The Incongruous Nature of International Law: Why Do States Adhere?

Dr. Muhammad Imran
Assistant Professor, College of Law, Government College University Faisalabad – Pakistan
adv.drmimran@gcuf.edu.pk

Muhammad Arif Saeed
Lecturer, Department of Law, The Islamia University of Bahawalpur
arif.saeed@iub.edu.pk

Dr. Rohaida Nordin
Assoc. Professor Faculty of Law, The National University of Malaysia. Malaysia
rohaidanordin@ukm.edu.my

Abstract

This paper provides an overview of the relationship between international law and the behavior of nations over the course of the last 400 years. The study argues that although governments generally comply with international law, it can be difficult to establish a causal relationship between behavior and legal responsibility. The primary challenge lies in the vast number of factors that can influence a State's behavior. The paper suggests that a constructivist approach, which takes into consideration not just the interests of individual nations but also the nature of the international regime, the structure of international society, and the internal frameworks of states, provides the most compelling argument for why States comply with the law and commonly understood norms. The analysis of the fundamental theories and circumstances that are likely to influence State action supports the conclusion that all States, strong and weak, behave in accordance with the law and commonly understood norms.

KeyWords: *International Law, Responsibilities, Sovereignty, States, United Nations Charter,*

Introduction

In the modern, globalised world, every government, even the most powerful ones, is required to provide justification for its actions by demonstrating that they are in line with international standards of law and morality. In this article, we will investigate the extent to which certain States adhere to these rules as well as the factors that contribute to the differences between the states in this regard. During the course of the last 400 years, there has been a general shift toward increased government compliance with various international responsibilities. From a historical point of view, two significant events that took place in Europe established the foundation for standards and customs that are recognised all over the world. The Thirty Years' War was finally brought to a close in 1648 with the signing of the Treaty of Westphalia, which formally acknowledged the monarchical independence of a number of European rulers. This incidentlaid the groundwork for the principles of territoriality and sovereign autonomy that are the cornerstones of traditional approaches to international law(Leafer et al., 2018). After the end of World War II in 1945, there were massive fights that broke out in Europe, which led to the integration of governments all over the world. Sovereignty and non-interference principles have been incorporated in law on a global basis owing to the UN Charter. Because of globalisation, sometimes referred to as “the internationalisation of the world,” (Simmons et al., 2018). the acceptance of international law and standards that are generally acknowledged has spread to every region of the globe.ome of these norms include the following:

However, despite the growth of standards and international law, governments have not always been obligated to follow them. However, throughout the course of the last four hundred years, we have seen an ongoing pattern in which governments have been compelled to justify their actions by referring to the law and the established standards of society. To be obvious, the term "primarily" must be highlighted. In spite of the fact that the UN Charter clearly forbids the use of force to conquer another country, there is a significant gap in the degrees to which various nations actually fulfil these responsibilities. How Nations Behave by Louis Henkin provides a description of the conformity level. In response to a question on adherence to international law, he said that "virtually all countries obey practically all of the fundamental rules of international law and practically all of their duties fairly frequently. This is the tendency in current international relations, given that war is still feasible but is largely considered as abhorrent in comparison to how people felt about it a hundred or even fifty years ago. It is expected that this tendency would compel States into a more docile and

predictable pattern of behaviour, which is one of the benefits of the trend(Nye et al., 2019). If you believe, wars can only come out when nations violate the laws that have been established.

Nations have devised notions such as pacta sunt servanda, which require that agreements be followed, in order to cope with the inevitable friction that arises from continual compliance. This is done in order to avoid the consequences of constant compliance.

These commitments to norms and treaties have, throughout the course of time, diminished sovereignty, strengthened international organisations, enabled the establishment of non-state entities, and sped up the construction of the present system of rules that are based on customary norms and treaties(Henkin et al., 2019).

The development of the World Trade Organization's (WTO) dispute-settlement processes, the establishment of the International Criminal Court, and the construction of a number of international treaties are all examples of States voluntarily relinquishing some of their sovereignty, as is the case with several other international organisations.

Compliance requirements might be different from one State to the next. The diversity includes states that are relatively comparable to one another as well as those that are strong and weak. Tanja Borzel and colleagues conducted a research to determine the varied degrees of conformity that exist throughout the member States of the EU(Mueller et al., 2019). According to their results, the degree to which different EU member States violate European law varies considerably both within each country and from one nation to the next(Koh et al., 2020). This is the case even if all participating nations are obligated to follow the same legal criteria. The demographics, economies, and relative significance of the United Kingdom (UK) and Italy (IT) within the European Union (EU) are extremely comparable to one another. Italy is also located in Europe. On the other hand, the figures show that Italy has a rate of non-compliance that is three times higher than that of the UK.

There are further pieces of evidence that point to similarities. According to the worldwide corruption index maintained by Transparency International, the United Kingdom is ranked seventeenth, which is 55 places higher than Italy (72) (Bull et al., 2017). The gap between the two nations is rather tiny on the Failed States Index, which was developed by the Foreign Policy Group. The difference between the two countries is just 12 points(Simmon et al, 2018). There seems to be a significant gap, on average, between the compliance rates of the powerful countries. One may argue that the UK has a more established legal system than Italy

does, which implies that domestic institutions effect the degree of compliance. Although there are additional components that govern State behaviour, this may or may not be correct.

Changes in compliance amongst weak countries may exhibit a pattern similar to this as well. Whitaker has finished his investigation of the degree to which the three African nations comply with anti-terrorism procedures(Tanja et al., 2020). She noted that all of these nations shared many commonalities, including being East African governments, former British colonies, friends of the US, and having weak economies that relied greatly on development assistance. Despite these commonalities, Whitaker remarked that there were considerable disparities in the degree of coordination amongst the three administrations(Whitaker et al., 2020). Even though one of the three wasn't really committed in the process, they worked together like a well-oiled machine. The role played by factors of a national character was especially significant. Simmons hypothesises that this is the case due to the fact that cases involving tiny nations with weak governments have little to lose by going through the legal systems. For instance, if these African countries agree to help with anti-terrorist activities, they could be able to bargain for further support if they are united in their fight against terrorism. As a consequence of this, factors such as a person's own self-interest, the character of the regime, and the strength of the nation's institutions may all play a part in the determination of compliance.

Literature Review

The reasons why nations adhere to international law may be broken down and analysed using a variety of different worldviews(Simmons et al, 2018). Realist, liberal, and constructivist perspectives are among the most often encountered worldviews. Realists, by definition, are sceptics of the efficacy of treaties and other officially worded accords in influencing the behaviour of sovereign states. Realists may also be sceptical of the usefulness of informal agreements. Rationalism, in its most basic form, encourages the independent pursuit of one's own self-interest as the fundamental driving force. For instance, Mearsheimer contends that the requirements of treaties would be adhered to even in the absence of a treaty if doing so would be in the self-interest of the nations concerned (Morrow, 2019). He posed the possibility that underlying power dynamics or opposing agendas were to blame for the situation. Realists such as Morgenthau are in agreement that the vast majority of international law has been obeyed over its 400-year existence (Mearsheimer et al., 2020). This is despite the fact that we may not always get along with one another. The research conducted by Whitaker on three African countries revealed that the best levels of compliance were seen in

those with common interests. However, one may argue that in order to identify one's interests, one must first decide what form of government they like (Morgenthau et al., 1985).

On the basis of historical explanations provided by authors such as the political philosopher Jean-Jacques Rousseau, it is possible to claim that international law is not an effective constraint on international trade. Hobbes felt that nations would be able to thrive in an environment that was frequently torn by conflict rather than permanent peace as international law developed, and he stated this belief in paragraph(Hoffman et al., 2021). Goldsmith and Posner argue that states will not change their behaviour unless doing so serves the interests of their populace (in democracies) or their autocrats (in autocracies). Although international law may impose obligations on states, states will not change their behaviour unless doing so serves the interests of their populations. Whether or not nations really comply with the pact in accordance with international law is immaterial to the legitimacy of the treaty. When seen from this perspective, it is plausible to believe that the pursuit of national self-interest plays a part in determining how countries operate(Goldsmith et al., 2021).

Both liberals and realists agree that the interests of the state need to take precedence over private ones. They do admit, however, that institutions might be of assistance to governments in the process of enforcing accords. The type of government has a significant role in determining the function that law plays in international relations (Slaughter et al., 2021). According to this point of view, the extent to which a nation can be described as a "liberal democracy," complete with a representative government that protects civil and political rights and a judicial system that upholds the rule of law, is one of the most important factors in determining the level of compliance within that nation. On the other side, the liberal Keohane believes that states need to collaborate in order to limit the amount of disorder on the world stage by achieving accords (Keohane et al., 2020). This argument receives further support from the research conducted by James Morrow, who discovered a correlation between the ratification of rules of war by democracies and increased compliance with those laws (Morrow., 2021). As a result, democracies, as opposed to illiberal regimes, are more inclined to uphold and defend international law. The democratic peace theory, which contends, among other reasons, that democracies avoid attacking one another, receives support from this notion, which adds validity to the idea. As a result, the reactions of governments might differ greatly depending on the sort (Owen et al., 2019).

Normative issues are becoming an increasingly important focus in research on the factors that underlie state behavior. In contrast to interest theorists, constructivists argue that states and their interests are socially constructed by "commonly accepted philosophical notions, identities, rules of behaviour, or shared forms of language" (Martha et al., 2019). Interest theorists maintain that individuals' self-interests are unchanging, while constructivists argue that states and their interests are socially constructed. This theory posits that norms establish socially formed standards of acceptable behaviour, which then guide states toward predicted behaviour patterns (Wendt et al., 2022). Specifically, this theory claims that norms generate socially created standards of acceptable behaviour in the workplace. Wendt and Finnemore, two constructivists, claim that governments place a higher value on common understandings than they do on formal treaties, and as a result, they are more likely to adhere to the former (Chayes et al., 2018). According to Finnemore, the usefulness of force is contingent on whether or not it is within the bounds of the law. What constitutes socially acceptable goals for a society is ultimately what governs the intentions of governments. Because cooperating with one another is often seen as the ethical choice by members of the global community, many nations are more inclined to do so.

These ideas provide a comprehensive analysis of the activities undertaken by the state. However, before reaching a conclusion about whether or not to adhere to globally recognised standards and rules, a state is required to give careful thought to a wide range of factors. In the context of international law, one example of anything that could be important is the framework of a treaty. By referring to the treaty's perceived injustice and its ambiguous phrasing, Chayes & Chayes present a convincing explanation for the lack of compliance (Fischhendler et al., 2018). The purposeful ambiguity of international treaties has allowed for the successful avoidance of disputes. One prevalent cause of ambiguity is the widely held notion that some level of ambiguity is required in order to successfully conclude treaty negotiations and that the ensuing confusion will one day be resolved. The responsibilities of the parties in international contracts are often interpreted in a number of different ways. When a nation violates the terms of an international agreement, it often draws condemnation from other nations. However, depending on how the treaty is written, that same state can argue that it complies with the terms of the agreement(McCurry et al., 2018).

Every state has unlimited autonomy and liberty, to the fullest extent possible. Nevertheless, not every country has the same access to resources like money, power, and expertise. A treaty that is not well-balanced may lead to nations responding in a variety of different ways to the

same danger. The Ottawa Treaty, for instance, which prohibits the use of landmines, has been ratified by 161 governments(Hart et al., 2020). The United States (US), Russia, and China are the three countries that generate the most weapons in the world, yet none of them are parties to the pact. This underscores the gaps that still exist. This is because the treaty will have an adverse impact that is disproportionately severe on these countries. A nation such as New Zealand, on the other hand, has neither an interest nor a history in the manufacture of weapons, nor does it have the ability to do so. Therefore, the United States of America (USA) is more likely to be affected by the fairness of the pact than New Zealand is. On the other hand, both the US and China have made it publicly known that they will no longer develop landmines in the foreseeable future. In fact, these nations are cooperating without making any kind of genuine commitment on their end. Accordingly, one of the factors that determines whether or not a country will comply with the terms of an international agreement is the degree of impartiality with which it applies its laws to the countries that make up its population.

When treaties are brought into disrepute as a result of scandals or disagreements about membership, governments could reassess their commitment to international law. Nations without States (NGOs) and governments have levelled accusations against richer countries like Japan, which is "pro-whaling," of "vote buying" from underdeveloped nations. As a direct consequence of this, the International Whaling Commission was forced to improve the openness and effectiveness of its business practises (Cronin et al., 2021). If the claims are accurate, then governments may have an incentive to respect a law (by entering a treaty) for reasons that are immoral; however, this only holds true if the legislation in question is one that they helped create (intentional corruption). And even though it has no voice in the matter, the landlocked country of Switzerland is nonetheless granted a vote whenever there is discussion over whaling. It is not always the case that democracies are predicated on the principle that each independent country is allotted one vote. According to Nye's calculations, a citizen of the UN member state of Nauru would have a voting power that was 10,000 times greater than that of a Chinese citizen(Abram et al., 2018). There are many different ways in which the form of a treaty might inspire the States that are participating in it.

Research Methodology

In order to finish my research paper, I will study a broad variety of academic materials, as well as the works of both local and international jurists and even some unpublished sources. In this particular research, an evaluation of a document from this source is presented:

- Primary sources like statutes, rules and decisions of the Supreme Court and other higher judiciary of Pakistan;
- Secondary sources like books, reports, internet, journals and newspaper articles.

The research depends largely on library and academic publications of national or foreign scholars, as well as online sources. Under the supervision of my advisers, the chapter-by-chapter framework will be applied to the findings and facts. Under the eminent direction of the supervisor, the research will be edited and revised until it attains its ultimate form.

As the real thesis research process begins and the researcher covers more content, search phrases will get more specific. For instance, the emphasis may move to one nation for comparison with Pakistan, followed by suggestions for improving the subordinate legislation process in Pakistan. Access to trustworthy databases such as 'j-stor', 'google scholar,' and other comparable search engines is readily available to the researcher. In addition, the author has access to the Federal Urdu University library. As regards trustworthy non-academic sources, there are several legal journals accessible. These include PLD, PLJ, SCMR, and several more.

Results

It is necessary of governments on several fronts, including ethics and the law, that they sign international treaties and apply global standards. Simmons demonstrates the incorporation of legal responsibilities into customary international law by using the principle of international law known as juris sive necessitatis. This principle requires that governments acknowledge the existence of a practise and ensure that it is implemented(Henkin et al., 2019). Nevertheless, all that it does is make it abundantly evident that reaching a consensus is dependent on satisfying a number of prerequisites.

As was said before, the US has not signed the Ottawa Treaty that bans the use of landmines. This is something that is prohibited under the treaty. Due to the fact that this is the case, the US no longer meets the criteria for conformity. It is possible that the US will agree to the terms of the treaty if it is shown that similar or superior advantages can be obtained via the use of some other suitable technology. For instance, modern aerial drones might be employed

in their place of obsolete mines in certain situations. If this is the case, it is possible that the US may join the treaty in an effort to enhance its reputation in the international community by invoking ethical grounds to prohibit the use of landmines (although years delayed). Skeptics, on the other hand, may see it as nothing more than an empty gesture. This particular illustration lends credence to the realist self-interest argument while also running counter to the standards that have been agreed upon by 161 governments. Constructivists, on the other hand, would say that compliance without ratification is proof of how governments are pressured into adhering to commonly accepted standards. Compliance without ratification is a common practise. This is the case owing to the fact that standards are relevant in situations in which they cause a pattern of behaviour to emerge that would not otherwise exist.

Acceptance does not indicate that the State will comply with the terms of the agreement. Hart contends that the State of Nature requires the incorporation of moral rather than legal norms into international law. He says this is because morality predates legality(Mueller et al., 2019). Hart essentially characterised loyalty to international law as obeying, rather than obedience to that rule. Even if a realist would claim that certain nations work together in order to save face, it's likely that these nations weren't really attempting to get along with one another in the first place. On the other hand, the fact that a State opts to comply rather than obey does not indicate that it is not devoted to the cause. On the other hand, the likelihood of a State to adhere to established standards and legal obligations is an essential component.

It's possible that a government's failure to fulfil its responsibilities prevents it from always acting in accordance with the rules. For example, in nations where the governments are not very strong, the domestic institutions may not be able to carry out the application of new norms, or the new norms themselves may be in contradiction with the norms that are widely accepted by the population(Tanja et al., 2020). According to Whitaker, the absence of internal institutions in weak African governments is to blame for their inadequate anti-terrorism collaboration. He makes this assertion in one of his statements. Even very strong rulers may not be able to impose their will on the populace if the institutions of that country make it difficult to do so. For instance, if the Congress of the US had a very different viewpoint, a certain treaty would never be authorised, and as a result, it would not be recognised under the law of the US.

As the essay by Bruce Cronin clearly indicates, one of the measures of a nation's strength is its ability to deftly navigate the conflict that exists between the rule of law and national

sovereignty(Whitaker et al., 2020). Hegemons pose a threat to the rule of law everywhere in the globe if they operate in a manner that is unilateral. On the other hand, there is speculation that they would be unable to maintain their hegemony if they destabilised the system that they are working so hard to lead. The "paradox of hegemony" is a phenomena that arises as a result of the conflicting demands of individual self-interest and global duty. For instance, if realists are true and international law is so toothless, then it begs the question as to why strong governments persist in their support of the concept.

According to one school of thought, governments obey legal standards because doing so is advantageous to the judicial system. This would explain why the US provided support to the World Trade Organization in the "Shrimp-Turtle Case," despite the fact that the verdict was detrimental to the interests of the US. A second line of defence against breaking the rules is that adhering to them is the morally superior course of action(Morrow, 2019). If legitimacy is present, every State will experience a "pull" in the direction of submission. One such example is the USA, which was established in accordance with the values of liberalism, democracy, and the supremacy of the law. The fundamental basis of the USA would be put in jeopardy if attempts were made to undermine the international legal system. The legitimacy of their States is something that rulers in weaker states have to continually struggle to defend (Mearsheimer et al., 2020). This indicates that the belief is more concerned with gaining credibility than it is with maintaining its existing credibility. If it joined the UNs, an organisation that emphasises sovereignty and non-intervention, the Democratic People's Republic of Korea (DPRK), often known as North Korea, may choose to work together with other nations on various matters pertaining to international law. On the other hand, it's possible that the UNs' reluctance to use military force is the only thing preventing North Korea from being coerced into joining.

Discussion

The research study examined the reasons why governments sign and comply with international treaties. It first mentions the principle of juris sive necessitatis, which requires governments to acknowledge and implement a practice, but acknowledges that reaching a consensus is dependent on fulfilling prerequisites. The example of the US not signing the Ottawa Treaty banning landmines is used to demonstrate the challenge of reaching a consensus, and the possible reasons for a government to comply with a treaty even if it has not ratified it. The essay acknowledges that the ability of a government to comply with

international treaties depends on factors such as the strength of its domestic institutions, the conflict between the rule of law and national sovereignty, and the existence of moral and legal norms. It discusses the advantages of obeying legal standards and the moral pull of legitimacy. The example of the US and the World Trade Organization's Shrimp-Turtle Case is used to illustrate the importance of adherence to international law, even if it is detrimental to national interests. The essay also mentions the challenge of maintaining legitimacy, especially in weaker states, and the possibility of using international organizations to enhance credibility.

Conclusion

The behaviour of nations has been altered as a result of recognised standards and the growth of international law throughout the course of the last 400 years. The result has shown, time and time again, that governments, on the whole, comply with international law. The underlying issue has been that it has been increasingly difficult to demonstrate a causal relationship between behaviour and legal responsibility. This has been the primary source of the issue. The arguments that are given in the primary body of the paper are quite persuasive. The study, on the other hand, is incorrect as a result of the vast number of factors that might influence the behaviour of a State. For reasons that transcend simple theoretical explanation, governments are obligated to defend their actions by demonstrating that they are in line with the law and generally accepted standards of society. The most effective strategy would be to frame the problem as a method that takes into consideration all of the many alternative explanations. The process of negotiating, developing, and evaluating treaty standards may be seen as a continuous discourse between governments. The international system's standards and practises are always shifting and becoming better throughout the course of time. A constructivist argument could be a better fit for describing this process argument. This approach takes into account not just the interests of individual nations but also the nature of the regime that is now in existence, the structure of international society, and the internal State frameworks of each of the numerous states that are engaged. An analysis of the fundamental theories and numerous circumstances that are likely to influence State action provides the most compelling argument for why all States, strong and weak, behave themselves in accordance with the law and commonly understood norms. This argument can be made by evaluating the numerous circumstances that are likely to influence State action.

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