

Phases of International Dispute Settlement and the Need for Adaptive Approach

Akeem Saliu¹, Adeola Adebisi²

¹Department of Peace and Conflict Transformation, Center for Peace Studies (CPS), The Arctic University of Norway, UiT, Tromsø, Norway

²Department of International Relations, College of Social and Management Science, Wellspring University, Benin City, Edo State

Abstract:

The paper revisits different perspectives on how international disputes are resolved without escalating into war. For example, there are articles on how these conflicts develop and what peace looks like, as well as the media's role in encouraging or discouraging violent conflict. By evaluating the involvements of state actors and non-state actors in conflict resolution, the study submits that efforts to make an effective peacekeeping doctrine by the United Nations (UN) have been faced with challenges by powerful states which hold the highest stakes in global politics. The world has a crucial stake in resolving conflicts among states without resorting to war because of the many deaths, economic loss, humanitarian crises, and other consequences of war across the globe. The UN has established a global agenda to help states that are or could be involved in violent conflicts. Drawing from the findings, the paper concludes that the usage of force during the process of peace and as a panacea to dispute resolution should be re-examined in view of the irrelevance of force in the current international order. Apart from making international institutions functional, disputants should be made prominent throughout the peace process and be adaptive to the consequences of the dispute and its effects on the community and the belligerents themselves.

Keywords:

International dispute; conflict resolution; adaptive approach; International community; United Nations

I. Introduction

International disputes, if not settled or well managed, could disrupt the relative peace the world is currently enjoying. (Adeleye and Osadola, 2022) The idea of "peace building" has risen to the forefront of academic and practitioner debates on how to stop wars and foster peace (Selby 2011), essentially, however, the period of dispute that involves the use of armed force often calls for concern beyond the location where the dispute takes place, and the argument that human lives deserve to be protected at all costs remains sacrosanct hence the call for international law for disputes settlement.

This study unpacks why most conflicts resulted in the use of armed force if at all, there are justifications for war, and if war itself is a solution to resolving contradictions, "that belligerent parties should be left to fight, regardless of atrocities committed, until one side has won", basically to give war a chance (Nieto 1999). More often, the armed control law contained in the Charter of the United Nations has over the time been flagrantly violated; the invasion of Iraq by United states of America and the most recent is the invasion of Ukraine territory by Russia, and many more given "that modern, Western-leaning Ukraine was a

constant threat and Russia could not feel "safe, develop and exist"(Kirby, n.d) as a justification for the invasion.

Critically, this paper uncovered several perspectives on settling international disputes by the international legal system, discusses the legality and illegality of the war, the dynamics of the UN peacekeeping, and the core objective of the international law which supremely is to regulate the use of armed force; to fundamentally prevents gross violation of human rights. According to Henderson, the notion of peace building is "the UN Security Council's primary responsibility for the maintenance of international peace and security... within which the legal power to establish peacekeeping operations reside" (Henderson, 2018).

The objective of this study is to interrogate phases of international dispute settlement and to highlight possible means peace can be achieved through institutional instruments. The theory of Realism will guide this study. The study is divided into five major sections; the justification for war and aggression, Legal approach to dispute management, dispute settlement through conciliation and political solution to dispute settlement. The study also features Ambiguity in the United Nation prohibition of use of force and UN peacekeeping and option of adaptive peacekeeping. It relies heavily on secondary sources that are relevant to the study.

II. Review of Literature

2.1 Justification for War and Aggression

War is usually avoided because of the brutality and fertility that always accompany it, and it is widely believed that under any condition, war should be prevented (Aremu and Osadola, 2018). International law was birthed to preserve the dignity of humans, to avoid the horror of extrajudicial killing and gross violation of human rights, but it is important to note, therefore, that there is a historical perspective that creates "a distinction between 'just war' (bellum justum) and 'unjust war' (bellum injustum)" (Merrills, 2017) and a modern perspective, given by some writers who are "the 'fathers' of international law, emulating the canonists, deemed it necessary to set out the list of just causes for war" (Merrills, 2017) hence, there are prominent writers who have argued to support the legality of the war, that is, the 'just war', Kelsen argued that war "is permitted only as a reaction against an illegal act, a delict, and only when directed against the State responsible for this delict" (Kelsen, 1945), though, Yoram contested the Kelsen theory on the notion of just war, given that:

There is a threefold difficulty inherent in Kelsen's theory. First, factually, war may be an inefficacious sanction. Victory in war is contingent not on right but on might, and a weak state resorting to hostility against the strong one is apt to find a painful and counterproductive experience. Second, in the absence of an impartial forum judicially competent to determine on the merit whether a specific war ought to be considered a genuine sanction...Third, as long as the original delict could consist of any conduct in contravention of international law ... After all, war always generates inevitable casualties, destruction and suffering, and cannot be contemplated as a proper sanction unless warranted by [a] compelling reason. (Yoram1972, Kelsen 1945).

For example, the first argument of Yoram corresponds neatly with the recent war between Ukraine and Russia, while Russia justifies the invasion of Ukraine territory given a feeble justification, there seems to be no known international law nor any recognized

document that stipulates one particular state could cross the border of another state with the purpose of protecting her ethnic minorities in another sovereign state, instead, this justification of 'just war' by Russia in Ukraine is merely a display of 'might' but not 'right'.

Drawing a connection between war and peace, and that war could bring peace, Luttwak concludes that "although war is a great evil, it does have a great virtue: it can resolve political conflicts and lead to peace" (Luttwak, 1999 and Nieto, 2011), though, as observed by Nieto, the confrontation that gave 'victory' to the Peruvian military against the revolutionary group – MRTA in the early 1980s and mid-1990s, appears to have brought a 'switch from a violent way of dealing with poor rural Peruvian communities to that of more peaceful actions', yet, 'it is not just peace, in the broad sense of the word that can and must begin when war is over, but also development (Nieto, 2011:530).' Therefore, with close observation of the Peruvian 'just war', it is not far from the truth to conclude that the war missed the target of achieving peace because the Peruvian military is still battling with other emerging revolutionary group till date, as "the lack of development projects among Peru's impoverished regions that has contributed to Sendero's rebirth" (Nieto, 2011:533).

2.2 Legal Approach to Dispute Settlement in the Ambience of International Law

The importance of law and legal institutions in the settlement of international disputes is a topic that has spawned a plethora of literature; to some, the answer to all world's problems can be found in legal codes and international tribunals; to others, the disregard for legality that is a feature of most international crises, law plays a minor role at best, and at worst, it is a pious illusion (Merrills, 2017). Plainly, the critical concern about the legal approach to settling international disputes is the aspect of adjudication and impartiality of judges, this gives rise to the consideration of other means of settling disputes. Unlike domestic courts where the winner may likely take all, judgment between states may be detrimental as the loser might consider other options to win.

Over time, the legal approach to international disputes is confronted with the challenges of referencing and precedence. Because *stare decisis* (the legal principle of relying on a 'higher' court's previous decision) does not apply in international law, references to earlier judgments or awards are limited, though the International Court of Justice and other permanent international law tribunals are increasingly relying on prior case reasoning as persuasive (Charney, 1998), according to Merrills (2017:313), the law is conservative in nature, relying on principles derived from previous experience, and, in a larger sense, since the objective of adjudication is to resolve disputes based on some legal principles while incorporating others that, although important to the issue, do not.

2.3 Theoretical Approach to Negotiation and International Conflict

Realism in the context of international relations is essentially concerned about the interest of the state within the international community, meanwhile, there is a likelihood of a clash of interests when an individual state is pursuing self-interest at the expense of the other, in return, it creates contradictions that in most cases, leads to full-scale disputes and war. However, it is argued that events that precede the cold war show a tremendous increase in intra-state conflicts as against the conflicts between states which were numerous before the cold war. Fen Osler Hampson, Chester A. Crocher, and Pamela R. Aall argued negotiation and international conflict from different realist perspectives in *Handbook of Peace and Conflict Studies*, edited by Charles Webel and Johan Galtung (2007). At the center of the realist theory on negotiation during the international conflict is the concern for 'trust', that is, parties to the conflicts do not trust one another but through dialogue and constant interactions, negotiations influenced by a

'third-party' could be made possible. Also, each party in conflict has the confidence to win, and when all parties are sure of victory, it hinders the process of negotiations. Nevertheless, it is also observed that 'timing' is essential to the third-party intermediary who is negotiating between the parties in conflict, this is to say, it becomes an ideal time for negotiation when it appears that parties in conflicts have become 'exhausted', then finding a 'political solution' becomes expedient.

III. Discussion

3.1 Dispute Settlement through Conciliation

International law today covers a wide range of subjects, including: the sovereignty of states; international trade; human rights; diplomatic relations; and the laws of the sea, of war, and of treaties, and despite the numerous subjects and responsibilities, international law is majorly concerned about dispute settlement by influencing conflicting parties to embrace peaceful, legal and, political means, deemphasize the use of armed force that could end in casualties and loss of lives. International law prescribes negotiations and not confrontations. The growing use of consultation and related tactics as a means of avoiding disagreements, as well as new forms of diplomacy connected with the rise of international organizations, are noteworthy advances in this area (Merrills 2017:304).

There is no perfect approach to settling disputes, in most cases, it depends on the application of various approaches, and none of them is without shortcomings. Essentially, the notion of a third party in negotiation has played a significant role in disputes settlement over the years, since all disputes attract negotiation, Merrills offers that conciliation is a 'form of quasi-arbitration cases concerned with present or future legal rights' (Merrills, 2017:304), nonetheless, Merrills argued that the effectiveness of inquiry and conciliation methods largely depends on how it has been successfully implemented, although the non-binding nature of these procedures ultimately benefits a party seeking a negotiated settlement, a state willing to give up the power can benefit from the added benefits of judicial settlement or arbitration (Merrills, 2017). For example, the Bakassi Conflict (Greentree Agreement, 2006) which could have led to war between Nigeria and Cameroon, despite armed conflict during General Sani Abacha regime was settled through conciliation in 2006 (Oyewale and Osadola, 2018). Thirteen years after oil and natural gas-rich Bakassi Peninsula was ceded to the Republic of Cameroon, the United nation backed Greentree Agreement, which both countries signed on June 2006 to formalise the exercise. It was the formal treaty which resolved the Camerron-Nigeria border dispute that had roots in armed clashes between both countries in Bakassi dating back to 1981 to 1996 (Guardian 2019). Adoption of either inquiry or conciliation, however, depends on the trust both conflicting parties have in the court, and the capability of such judicial tribunal to adjudicate such dispute, historically, however, the judicialization of interstate arbitrations began in the twentieth century, when international agreements creating these courts demanded that verdicts adhere more closely to existing international law (Greentree Agreement, 2006).

3.2 Political Approach to Dispute Settlement

International law permits the use of political means to settle disputes. Between 1918 and 1996, 30 percent of crises were mediated by a third party at some time, due to the high frequency with which mediation happens, there has been a lot of interest in figuring out what causes mediation success and failure (Wilkenfeld, 2003, Fey, Mark, and Ramsay, 2010). With closer observation, however, the mediation method and third-party approach to dispute settlement have not recorded more successes than failures. Nevertheless, a negotiated set of agreements to bring a conflict to a conclusion or prevent it from commencing is referred to as a "political

settlement" in the international relations and peace literature, it differs from other processes for ending dispute, such as military triumph or third-party-imposed peace, as well as other strategies for preventing conflicts, such as disarmament and external security assurances (Ingram, 2014). As a distinctive approach to settling disputes, according to Merrills:

From the political perspective, international disputes can be thought of as having three dimensions: the social, the material and the temporal. The social dimension is concerned with where a dispute occurs, and establishes who the protagonists are. The material dimension relates to what the dispute is about and identifies its subject matter. And the temporal dimension concerns when the dispute occurs, how it lasts and when it is resolved. All the three dimensions are present in every dispute and can exercise a crucial influence on the effectiveness of peaceful means of settlement (Merrills, 2017:136).

For example, the social, economic, and political interaction between the US and the UK through NATO makes disputes between these countries practically impossible, even if there is one reason to disagree to dispute, there are always hundreds of reasons to agree to a peaceful settlement. As Merrills noted, when states share a great deal in common, even though they are separated geographically, the odds of them amicably resolving their differences are high (Merrills, 2017:306). The political perspective to settling disputes which is encouraged by international law seems to be more effective in recent years. The idea of "elite settlement" (Burton & Higley 1987, 1998; Higley & Burton 1998, Ingram, 2014) performs significant functions in the political approach to dispute settlement, it encouraged the 'profound transformation' of elites from 'disunity' to 'consensual unity' to achieve political change (Burton and Higley 1987).

3.3 Use of Force and Peace Process in the International Law

a. Ambiguity in the UN Prohibition of the Use of Force

Beyond the argument of 'just war' and 'unjust war', the rhetoric of the legality and illegality of aggression, it is worthy of note that the Preamble of the United Nation expressly suggests that war, and the use of force by states and/or state actors, should be prevented to save lives. After the resumption of U. S.-Soviet arms control in Geneva on March 12, 1985, 'arms control remains in a general state of paralysis', Borawski further reports that previous efforts to limit force levels have yielded "ambiguous" results, and the problem is exacerbated by radical disagreements over the optional course to pursue in future talks, as well as serious questions about compliance with existing accords (John, 1986). Also, Gray (2014) observes that Article 2(4) of the UN Charter is problematic, given that, nations vary on how to interpret the UN Charter's fundamental provisions on the use of force, the ban on the use of force is directed at interstate disputes; there is debate over whether this allows for humanitarian intervention or 'responsibility to protect. "To state the obvious, Yoram maintained that, Article 2(4) is limited to the use (or threat) of force by United Nations Members "in their international relations," according to the comparatively concise wording of the Article, "The use of force purely within a state is not covered', therefore, armed conflict does not fall under the purview of Article 2 (4) as long as it is exclusively non-international in nature (Yoram, 2017). In consequence, it is fundamental to note that Article 2(4), which states that: 'All members shall refrain in their international relations from the threat or use of force against the territorial integrity of political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations' (Yoram, 2017:89) is loaded with a bundle of ambiguities, and states have been leveraging on the unclear interpretation to use armed force, Gray provides the invasion of Argentina invasion of Falkland Island in 1982 and Iraq invaded Kuwait in 1990, therefore, the world is left with a growing expectation that Russia might present the 'controversial' Article 2(4)

to justify the invasion of Ukraine due to the alliance of both countries with the defunct Soviet Union. The invasion greeted economic, military and social sanctions from the G8 countries and other European countries against Russia to weaken Russia's ability to finance the war and specially target the political, military and economic elite responsible for the invasion. This has far adverse effect on Russian growth.

b. UN Peacekeeping and Option of 'Adaptive Peace-building

The concept of 'peacekeeping' itself is problematic because it welcomes all definitions, not only that the term 'is not found in the UN Charter', according to Henderson, Since 1945, and particularly since the end of the Cold War, the United Nations has undergone significant changes, which have been reflected in attempts to define it, while each operation can be distinguished by the environment in which it operates, the functions with which it has been mandated, and the method it uses to fulfil its mandate (Merrills, 2017:186). Although, Sheeran observes that 'the concept of UN peacekeeping developed as a response to the failure of the collective security system envisaged in the Charter' (Scott, 2018:167), despite this, the purpose for the creation of the UN peacekeeping seems to have been defeated and ineffective. However, there have been occasions when it appears that an operation has evolved beyond any clearly articulated definition of peacekeeping (when peacekeepers use armed force than disputants), or even peace enforcement, and may more readily be classified as *war fighting* (Scott, 2018:197), and despite this 'war-for-war' approach to peacekeeping, with the aim of achieving a ceasefire, Mac Ginty concludes that "many ceasefires and truces do not lead to anything significant" (Roger, 2021:128) hence a need for a different approach to peacekeeping, and to build peace.

When peace could not be reached, it was frequently blamed on flaws in the design's execution, with the most common response being a redoubled attempt to make the plan work (Cedric, 2018), for example, the US-led peace mission in Afghanistan is largely responded to by several analysts as a failure, owing to the fact that the U.S. withdrawn its troops, leaving Afghanistan people to keep and build their peace in their own pace, this decision of the U.S., however, has led to the conclusion that achieving peace and settling disputes require more than the use of force. Alternatively, International Law is required to thread the path of an adaptive approach to conflict settlement and peace building, instead of the usual expensive approach that targets management more than prevention, according to Boutellis, "the UN Secretariat spends approximately US\$7.5 billion a year on peacekeeping, and less than US\$1 billion on prevention, mediation and peace building" (Arthur, 2017:308), adaptive approach, as proposed by De Conning, recognizes that there is no external privileged knowledge or predetermined model, and that the design and decisions should emerge from the process itself, giving all stakeholders, particularly local societies and communities, meaningful opportunities to co-own and co-manage the process (Ibid, 312).

IV. Conclusion

Whether or not war is 'just' or 'unjust', the impression of the international law and legal system is that war should be prevented from occurring, and the use of force by disputing states and state actors should be disallowed. There are ambiguous sections in the UN Articles that states often dribbled off to use force, most exceptionally, Article 2(4), even the UN Peacekeeping is argued to be found of engaging in the use of more force than the force it was designed to address, all of these, combined with the most recent invasion of Ukraine by Russia coupled with the free flow of firearms and other ammunitions (both offensive and defensive), attested to the fact the international law is more effective on the pages of papers. Nevertheless, different perspectives on settling disputes in international law are active in reducing tensions and

availed practical alternatives to confrontations and war. Through conciliation, negotiations, political means, and involvement of third-party in disputes settlement, the world is becoming a liveable place with the possibility of managing many disputes that are capable of birthing World War III. This study, therefore, offered De Conning's adaptive approach to peace building, to be replicated in dispute settlement, in such a way that, the disputing parties should adapt to their disputes while the third party should make the disputants prominent in settling it.

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