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ADDRESSING CONFLICTS IN INTERNATIONAL TREATY LAW

By

FAIZAH A. MUHAMMAD[*]

ABSTRACT

International law is a vast body of laws that touches on varying subject matters and imposes serious responsibilities and liability on states. Due to its broadness, states have got into the practice of binding themselves to multiple treaties that embody opposing principles.
These conflicting treaty obligations highlight the flaws of international laws that consider all treaties to carry equal force, thus making it difficult to determine what law should supersede others in case of a conflict.
Thus, this essay analyses the problems involved when states take on conflicting treaty-based obligations. It studies the current rules for resolving these conflicts and underscores particular points where a detailed hierarchy may be developed so that treaty laws can be more effective.
Finally, the essay recommends that states pay more attention to their existing bodies of law to avoid potential conflicts with later treaty provisions.

Keywords: International Law, Conflict of Laws, Treaty Obligations

[*] Faizah A. Muhammad is an undergraduate student of Law at the University of Ilorin, Kwara State, Nigeria

Introduction

Laws are an essential part of every nation's development. More importantly, laws are essential for ensuring co-operation and peace in interactions between states and international non-state bodies.

Unfortunately, this order is threatened by conflicts in the laws that lay out the obligations of states. Because of the large number of international instruments states are presented with, there have been cases where they ratify and agree to be bound by different treaties with conflicting principles, creating a situation where the performance of one obligation violates the other.

This duplicity in the application of legal instruments reflects the lack of clarity in many states' long-term foreign policy and presents problems in the interpretation of international law as it allows states to wriggle out of performing their obligations even at the expense of global welfare and development.

In so doing, they raise doubts as to the effectiveness of these treaties and cause confusion in the determination of the proper sanctions to be enforced for violation of treaty obligations.[1]

This essay is a study of the nature of these conflicting obligations. It will examine the current principles applied in resolving conflicts (from domestic laws and recognized international principles) and give recommendations as to the most sustainable model for managing these conflicts.

1.0. Establishing Context

1.1. The Unique Nature of Treaties

A treaty is "'an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation"[2]

Treaties are legal instruments that states subscribe to, to guide their activities with other states. They regulate the interactions of a state with another state through bi-lateral treaties

[1] Christina Voigt, "Book Review: Sadat-Akhavi, Seyed-Ali. Methods of Resolving Conflicts between Treaties and Wolfrum, Rüdiger and Nele Matz. Conflicts in International Environmental Law.," *academic.oup.com*, 10.1093/ejil/chh513 (accessed 202113-March).

[2] "Vienna Convention on the Law of Treaties," Article 2 (1)(a).

while multi-lateral treaties regulate the actions of a state in the general international community.

One important fact to note regarding the obligations imposed by treaties is that states, to an extent, limit their own sovereignty when they submit to treaty law as these documents impose obligations on member states that they are bound to follow, failure of which may lead to sanctions or strong censure from the international community.

1.1. Legal Force of Treaty-based Laws

As stated above, a failure to perform the obligations required by a state usually draws some form of sanction from other states or non-state International bodies[3].

A point worthy of note, in this case, is that owing to the legal principle of state sovereignty, even when states consent to be bound by treaty agreements, their domestic law reigns supreme. Nevertheless, Articles 26 and 27 of the Vienna Convention reiterate that treaties are binding upon parties and "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

These provisions imply that even when international instruments have been signed but are not ratified,[4] they are regarded as binding on the state internationally[5] even if not legally enforceable by the country's courts.

2.0. Conflicts in Public International Law

The treaties that a state is a party to, guide its foreign relations. But a state may be a party to several international bodies and laws that may oppose each other. The possibility of this happening is not difficult to envision when one considers the various international organizations and instruments that a state has access to.

2.1. Example: Multiplicity of African Organizations

The African continent is joined under the umbrella of the African Union. But there still exist many other regional bodies, each with its own originating instrument and attached

[3] For example, in an attempt to force it to accept democracy and give "greater respect to human rights", the US has restricted its citizens and companies from trading with Cuba since 1958 till date. Sanctions can take the form of Tariffs, Embargoes, Asset freezes or even Military threat.

[4] As provided under Section 12 of the Nigerian Constitution

[5] United Nations, *Fourth report on the Law of Treaties by Mr. G. G. Fitzmaurice, Special Rapporteur* , Extract from the Yearbook of the International Law Commission (http://www.un.org/law/ilc/index.htm: The International Law Commission , 1959). Pg 43, Article 7.

obligations, creating a situation where a country like Kenya is a party to 9 organizational treaties and the Democratic Republic of Congo is a party to 14.

African countries are split in a complex regional division into the Economic Community of West African States (ECOWAS), Southern African Development Community (SADC), Common Market for Eastern and Southern Africa (COMESA), Economic Community of Central African States (ECCAS), the Arab Maghreb Union (AMU), the Community of Sahel-Saharan States (CEN-SAD), and the East African Community (EAC)[6], not to mention numerous international unions like the Organisation of Petroleum Exporting Countries (OPEC).

This multiplicity leads to a situation where the African Union's efforts to create a unified continental trade is curtailed by the existing trade agreements between regional bodies in Africa.[7]

2.2. General vs. Continental Conflict: A Clash of Values

Another example of this conflict is in the regional international law of Africa where the African Charter is interpreted generously to allow states to place their cultural values over the implementation of absolute human rights, while the UN Charter makes no such concessions.

For example, African states hide behind the principle of Progressive Realization (which allows them to implement the provisions of the African Charter in incremental steps)[8] at the expense of civil rights, like the right against discrimination of homosexual people, while the United Nations takes a decisive position against the violation of LGBT+ rights amongst its member states.[9]

Furthermore, states cite the emphasis of the Charter on 'African Family Values' as a justification for limiting the rights of the African homosexual community.[10]

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[6] Byiers B., "Regional Organisations in Africa — Mapping multiple memberships," *ECDPM Talking Points Blog*, 15 September 2017, ecdpm.org/talking-points/regional-organisations-africa-mapping-multiple-memberships/ (accessed March 15, 2021).

[7] Woolfrey Sean Byiers Bruce, "The African Continental Free Trade Area and the politics of Industrialisation," *ECDPM Blog*, 18 November 2019, (accessed March 15, 2021).

[8] Manisuli Ssenyonjo, "Analysing the Economic, Social and Cultural Rights Jurisprudence of the African Commission: 30 years since the adoption of the African Charter," *Netherlands Quarterly of Human Rights* (Netherlands Institute of Human Rights) 29, no. 3 (2011): 387.

[9] UN Human Rights Council , *Protection against Violence and discrimination based on Sexual orientation and Gender identity*, Resolution (A/HRC/RES/32/2 , June 2016).

[10] "Sexual Orientation under the African Charter on Human and Peoples' Rights," *Pambazuka.org*, 22 November 2010, (accessed March 15, 2021).

In view of these facts, what happens then, when one state ratifies two treaties that impose conflicting obligations, such that the performance of one violates the other? How do we determine which will take priority?

3.0. Solving Conflicts of International Obligations

Resolving conflicts of international law, just as it is with domestic laws, requires a determination of hierarchy. That is, which law or international instrument is superior?

Thus, an understanding of what treaties are superior to others and what principles cannot be compromised is invaluable in this endeavour.

Here, a study of methods for the resolution of domestic conflicts of law in Nigeria is instructive.

3.1. Illustration: Treatment of Conflicting Domestic Laws in Nigeria

Conflicts of law are an intrinsic part of the Nigerian legal system, owing to its acceptance of multiple customary laws, history of colonisation and the dual nature of courts that must constantly keep track of new precedents to avoid applying obsolete or invalid laws.[11]

In domestic conflicts of law, the existence of clashes is foreseen. Thus, the rules guiding resolution is usually contained expressly in statutes. For example, in conflicts of statutory law, the Nigerian constitution is considered superior[12] to all other legislation in the state as it lays down the basic framework for all laws.

It is also clearly established that the federal law trumps state laws, just as state laws are superior to subsidiary legislation, which are higher in hierarchy to mere regulations. Where 2 subsidiary legislations are conflicting, the draftsmen specify which is superior to the other in the wording of the statute. [13]

One thing that stands out in this analysis is that wherever there are supposed clashes in different laws, the statutes themselves tend to specify which law is to supersede the other, and where it does not, the judicial body interpreting is expected to approach the issue by considering the intentions of the draftsmen.

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[11] Nwamaka Iguh, "Conflicts of Laws in Nigeria," in *Fundamentals of the Nigerian Legal System*, 91-110 (2010).
[12] S1 (1)(3), Constitution of the Federal Republic of Nigeria, 1999.
[13] For example, where there is a conflict between two customary laws in the states of Western Nigeria, S 20 (2) of the Customary Courts Law states expressly "in causes and matters arising from inheritance, the appropriate customary law shall…be the customary law applying to the deceased."

4.0. General Principles in Resolution of Conflicts of Law

Treaties have equal force and effect, and therefore, parties to more than one treaty have incurred responsibility, and thus, liability under each of them.

International law principles of Treaty Interpretation specify expressly that, "The mere fact that a treaty obligation is incompatible with obligations under another treaty is not in itself a ground justifying non-performance. "[14]

Where there is a conflict situation, non-performance is only justified in situations where an obligation under one treaty is considered null, is in conflict with the United Nations Charter, or can be cancelled or superseded by a later obligation.

This aligns with Article 46 of the Vienna Convention, which only allows states to violate treaty obligations if the violation is 'manifest' and concerns a rule of its domestic law of fundamental importance.

These declarations as to superiority are usually settled by the rules of special priority contained in the treaties themselves. Where these are not available and the treaties have equal force, the provisions of the Vienna Convention on Law of Treaties and other general rules of international law apply to determine the hierarchy of the laws.

4.1. Practical Implications

We have established above that where there is a conflict of treaty-based obligations, states are to be held liable for breach even when non-performance is prompted by conflicting obligations.

Exceptions to this general rule are where one treaty is null or inapplicable by its contents (e.g. By being incompatible with international standards of human rights).

Still, in practical application, states typically pick and choose which obligations to respect and which to disregard, by their economic interests, with little to no consequence.

This state of affairs emphasises why it is important to create a standard system of determining hierarchy as the current system is riddled with ambiguity and is less than optimal for preventing states from prioritising economic gain over treaties that target common global development like the Paris Convention.

[14] United Nations, '*Fourth report on the Law of Treaties by Mr. G. G. Fitzmaurice, Special Rapporteur*' (supra). Article 8 (2).

Recommendations

Beyond examining the current law relating to resolving conflicting obligations in international law, there is a need to pursue sustainable methods that preserve state sovereignty while allowing international law to operate without confusion. To demystify this area of law, states are encouraged to:

1. Capitalize on their rights of reservation[15] to prevent conflicts of this nature from arising. Furthermore, they should uphold the practice of refraining from codifying foreign laws if they are in contravention to their existing body of laws (both domestic and international).
2. Furthermore, states should make use of the right to suspend or withdraw from treaty obligations under the provisions of Article 54 of the Vienna Convention. As a consequence of this, states will benefit from investing in systems that allow their citizens to participate in the choice of which international obligations to prioritize.
3. Finally, it is the responsibility of international bodies to develop and lay down standard rules of hierarchy to answer questions such as 'Are regional treaties superior to continental or general treaties?' or 'Should provisions of treaties that concern human rights supersede all others?'[16] [17] It is noted that once these questions are answered and states begin to adopt a practice of more careful scrutiny before ratifying treaties, the problem of confusion in interpretation and the need for judicial involvement will mellow.

Conclusion

When states undertake to honour opposing treaty obligations, they raise doubts as to the efficacy of international law to cause change and cast a negative light on the disjointed structure of many international laws that would allow states to get away with committing to co-operation and positive change and shirking their duties afterwards.

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[15] That is, the practice of signing a treaty, subject to reservations as to certain provisions so as not to be bound by those provisions.

[16] For example, Ahmad Ghouri argues that states should pursue a value-based system of hierarchy based on concepts like the ''interest of mankind as a whole'' or the ''common heritage of mankind''.
Ghouri, Ahmad Ali. "Determining Hierarchy Between Conflicting Treaties: Are There Vertical Rules in the Horizontal System? ," *Asian Journal of International Law* (2012): 239.

[17] Wolfrum and Matz, on the other hand, suggest using the concept of sustainable development as a guideline to determine which treaty should be favoured over others.
Rüdiger and Nele Matz Wolfrum, *Conflicts in International Environmental Law.*, ISBN 3-540-40520-8 (Berlin/London: Springer, 2003).

That is why this essay focuses not just on how judicial bodies can interpret these situations but on the role that states have to play in preventing these conflicts based on existing principles of international law like the rights of reservation and withdrawal from membership of a treaty or organization.

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