Role of International Law in a Unipolar World: Disparity between enforcement and existence of obligations.

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Abstract— Traditionally international law and hegemonic powers are considered irreconcilable. According to many critics, hegemonic powers are reluctant to obey the rules of international law. In such a scenario the international legal system seems to be more helpless and its implementation and the validity will be dubious. Therefore, the enforcement of international law in a unipolar international system will be more controversial and is affected by hegemonic powers. It will also explore both positive and negative features of the execution of international law in international system of hegemonic powers. The idea of instrumentalization sees dominant states in the unipolar system as a driving force of the development of international law. Further it explains how dominant state positively impact on the stability of the international legal order. In the 16th century Spain was a prominent example to show that hegemonic power has contributed to rules on territorial acquisition.

On the other hand, hegemonic powers tend to withdraw from international law. Moreover hegemonic powers are reluctant to accept the norms and obligations under international law. Therefore it is imperative to study how international law can be implemented with obligations in a uni-polar world. Concurrently, the preamble of the Charter of the United Nations clearly states that its objective is "*to establish conditions under which justice and respect for the obligations arising from treaties and other sources of International Law can be maintained*". Therefore, it is obvious that, protection of International law is one of the primary goals of the United Nations.

The main objective of this research paper is to provide a deeper insight in to the role of international law in the unipolar world by analyzing the disparity between the enforcement and existence of obligations. Further this study intends to examine the salient features of the current international law system. The archival study would deal with a wider range of primary and secondary sources which draw the European Union, United Nations Law codes. Moreover, this research would conclude with an assessment of the role of international law in the Unipolar World.

Keywords— **International Law, Obligation, Enforcement, Unipolar World**

INTRODUCTION

Law is the element which binds the members of the community together in their adherence to recognized values and standards. It is both permissive in allowing individuals to establish their own legal relations with rights and duties, as in the creations of contract, and coercive, as it punishes those who infringe it's regulations. Law consists of a series of rules regulating behavior, and reflecting to some extent, the ideas and preoccupations of the society within which it functions. (Malcolm N. Shaw, 2003)

And it is with what is termed international law, with the important difference that the principal subjects of international law are nation State, not individual citizens.

There are many contrasts between the law within a country (municipal law) and the law that operates outside and between states, international organizations and, and in certain cases, individuals. (Malcolm N. Shaw, 2003) international law is divided in to two categories, which is Private international law and Public international law. Public international law covers relations between states in all their myriad forms, from war to satellites, and regulates the operations of the many international institutions. (Malcolm N. Shaw, 2003)

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UNIPOLAR WORLD

The unipolar world can be described as a power structure with one dominant super power. As defined by the Oxford dictionary, unipolar world is, "one where the distribution of power is such that one state exercises most of the cultural, economic and military influence". (Charter of the United Nations) It is a term used in the field of International Politics. According to some critics in the field of international politics, uni-polarity is comparatively unstable and conflict prone, as a result its long term survival is uncertain. (Malcolm N. Shaw, 2003)

The United States of America has acquired most of the qualities required for creating a uni-polar world. Indeed, the absence of a counter-power has stabilized the hegemonic position of the USA. Their hegemonic position always the USA to play a more active role in the international arena where international law practiced.

International Law

International law can be defined as "the body of legal rules which apply between sovereign states and such other entities as have been granted international personality."(Oxford Dictionary)

According to the above definition, technically international law is applicable to all sovereign states in the international system and all other entities which are authorized as international personality.

The extreme imbalance of power relations in the international system in general, and among the five permanent members of the Security Council in particular, in favor of only one Member State i.e. the total absence of a balance of power, has become the fundamental predicament of the United Nations Organization at the beginning of the third millennium. The problem has been aggravated as a result of the fact that the UN Charter, unlike domestic constitutions, does not have a framework of checks and balances between legislative, executive and judicial powers. It was the intention of the founders that virtually all powers should be concentrated in one institution, the Security Council, where the permanent members enjoy a special statutory privilege. Unanimity among the great powers of that time was considered, by them, more important than considerations of equality, not to speak of transnational democracy (Kochler, Hans).

One of the Founders of modern international law the Dutch Scholar Hugo Grotius excised theology from international law and emphasized the irrelevance in such a study of any conception of a Divine law. He remarked that the law of the nature would be valid even if there were no god. The law of nature now reverted to being founded exclusively on reasons. Justice was part of man's social make-up and thus not only useful but essential. Grotius conceived of a comprehensive system of international law. (Malcolm N. Shaw, 2003)

From broader perspective, there is no strong independence mechanism to determine the international law and monitor its conduct or to make final decisions. Similarly, international law does not have a legislature to which all the states are abide. In addition, there is no system of courts that can adequately enforce the international law. The International court of justice does exist at The Hague, but it can only decide cases when both sides are agreed and it is not in the position to ensure that its decisions are compiled by the states. (Malcolm N. Shaw, 2003)

The absence of an identifiable institutional mechanism to establish rules of the international law indicates that there is no way to get clarification and monitoring process to see the violations of international law. Therefore it is difficult to recognize international law as a mandatory law. (George Schwarzenberger, 1967)It is more correct to identify it as an optional law. However with this law making body of International Law develops and matures it may come to encompass the legend relations of non-state entities, such as peoples' territories, International Organizations, individuals or multinational companies. (Malcolm N. Shaw, 2003)

According to Oxford Dictionary, obligation is defined as, "An Act or course of action to which a person is morally or legally bound a duty or commitment." The Montevideo convention signed in 1933 clearly states the rights and the duties of a state. The first article of the convention sets out four criteria for statehood while article number 11 is prohibiting the use of mility force to obtain sovereignty. (Montevideo Convention on the Rights and Duties of States)

In the present unipolor world the question of whether the existence of an obligation and whether that obligation is been enforced is a vital discussion in regard to international

law. As it is said that states do observe international law and will only usually violate it on the issues regarded vital to their interests, the question also arises as to the basis of this sense of obligation

When we are discussing about the existence of an obligation under International Law it has a body of rules binding upon them as Law. States believe International Law exists. When Iraq invaded Kuwait in 1990 or earlier and when Tanzania invaded Uganda in 1978/ 1979 the great majority of states regarded the action as "unlawful", not merely "immoral" or "unacceptable".(W C. Keating, Gregory) When USA went to Pakistan to capture Osama Bin Laden, international community criticized that intervention was unlawful against a sovereign state. The same is true of the war crimes committed in Bosnia and Rwanda and this is given concrete form when the United Nations security council imposes sanctions or takes actions against a delinquent state, as with that against Libya in 2011 in order to protect civilian populations. (W C. Keating, Gregory)

In regard to the legal validity of a duty of an obligation for example where the right to a fair trial under international law has come under intense scrutiny in the attempt by the United States to deny over 400 non-US citizens detained at Guantanamo Bay, Cuba, the right they would have had if they were tried in the civil courts of the US or by courts martial; where after the September 11th, 2001 attack president Bush issued a Military Order to establish military commissions to try non-citizen detainees according to procedures that have been described by *Lord Steyn* of the Court of Appeal in Britain as a 'pre-ordained arbitrary rush to judgment by an irregular tribunal, which makes a mockery of justice'. In a recent decision of June 29, 2006 the US Supreme Court in *Hamden v Rumsfeld 546 US (2005)* decided that President Bush lacked the constitutional authority to establish military tribunals to try enemy combatants and the structure and procedures of the tribunal violate both uniform code of military justice and the Geneva Convention.(Dias, Noel, and Roger Gambler, 2006)

The Afghanistan "War Against Terrorism" Attack.

The U.N. Charter provides that all member states must settle their international disputes by peaceful means, and no nation can use military force except in self-defense or when authorized by the Security Council. After the 9/11 attacks, the council passed two resolutions, neither of which authorized the use of military force in Afghanistan. Resolutions 1368 and 1373 condemned the September 11th attacks and made certain important orders. In addition, it urged ratification and enforcement of the international conventions against terrorism.

The invasion of Afghanistan was not legitimate self-defense under article 51 of the Charter because the attacks on September 11th were criminal attacks, not "armed attacks" by another country. Furthermore, there was not an imminent threat of an armed attack on the United States after September 11th. The necessity for self-defense must be "instant, overwhelming, leaving no choice of means, and no moment for deliberation". This classic principle of self-defense in international law has been affirmed by the Nuremberg Tribunal and the U.N. General Assembly. Those who conspired to hijack airplanes and kill thousands of people are guilty of crimes against humanity. They must be identified and brought to justice in accordance with the law. But retaliation by invading Afghanistan is not the answer to everything. (Cohn, Marjorie)

The invasion of Iraq by the United States is a crucial example in regard to the power of a unipolor world in International law and where duty to enforce obligation has been affected. In 2002 and 2003, President George Bush cited the possibility of Saddam Hussein acquiring weapons of chemical, biological and nuclear weapons and thus posing a direct threat to the United States as the main rationale for a pre-emptive invasion of Iraq. (Wong, Edward)

The then United Nations Secretary-General Kofi Annan said in September 2004 that: "From our point of view and the UN Charter point of view, it (the war) was illegal." The Prosecutor of the International reported in February 2006 that he had received 240 communications in connection with the invasion of Iraq in March 2003 which alleged that various war crimes had been committed. At the end up to now there were no weapons of mass destruction found in Iraq.

The most important of the subject of international law do not claim that they are above the Law or that international law does not bind them. In the case concerning the application of convention on the prevention and punishment of the crime of Genocide (Bosnia and Herzegovina Vs. Serbia and Montenegro (ICJ 2007), Serbia did not deny the existence of rules of Law concerning genocide, but contended rather that it was not internationally Law that had taken place. (www.jgu.edu.in/joss/PDF/internationallegalsystem.pdf)

In the light of these weaknesses of the international law, it is worth to examine how the USA complies with the international law in the hegemonic atmosphere. For instance, United States of Americas rejection of the convention on Bio Diversity, the Comprehensive Test Ban Treaty, and Convention on Land Mines shows that USA is more closely associated with the "withdrawal pole". (www.jgu.edu.in/joss/PDF/internationallegalsystem.pdf)

Further, the rejection of the International Criminal Court and the Kyoto protocol are the other prominent examples to demonstrate the USA's reluctance to accept multilateral treaties that fallen under international law.(http://www-pub.naz.edu:9000/~rgecas7/problem.htm) A deep survey on this USA reluctance to become a party to international conventions reveals that USA has become party to nearly only 60% of the treaties deposited in the UN General Secretariat which have been ratified by the other majority of states since the Second World War. In contrast, other states have ratified 79 percent of these treaties. (Nico Krisch, 2005) This leads to the argument that United States of America has an intentional reluctance to become a party to multilateral treaties that are not complied with their national agenda. Similarly, this tendency questions the America's genuine commitments towards the international law and its obligations as a subject of international law. Moreover, this inclination creates a space to assume that USA is partially moving away from the obligations under international law as a hegemonic power.

On other hand, the USA is highly criticized for long waited reservations of treaties. "Frequent use of reservations, extensions as to render treaty obligations meaningless and both treaty supervision and western allies have raised serous abjection to this". (Nico Krisch, 2005) This leads to further discussion on the how USA strategically being away from certain obligations under international law. Moreover, this intentional delay is viewed as a part of its hegemonic agenda. Concurrently, the America is criticized for its failure to provide adequate justification for such treaty resistance.

Conclusion

International law attempts to create a framework, no matter how rudimentary, which can act as a kind of shock-absorber clarifying and moderating claims and endeavoring to balance interest. It sets out how states should behave. The international community should always bear in mind its ultimate values. (Malcolm N. Shaw, 2003)

In the unipolar world order where the United States is the main superpower which has the most powerful authority, which as examples given above relating to the invasions of Iraq, Afghanistan and also certain other states which has being in the mercy of United States. And at those instances International law obligations are not been properly enforced. International community states should have a consensus approach with other states which then would result in a better world order.

The existence of an obligation and of the enforcement of that obligation in International law, we as Researchers of International law should understand that International Law cannot be a source of instant solutions to problems of conflict and confrontation because of its own inherent weaknesses in structure and content. To fail to recognize this encourages a utopian approach which, when faced with reality, will fail.

As noted by the C.G. Weeramantry, "Good faith among is another of the central pillars on which international law is built". (C.G. Weeramantry, 2001)Hence the achievement of the international law should be expected in a new model, which is different from the enforcement tools used in national law. It is more from the moral element other than the forcing element. As the super power of the unipolar system, USA has to rethink of its role in obeying international law based on the genuine acts and commitments. Therefore, though there is an existence of an obligation under international law, the unipolar world does not enforce the obligation but, they have a duty to comply with the obligations under international law in order to refrain from conflicts among nations.

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