. It was successful in resolving a number of disputes that would have otherwise resulted in war.

This Court system, however, was not sufficient to prevent World War I from occurring in 1914. The War resulted in an enormous loss of life and further intensified the drive for peace and international law (Bjorn, 2005). In the Treaty of Versailles in 1919, the Permanent Court of International Justice was established with jurisdiction to settle international disputes if the states concerned were prepared to refer their disputes to the court. Consisting of a highly qualified, regular body of judges, this Court was empowered to apply the principles of international law and diplomacy to disputes before them, and functioned with great professional competence (Knoops, 2014).

International law and diplomacy thus gained in stature and acceptance. However, they still have been insufficient to prevent war because states were not required to submit disputes to the court. The world underwent the agony of a second world war (Beuno, 2011). Afterwards, the Court of International Justice was given greater stature through the creation of the United Nations and the acceptance of the UN Charter of which the Statute of the International Court of Justice was made

an integral part. By this Charter, war was outlawed and the peaceful settlement of disputes was required. The Charter was a tremendous advance and a great milestone on the road to the enthronement of international law and diplomacy (Bryman, 2014).

The UN Charter explicitly states, in Article 2.4, that all member states “shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations” (Folker, 2013). The UN Charter has now been in force for 60 years, and virtually every state in the world is a member. It is binding on all nations. It is the duty of every nation and of every citizen to do all they can to strengthen the acceptance and authority of the UN system as well as the system of international law and diplomacy because this is the principal means of achieving a world of peace and our principal protection against future wars (Pease, 2011).

4.0 Role of International law and Diplomacy in Preservation of Peace and Security

International law and diplomacy may well be described as the queen of disciplines which deal with global order. Leadership in the battle against the factors disrupting global peace is the natural province of international law (Bryman, 2014). The principles underlying international law and diplomacy are based upon universally accepted values and moral standards. They can be understood by every schoolchild. International law and diplomacy also represents the essence of the progress of civilization towards a world ruled by law rather than a world ruled by force (Powell, 2013).

It took thousands of years of effort, hundreds of wars, and the sacrifice of millions of lives to achieve this. It is thus a very precious possession of all human beings, which must be carefully protected. International law is an essential tool for the abolition of war. War has been a part of the human condition for thousands of years, but its abolition is now a necessity (Wallestein, 2002). With weapons of mass destruction becoming ever more readily available to state and non-state actors, the threat to a peaceful world being dragged into catastrophic conflict is so great that civilization itself is in peril.

Misunderstanding and cross cultural ignorance are among the root causes of war. While global forces demolish geographical barriers and move the world toward a unified economy, clashes among cultures can have damaging impact on peace (Aloisi, 2013). International law and diplomacy draws upon the principles of peace expressed by great peacemakers and embodied in ancient writings, religions, and disciplines, and places them in the social and political context of today to dissipate the clouds of prejudice, ignorance and vested interests that stand in the way of world peace and harmony (Bueno, 2011).

Today, international law and diplomacy promotes active cooperation among nation states. International law and diplomacy prescribes a set of fundamental norms within which nation states are to conduct their internal behavior and their external relations (Folker, 2013). In regard to internal behavior, international standards regulate such things as the environment, health, industry, postal services, transportation, and occupational safety standards. Dozens of international human rights treaties also set forth political, civil, social, economic, and cultural rights to be respected within national legal systems. In relation to external behavior such as the use of force, the peaceful resolution of disputes, conciliation, arbitration, negotiation, mediation, and judicial settlement, all nations must abide by standards laid down in the UN Charter and other international instruments (Kirch, 2006).

War has been outlawed by the UN Charter except in the limited situation of self defense and that too is regulated under strict limitations. The Security Council is also authorized by the UN Charter to direct the use of force to maintain or restore international peace and security (Matlasa,2007). Many of the world's countries also operate in regional groups regulating their affairs by international agreements, including the European Union, the Organization of American States and the African Union. In short, in every detail of its own affairs, every country needs to have some relationship or interaction with other countries and every one of these is heavily influenced by international law and diplomatic ideals (Pease, 2011).

Compliance with international law and diplomacy is the ordinary state of affairs. States normally follow the rules. Compliance is caused by the commonly shared expectation that governments

and individuals will abide by the law; the disapproval and condemnation that result when rules are broken; the loss of standing suffered by a rule-breaking state, which can have adverse diplomatic and economic consequences; and the availability of sanctions including economic measures like trade embargoes and in extreme cases, the use of force directed by the Security Council (Powell, 2013).

4.1 Sources of International Law and Diplomacy

The most authoritative statement on the sources of international law and diplomacy is contained in Article 38 (1) of the Statute of the International Court of Justice, an integral part of the UN Charter. The Statute identifies five sources and these are

1. Treaties (Conventions)
2. Customary International Law
3. General Principles of Law Recognized by All Nations
4. Judicial Decisions
5. Teachings of the Most Highly Qualified Jurists

Treaties, also referred to as conventions, set out in writing what has been agreed among nations. They are binding because one of the basic principles of international law is that treaties are binding on the nations who are parties to them, according to the maxim *pacta sunt servanda*, which means agreements shall be observed (Akande, 2010). However, treaties are only one of the sources set out by the Statute, contrary to the common but false impression that international law is contained only in treaties. Treaties give expression only to a small part of the totality of principles which constitute international law.

Customary International Law consists of rules and principles based on general practices accepted across the world as binding. It reflects in part universal moral values underlying, for example, the prohibitions of genocide and torture.

The **General Principles of Law Recognized by All Nations** signify general principles acknowledged by all legal systems, again reflecting universally shared standards or concepts.

Customary international law and general principles of law draw on all the cultures of the world to generate concepts, principles and rules to govern new situations as they arise. International law draws upon this vast reservoir for humanity-protecting and future-regarding principles like trusteeship of the earth's resources, conservation, protection of the environment and of health and welfare, duties to the community of nations, and obligations *erga omnes* (towards all people) (Knoops, 2014).

When the Nuclear Weapons Case was heard before the International Court of Justice in 1995, one of the arguments made by the nuclear powers was that there was no treaty provision expressly prohibiting the use of nuclear weapons (William, 2003). This illustrates the common fallacy that international law is only treaty law. It loses sight of the fact that apart from treaty law there is a vast range of principles which prohibit such destructive weapons - principles against genocide, principles against the killing of civilian populations, principles against the use of weapons that are cruel and inflict severe suffering and hardship, environmental principles protecting the rights of future generations, and so forth. Treaties, customary law, and general principles of law are the sources of international law, with the bulk of international law contained in these last two sources. Judicial Decisions and Teachings of the Most Highly Qualified Jurists are only means for determining the rules of law (Wolff, 2011).

4.2 Effects of International Law and Diplomacy to the International System

Today, every country depends on international law and diplomacy for the daily function of most of its institutions. This is not often seen, as international law is relegated to the category of an abstruse discipline which operates at very high levels of diplomacy and statesmanship, separate from ordinary people (William, 2001). However, international standards heavily influence employment, labor protection, health, criminal justice, children's rights, fair trial, privacy, environmental protection, and domestic laws.

International law and diplomacy impinges on the life of every citizen several times daily. A person cannot post a letter, travel abroad, receive an inoculation, refuel a car, purchase

groceries, or use a telephone but for the fact that international law is smoothly working behind the scenes, attending to and regulating the transactions relevant to these services (Fran, 2014). Health relies on international standards and controls; international travel depends on a series of treaties and international law principles; the carriage of a letter would be impossible without international postal regulations; the normal stock of groceries regularly purchased almost surely contains a fair proportion of materials imported across national borders; and telephone services depend heavily on satellites and international telecommunication agreements (Powell, 2013).

Hundreds of multilateral treaties subscribed to by most of the nations of the world regulate such important functions as commerce, health, travel, aviation, shipping, outer space, telecommunication, and currency. Every citizen's life today is so heavily dependent on international standards that life would be impossible without them and the international law and diplomacy which makes them work (Wallestein, 2002). No longer is it true to say that any country, however powerful, can regulate its own affairs. Life within nations relies on the smooth functioning of international law.

4.3 Principles and Values Embedded in International Law and Diplomacy

International law and diplomacy adheres to principles that are based on universally accepted values and moral standards. For example, international law and diplomacy exemplifies the rule of law rather than the rule of force, demonstrates constructive management of conflict through peaceful settlement of disputes within and among nations and stands up for the protection of children and the rights of future generations as heirs to the future of humanity (Matlasa, 2007).

International law and diplomacy advocates peace and non violence. It is intrinsically linked with various subjects, writings, philosophies, and historical figures that reflect a yearning for peace i.e., world history, philosophy, literature, economics, political science, religious studies, sociology, psychology, and the fine arts (Bjorn, 2005). For example, physics, chemistry and medicine inform international law and diplomacy in its efforts to achieve and maintain peace as the highest of human aspirations in dealing with weapons of mass destruction, environmental considerations, ethical duties of scientists, and the right to health. In addition, Greek, Roman,

Hindu, and Chinese peace philosophies, great writings of Aristotle, Rousseau, Kant, Jeremy Bentham, and Tolstoy, and peacemakers such as Gandhi, Mandela and Martin Luther King, Jr. inspire and guide international law for the peaceful settlement of disputes (Knoops, 2014). A plaque of the Buddha peacefully settling a dispute adorns the walls of the International Court of Justice outside the Judges' deliberation chamber, serving as a helpful reminder of the aims of international law (Powell, 2013).

International law encourages diversity and fellowship thus it trains for world citizenship: just as civics is a subject that equips individuals to be citizens of their own country, international law is a subject that equips them to be citizens of the world. It measures the international implications of major policies that governments pursue to see whether such policies favor self interest of the state or improved relationships and functioning between and among nations of the world (Bueno, 2012).

International law and diplomacy promotes respect for all people. It advocates that all human beings are members of one family; Christianity, Judaism and Islam express this value; Hinduism speaks of the divine spark in every human being; and Buddhism teaches that whereas all other varieties of mammals, reptiles, birds, insects (William, 2003). International law promotes cooperation. It formerly consisted of a set of rules for mere passive co-existence among nations, but today is moving into active cooperation among them. Concerned with matters such as human welfare, health, transport, outer space, the environment, international travel, and disaster relief, international law governs and facilitates both the internal and external affairs of a country (Wolff, 2011).

International law practices equality and economic justice and elevates the condition of impoverished states and deprived populations of the world. It is estimated that over the past fifty years more than three times the number of people who died in all wars of the 20th century have died from hunger and poor sanitation (Folker, 2013). At least part of the staggering total of 418 million people need not have died if their problem had been the subject of concentrated attention in the light of applicable principles of international law (Akande, 2010).

International law and diplomacy upholds human dignity through the principles of the UN Universal Declaration of Human Rights of 1948, a post World War II development and legal revolution of the 20th century (Knoops, 2014). Every individual is born a member of the human community with inherent rights. No regime or government can deny these rights to any individual. Earlier theories that these rights are conferred by states, rulers or constitutions are obsolete.

4.4 Leading International Cases Where International Law and Diplomacy Was Used

Following World War II, the victorious Allies (United States, Britain, France, and Russia) established the Nuremberg Tribunal. It tried Nazi leaders - politicians, generals, industrialists, and others - for war crimes, crimes against humanity, and crimes against peace. War crimes are violations of the rules governing the conduct of warfare and occupation, and aim at protecting civilians against the effects of warfare and combatants from unnecessary violence (Kirch, 2006). Crimes against humanity are large-scale atrocities against civilian populations. Crimes against peace are the planning and waging of wars of aggression (at about the same time, the UN Charter was written to prohibit the use of force against the territorial integrity or political independence of states).

The Nuremberg trials are generally perceived as having been conducted fairly. They clearly established the principle of individual responsibility for participation or complicity in international crimes, with the corollary that following orders is no defense. However, it is also true that they did represent a kind of "victor's justice." For example, the Allies were not put on trial for the practice of city bombing that culminated in the U.S. atomic bombings of Hiroshima and Nagasaki (Pease, 2011).

The Nuremberg precedent lay dormant for decades, but in the 1990s served as the inspiration for the Security Council's establishment of ad hoc international tribunals to try individuals for crimes allegedly committed in the former Yugoslavia and Rwanda. States then built upon this

experience to create the permanent International Criminal Court, which became operational in 2002 (William, 2001).

The International Court of Justice and Nuclear Weapons: Unlike the International Criminal Court, which prosecutes individuals, the International Court of Justice, often called the World Court, resolves disputes among states. The World Court has another function as it provides advisory opinions on legal questions posed by UN bodies. In a creative use of this function, in the early 1990s the World Health Organization and the UN General Assembly asked the court for its advice on the legality of use and threatened use of nuclear weapons (Matlasa, 2007). Developing countries had condemned nuclear weapons for decades in resolutions in the General Assembly, but the nuclear-armed countries had voted against and ignored the resolutions.

So taking a suggestion from civil society groups led by the International Physicians for the Prevention of Nuclear War, the International Association of Lawyers Against Nuclear Arms and the International Peace Bureau (a network of peace groups), non-nuclear countries turned to the World Court. Civil society - some 700 groups globally - lobbied in New York and Geneva and in capitals around the world for the adoption of the requests for the court's opinion by the General Assembly and the World Health Organization. Then civil society assisted governments in preparing their presentations to the Court (Powell, 2013).

5.0 Conclusion

In conclusion it can be noted that although international law and diplomacy is sometimes undermined, they are by no means powerless and wield perhaps the most power in international society. While no one would deny the importance of diplomacy and international law, it is international organisations which bring them into being and sustain them. As the international system is not governed by any real and tangible global governance, compliance with laws and diplomacy is voluntary and largely unenforceable. Attempts to make the international system less anarchic by providing some laws and groundwork for relations between states will only ever be successful if a way is found of enforcing the laws that are made.

Until then, the utopia of international order remains a distant dream. However, the successes and failures of international law and diplomacy are similar to that on a domestic level; some nations will obey through a sense of morally responsibility whilst others disregard it without thinking about the repercussions. It appears that international law and diplomacy is unable to maintain international order completely, but can keep nations more in order than they would be without any law. Nevertheless, as it is in their interests, most states do in fact obey international law and diplomacy.

Recommendations

In order to ensure full compliance to international law and diplomacy, this paper proposes a number of recommendations and these include;

- More capacity building should be conducted in countries on international law and diplomacy.
- International law and diplomacy should be applied systematically.
- Peace building should be encouraged in order to eliminate future wars or conflict.

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