

A World on the Brink of Hostilities: Striking a Balance between International Law and International Politics

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ABSTRACT

Notwithstanding the sacrosanct provisions of Article 2 (4) of the UN Charter,¹ hostilities motivated by national interest and international politics have always been a commonplace occurrence on the international scene. While States are expected to either refrain from hostilities or at least ensure that any hostilities in international relations are justified by indisputable international law principles, the trend around the globe seems to be moving in quite the opposite direction. This has thus raised questions as to whether States have indeed in practice been able to strike a balance between international law and international politics by ensuring adherence to strict principles of international law in their relationship with other States.

Relying on this backdrop, this essay is a scholastic attempt at exploring the adherence of States to international law in instances where it conflicts with international politics and national interest, especially those interests only capable of being achieved through hostility. In doing this, it shall begin by conceptualizing relevant terms. It shall then proceed to explore trends of hostility across the international scene, particularly those manifestly occasioned by international politics, and examine how States have attempted to justify or align their decisions with international law. Finally, it shall conclude by providing recommendations poised to enhance the relevance and enforceability of international law and enforce the compliance of States' decisions with it.

Keywords: International Law, International Politics, National Interests.

Introduction

There are two key players in the international scene -International Law and International Politics.

The domain of both players is so intertwined that any attempt to locate the boundary between

¹ Article 2 (4) Charter of the United Nations, 24 October, 1945, 1UNTS XVI, available at www.refworld.org/docid/3ae6b3930.html accessed 5th April, 2022. It requires UN member States to refrain from the "use of force against the territorial integrity or political independence of any State" except in certain narrow circumstances.

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them would be fruitless. They also have an exceptional relationship such that international laws are principles put in place to regulate the relationship between States in their dealings with each other and in pursuit of their national interests. These laws are thus designed to function in a way that States in pursuit of their national interests are expected to strike a balance between international law and international politics by adhering to the principles of international law - principles that frown sternly at unjustified hostilities of any sort- when dealing with each other.

However, do States always make effort to strike this balance when pursuing their national interests -especially national interests that can only be achieved through hostilities? Or is the common practice for States to neglect these principles when it is contradictory to their national interests? This pivotal question is what this essay seeks to provide an answer to as it examines the relationship between States, and attempts to determine the extent of their adherence to principles of International Law, especially in instances where these laws contradict their national interest.

1.0. Relationship between International Law and International Politics

As a result of the lack of a singular definition for international law² and international politics,³ an apposite juncture to begin this study is with the question of definition. In this regard, relying on the most authoritative provisions of Article 38 (1) of the Statute of the ICJ,⁴ international law refers to treaties, customary international law, general principles of law, judicial decisions, and

² Chrsitopher A. "From International Law and International Relations to Law and World Politics" (2016) www.law.uci.edu/faculty/full-time/whytocl/whytock-il-021216b.pdf accessed 5th April, 2022.

³ Klaus Dodds, "Geopolitics" (2015) www.sciencedirect.com/topics/social-sciences/internationalpolitics accessed 5th April, 2022.

⁴Article 38 (1) United Nations, Statute of the International Court of Justice, 18 April, 1946, available at www.refworld.org/docid/3deb4b9c0.html accessed 5th April, 2022.

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the teachings of the most highly qualified publicists of the various nations. Its aim being to regulate international relations and promote peaceful settlement of disputes through an applicable set of rules.⁵

On the other hand, international politics refers to a subject that studies the specific and complex nature of power interactions between nations often characterized by conflict, struggle for power, wars and dispute as well as cooperation and friendship.⁶As clearly articulated by H.J. Morgenthau,⁷ in international politics each nation tries to accumulate and expand the power for gaining their national interests. In other words, international politics is largely motivated by national interests.

A deeper dive into the study of international law and international politics would reveal that notwithstanding their distinctiveness, close ties exist between both subjects. This relationship becomes evident as, in engaging in international politics towards furthering their national interests, States have a duty to ensure that their decisions are well justified and adequately in line with the principles of international law which seeks to regulate interstate engagement. Thus, in order for States to successfully achieve their national interests, they must strike a delicate balance by according to Razvan Bostinaru:⁸

⁵Mary Ellen et al, "The Power and Purpose of International Law: Insights from the Theory and Practice of Enforcement" (2016) <http://www.corteidh.or.cr/tablas/26120.pdf> accessed 5th April, 2022.

⁶ George Varghese, "Theories and Concept of International Politics" (2017) www.sduoc.ac.in/sites/default/files/sde_videos/SLM-theories-and-concepts-of-international-politics.pdf accessed 5th April, 2022.

⁷ Supra

⁸Razvan Bostinaru "Balance between International Law and Politics" (2015) www.lawyr.it/index.php/article/reflections/684-balane-between-international-law-and-politics accessed 5th April, 2022.

“...ensuring that they justify their realpolitik decisions using international law, or risk a predictable reaction from the international community labeling their actions as illegal and constituting a breach of international law, with resultant disruptive sanctions on such State.”

2.0. The Delicate Balance: Instances from the Past and Present

To determine whether States indeed attain a balance between international law and international politics, particularly with respect to instances where hostilities have occurred, this subsection shall explore major events of hostilities at the international scene and examine the attempts of States in striking a balance between international law and international politics.

One contemporary case study that readily comes to mind is the Russian-Ukraine conflict. On the 21st of February, 2022, Putin issued orders for a full-scale invasion to Russian armed forces which have been amassing at the Ukrainian border for months.⁹ This action of invading Ukraine through the use of armed forces, experts suggest, is another hostility in furtherance of Russia's national interests.¹⁰

With respect to striking a balance between international law and international politics, Putin and other top Russian officials have tried to justify their decisions by claiming that Russia's action is justified under Article 51 of the UN Charter which allows for self-defense if an attack occurs

⁹ Human Rights Watch “Russia, Ukraine & International Law: On Occupation, Armed Conflicts and Human Rights” (2022) www.hrw.org/news/2022/02/23/russia-ukraine-international-law-occupation-armed-conflict-and-human-rights accessed 6th April, 2022.

¹⁰ Russia's invasion of Ukraine, as suggested by experts, was in furtherance of its national interest to first, intercept the former Soviet Union member's closer coalescence with the West and its ambition to join the North Atlantic Treaty Organization (NATO). Second, to, in the Russian leaders' words, defend the Russian nationals in Ukraine, especially those in the two self-declared Republics of Donetsk and Luhansk in a process he tagged “denazification”.

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against a member of the United Nations.¹¹ Pundits have however argued that this defense holds no water as it is not what is exemplified by the Russian-Ukraine conflict.¹² In fact, according to Professor Naz K. Modirzadeh, a Professor in the Harvard Law School Program on International Law and Armed Conflict, “*none of the justifications offered by President Putin for the invasion of Ukraine... could conceivably be understood as falling within the self-defense exception*”¹³ as Ukraine did not commit, or threaten to commit an armed attack against Russia or any other recognized UN member State. The condemnation Russia received from international bodies and States¹⁴ also exemplifies its action as a failed attempt at striking a balance between international law and politics with respect to hostilities.

Another example of hostilities at the international scene is that of the US invasion of Afghanistan. This invasion was also interpreted to be nothing but a brazen show of power of the US at the time which was not legally justifiable under any recognized international law or principle. Majorie Cohn,¹⁵ a professor of Law, described the invasion as “*a patently illegal use of armed force.*” According to him, the attacks were not a legitimate form of self-defense under Article 51 for two reasons: first, “*the attacks in New York and Washington DC were criminal attacks and not ‘armed attacks’ by another State*”. Second “*there was no imminent threat of an*

¹¹Article 51 Charter of the United Nations, 24 October, 1945, 1UNTS XVI, available at www.refworld.org/docid/3ae6b3930.html accessed 5th April, 2022.

¹² Alexander Ermochenko “How Russia’s Invasion of Ukraine Violates International Law” (2022) <https://www.google.com/amp/s/www.cfr.org/article/how-russias-invasion-ukraine-violates-international-law%3famp> accessed 5th April, 2022.

¹³Naz K. Modirzadeh, “The War in Ukraine and International Law” (2022) <https://today.law.harvard.edu/the-ukraine-conflict-and-international-law/> accessed 5th April, 2022.

¹⁴ Russian leaders decision to invade Ukraine earned Russia backlashes from several international bodies and States such as the Council of Europe, the UN, the U.S.A, Britain and a host of others with some imposing heavy economic and political sanctions on the State.

¹⁵ Marjorie Cohn “Bombing of Afghanistan is Illegal and Must be Stopped” (2012) www.iadlaw.org/files/BOMBING-OF-AFGHANISTAN-IS-ILLEGAL-AND-MUST-BE-STOPPED-by-Majorie-Cohn.pdf accessed 5th April, 2022.

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armed attack on the US after September 11, or the US would not have wanted three weeks before initiating its bombing campaign.”

Lastly, this study would remain incomplete without an examination of the US invasion of Iraq in 2003. Justifying its actions under international law, the US asserted that its hostility was permissible on the basis that it was authorized by the UN Security Council in 1990 and also justified on the basis of the doctrine of preemptive self-defense.¹⁶

However, reactions from the international community also show that this invasion did not achieve a perfect balance between international law and international politics as it was illegal and contrary to the provisions of international law.¹⁷ In the words of Kofi Annan, the then UN Secretary-General, the invasion was *"not in conformity with the UN Charter and was not sanctioned by the UN Security Council"*.¹⁸ This view has also been corroborated by several International Law scholars. For example, as Dunne pointed out, *"the coercive Iraqi regime change was unnecessary and, in this way, an illegitimate intervention in defiance of a pluralist international society."*¹⁹

3.0. Attaining the Delicate Balance: Instructions for the Future

One major reason why States find it difficult to strike a balance between international law and international politics, particularly with respect to employing hostilities in furtherance of national interests, is because international law is largely unenforceable, especially against "superpowers".

¹⁶Supra

¹⁷Gerry Simpson "The War in Iraq and International Law" (2004)

https://law.unimelb.edu.au/_data/assets/pdf_file/0003/1681149/Simpson.pdf accessed 5th April, 2022.

¹⁸The Guardian "Iraqi War was Illegal and Breached UN Charter, Says Annan", (2004)

<https://www.google.com/amp/s/amp.theguardian.com/world/2004/sep/16/iraq.iraq> accessed 5th April, 2022.

¹⁹A.C. Mc Keil "The Iraq War in International Society" (2012) <https://www.e-ir.info/2012/07/25/society-and-change-in-international-relations-the-iraq-war-in-international-society/> accessed 5th April, 2022.

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In this regard, the following recommendations are poised to enhance the relevance and enforceability of international law and enforce the compliance of States' decision with it.

First, true democracy, rather than selective dictatorship, should be the basis for decision making at the world's largest and most powerful international organization – the UN, as this would help increase trust, demonstrate inclusion and improve support from States for the body. A revocation of the veto power of the five permanent members of the UN security council would be a good starting point in this regard.

Second, equality between States, regardless of status, should be at the core of international law. Although the dominance of some States over others in the world is undeniable, the dominant States should not then be designated as sacred cows, untouchable by the chastising whip of international law, to the extent that they can flout established international law principles without any repercussions.

Lastly, the international community should rely more on the vulnerability that the political and economic interconnectedness and interdependence of the global community brings in its wake to create sanctions and enforcement mechanisms that would be effective regardless of any individual State sovereignty.

Conclusion

The need for States to pursue their national interests cannot be overemphasized. However, such pursuit should always be done in conformity with international law, and hostility should be regarded as a last option, employed only when glaringly justifiable under international law and

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States are pushed to the edge of a cliff. An examination of the trend in the international scene would however reveal that States, especially “superpowers”, rather perform actions in pursuit of their national interest, even when it includes hostilities against other States, and then proceed to rely on erroneous and manipulative interpretations of international law to serve as justifications for their actions. This anomaly exists because international law is largely unenforceable against States. In this regard, this paper has proffered viable recommendations poised to correct this abnormality and improve the enforceability of international law against States. An adoption of the above recommendations remains a laudable step in the right direction.