



The Role of International Law in Contemporary Diplomacy

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ABSTRACT

The history of diplomacy starts with the history of mankind itself. The mankind to achieve its motives without being engaged in a battle has always used negotiations skills as a tool. Although the diplomats all around the world are still using the tool of diplomacy, however, the concept of contemporary diplomacy is far afield from the one of early diplomacy.

With the advent of globalization, the idea of diplomatic practices has been formalized and its scope has widened. Not only are the diplomatic tactics being used to cope up with the political issues among the states, but also the issues concerning economic and social problems of the states. This increased usage of diplomatic practices has paved path for the international laws to govern the diplomatic practices in the prevailing era.

This paper tries to examine the role of International Law in the contemporary diplomacy. Emphasis is laid upon answering the question that whether the international laws, as framed by the United Nations, are helpful in flourishing peaceful diplomatic ties among states or not. It has been concluded that the contemporary diplomatic practices among states is beholden to International laws.

INTRODUCTION

Background and Scope of Study:

The idea of diplomacy is as old as the inception of mankind itself. The roots of diplomacy can be traced back to the early civilizations when the kings used to designate the duties of a diplomat to the trade consuls. The early civilizations, though informally, were involved in diplomatic ties with the other civilizations, traces of which have been found by the researchers (Sharp, 1999).

Subsequently, the art of diplomacy was also adopted during the ages of empire. The Roman & Byzantine empires were the introducers of formal methods to the art of diplomacy. Evidences justify the presence of a large number of diplomats during the time of empire state system (Black, 2010).

With the advent of modern state system after the treaty of Westphalia, the art of diplomacy transformed completely (Gross, 1948). More formal ways and techniques were introduced in the field of diplomacy. Diplomacy emerged as a distinct subject in the field of arts as well as science.

The modern concept of a 'State' is based on the four main characteristics i.e. territorial boundaries, population, sovereignty and government (Oestreich, 1982). For every state, it is mandatory to maintain these characteristics in order to be recognized as a distinct state. This is where the tool of diplomacy comes in handy to maintain these characteristics (Picco, 2005).

Vienna Convention is considered as the cornerstone for contemporary diplomacy. The prevailing diplomatic practices in all around the globe are in accordance with the conditions

laid down in Vienna Convention. The ratification of Vienna Convention by a large number of states makes it one the most powerful agreement among states. The reason for such a huge success of Vienna Convention in formulation of contemporary diplomatic practices is its working structure, which is based on the principle of reciprocity (Farnsworth, 1984).

Vienna Convention constitutes a legal binding on the states to help practice diplomacy on the basis of reciprocity. In this regard, International Laws have been a vital role player to strengthen the roots of contemporary diplomacy. Researches have shown that there exists a link between international laws and the practices of contemporary diplomacy.

This paper aims to seek the role of International Law in Contemporary diplomacy. This paper tries to find out whether International Law can be considered as a pillar of contemporary diplomacy or not. Since adjudication is a common practice among the states involved in diplomatic ties, therefore, there exists a deep relationship between international law and the contemporary diplomacy.

International Law

International Law is referred to as the laws that are formed to address the issues of 'Global Concern' such as environment issues, international water borders and human trafficking are to mention a few. These laws are framed by the specialized agencies of United Nations concerning to the particular issue. Therefore, all the international laws come under the umbrella of United Nations (Starke, 1989).

United Nations for the purpose of maintaining peace among the states and to flourish healthy bilateral and multilateral relationships has greatly emphasized on International Laws in the past few years. Not only that these laws are to be abided by the states ratifying the charter of

UN, but also there exists a possibility of adjudication against states in the International Court of Justice.

Almost all the countries in the world are member states of United Nations, thereby under obligation to follow the international laws framed by the Agency. With the passage of time, several new laws have been introduced by different subsidiaries of United Nations in accordance with the global needs. These international laws are framed considering various aspects such as the global cultural values, precedence and issues that need to be addressed by those laws (Anghie, 2006).

With the reference to the prevailing practices of the contemporary diplomacy, international law is a vital role player in the establishment of peaceful and successful diplomatic practice among the states. It is the nature and structure of International Laws that bring the states under obligation to comply to the rules of diplomatic practices laid down in Vienna Convention.

How do Contemporaries define Diplomacy?

The modern definition of diplomacy defines diplomacy as the process of conducting negotiations between representatives of states. This definition is somewhat different from the early definitions of diplomacy. During the early ages, the concept of diplomacy was much more informal and its scope was limited. However, in the prevailing era, concept of diplomacy has been formalized and its scope widened (Pigman, 2010).

The transformation from early diplomacy to modern diplomacy is a rapid one. The main characteristics of early diplomacy were state-centric and revolved around the element of negotiations among states. Since the ties among the states were very limited in early times, therefore, diplomacy has very little role to play. Nevertheless, the scenario has changed

drastically and states are now much more connected with each other (Kerr & Wiseman, 2012).

With the advent of globalization the ties among states has strengthened. The interconnectedness of economies and the concept of economic liberalism have widened the horizon for diplomatic practices. Not only that the states have economic interdependence but also have political and cultural influences on each other. Due to the increased interdependence among states, the role of diplomacy in prevailing era has also increased immensely.

The term diplomacy has now been divided into further categories such as economic diplomacy, cultural diplomacy, political diplomacy and many more. Although, the idea of conducting negotiations still remains the crux of diplomacy, however the umbrella of diplomacy now encompasses many other tasks that were previously excluded from the realm of diplomacy (Van Bergeijk, 1994).

The concept of reciprocal bargain was alien before the ratification of Vienna Convention. Reciprocity and Multilateralism are now considered as a part and parcel of the modern diplomacy. Picco (2005) points out the main characteristics of contemporary diplomacy with the following definition

“Diplomacy, one of the last monopolies of a government, is now accessible to and performed by NGOs as well as individuals who have one main characteristic: credibility”.

Extension of the concept given by Pico leads us to the conclusion that the concept of diplomacy in modern sense is not at all caged. Rather, it has now become a concoction of

fields and require due importance and attention by the social scientists and researchers (Sharp, 1999).

Precedence & Law

Precedence in the literal sense means to benchmark what was done in the past. In civil cases, precedence is often used as a replacement to statutory laws. There are three common types of precedence since it's a common law as it provides guidance into similar situations, in similar or superior courts.

The original precedent is a new case, which has never been trailed before in the court of law. The original precedent is usually the manuscript for a type of case. The binding precedent is also known as normal precedent and is a previous court ruling. Finally, there is a persuasive precedent, which is a ruling by a lower court and can be used by the higher court, in the same manner yet they may not have a legal binding to do so. The case without binding essentially means that the case or its details haven't been dealt by any equivalent or higher court in the past and there is no judgment present to prove innocence or otherwise (Stone, 1985).

The primary role of judges is to solve disputes using the applicable laws. These judges interpret the legal laws for their decision-making and since they are not machines, they enjoy certain leeway in decision making. Precedence becomes very useful here, since in natural settings, it guarantees the equality and certainty of the given treatment. Too much reliance on precedent, however, can have certain negative effects like freezing the progressive and ever – evolving nature of legal development. To counter this situation, a perfect balance between progression and certainty is to be maintained (Allen, 1964).

This essentially means that rulings for subordinate or smaller courts normally goes by precedents yet the higher courts are entitled for jurisprudential development. Both courts

want to have justice as their cornerstone, yet they go to achieve the same through different routes. In practice, however, the development of laws is not the duty of judiciary. Instead, the legislature has this power. The court, both bar and bench, then try and find inspiration in previous solutions provided so they can have some input in progression of the legal development. Hence, it can be concluded that for all national laws, precedence serves as the starting point for reflection on judgment. Precedence is legally certain, they aren't challenged by the higher courts, they cater of intellectual laziness and finally, the legal setup doesn't allow laws to be formulated by the judiciary, but rather the legislature.

Keeping the above facts in mind, one can understand the deep connection between precedence and law. There exists a bilateral relationship between the two terms and it can be safely argued that laws are made in accordance with the precedence and past experiences. In fact, the only case when we come to know that an issue needs to be addressed by law is when issue arises. Therefore, the claim that there exists a strong relationship between law and precedence is not baseless.

Importance of Precedence in Framing of International Law

Precedence was not very applicable to International Law till 1967, when Sir Robert Jennings noted that very little was done to explain the principles of precedence in framing the international law. International Court of Justice and interstate arbitration tribunals were targeted through this observation. As far as international commercial arbitration was concerned, precedence was never given a thought as decision – making and taken decision were extremely confidential (Hunter, 2001).

The situation flipped and is very different today since due to globalization and international trades, there is an abundance of international courts and arbitration institutions. International

Court of Justice today enjoys a great position as it has benefitted with the emergence of International Criminal Courts, Appellate body of WTO, International Tribunal for the law of sea and many other international administrative tribunals. Similarly, at the regional level, European and African Courts of Human Justice have emerged. Along with the traditional forms of arbitration, new forms have emerged like ICSID (Charnovitz, 2011).

All these developments have made precedence important than before in international law, both on public and private avenues. In these areas, however, precedence poses multiple problems, which are as follows:

- For domestic law, it's incumbent to follow the local arbitration and other judicial bodies.
- Due to domestic jurisdictions, it's difficult to use precedent in international situations

Respective to both the cases, there is a question of having legal certainty for the first case, while for the second case the international law's coherence is a burning question. The legal circles have been discussing the abundance of the presence of international courts over the last few decades and have been arguing on their impact in the international scenario. They agree on the fact that the increase in international judicial institutions is a favorable outcome as it will act as a catalyst to the development of legal frameworks and will help to incorporate differing views. Hence it can be safely concluded that precedence has been a driver for framing international law though as of today, there are many separate law making entities, which are working for global law formation and enactment.

In the context of diplomatic activities, history has shown that there still exists the possibility of the happening of an event that lie outside the realm of international laws. In that case, precedence is the only tool diplomats are left with to combat the situation. Precedence is like

Standing on the Shoulders of Giant. Hence, a great deal of emphasis is laid on precedence while framing international laws. Moreover, precedence can also be considered as a test simulation that provides the basis to go for the appropriate action.

Contemporary Diplomacy in the Light of Vienna Convention

A key aspect of governance is the maintenance of diplomatic relations between two independent countries. Times and situations have demanded the countries to establish a framework for studying the interactions between different countries. The idea to have diplomatic relationships stemmed a century ago and people who were instrumental in bringing this change are still credited for this (Brown, 1988).

The Vienna Convention is regarded as the pioneering act to strengthen relationships at inter-state level. It's a set of governing rules between different states on the maintenance of relationships. The treaty secures diplomats in performing their duties from all kinds of harassment and violence. The treaty is accepted in 180 countries around the world and forms the cornerstone for modern day diplomacy (Kerley, 1962).

The Vienna Convention was a step taken by UN in 1961 in aligning the participation of different sovereign states to reach and consensus and provides guidelines on the international diplomacy. This convention was successful since it provided stable rules which governed law internationally and provided regulations against non-compliance. Before this convention, communication and interactions between different nations were limited due to wars and the interest to have supremacy. Till the treaty wasn't adopted and agreed upon, the main causes of unstable relationships between different states were political and economic issues, which lead to war and trade sanctions. This meant that there were less respect for the envoys and disagreement over their status. The concept of closed economies also added fuel to the fire

and global peace making missions failed as a result of this. The Havana Convention on 1928 was the first step in the right direction.

The adoption of this convention was looked as for promoting global peace in the world. It helped in significantly transforming the customary laws, which were in operation for some 200 years. Consular relations were setup to guide these customary laws. Free communication was at the heart of facilitation for these consular functions. To develop diplomatic services, freedom to share information was provided to these consular officials. Moreover, other nation consular was given a free path to meet each other. Smooth communication was ensured through this, which holds key to better diplomatic relationships (Frankowska, 1987).

The element of reciprocity in the structure of the articles of Vienna Convention ensured the smooth working of diplomats. The fear of being caught or being traced has now vanished in the light of the articles of Vienna Convention. It provides safeguard to the diplomats performing their diplomatic activities as laid out in Vienna Convention. The concept of diplomatic immunity and diplomatic property turned out to be the cornerstone of modern diplomacy.

International Law and Contemporary Diplomacy

The recent changes in the diplomacy have improved upon the definition of international law. The current definition of International law should keep up the pace with the conditions of international life, which is affecting the current status of international relations. There has been emergence of new actors now, both state and non-state (Latane, 1906). Moreover, corporations and organizations have emerged in the global paradigm throwing new challenges for inter-state relations. Diplomacy, in the current scenario is also dictated by bureaucracy in certain states, which challenges the merits of international law. The impact of

globalization has been multi-pronged. Firstly, autonomous state actors have ever-growing powers in the current international system. Secondly, global problems are complex enough to ask for answers that are beyond state control and governmental regulation. Finally, global and political economic environment can change drastically with the passage of time (Chatterjee, 2013).

With global organizations, the relations between states and international organization have been known as issues which involve greater regulation in the current new world order. The authority and integrity of international organizations and their approach is well audited in current times in the global context. Another trend that has emerged in the recent pass is the presence of NGO's and their conduct on both national and international levels. The global issues that these organizations are targeting involve disaster relief, environmental protection, human rights, education, literacy and waters. The main barrier is to ensure that these objectives are fulfilled against the odds of externalities or sinister agendas. Also, it's required to ensure that these objectives are flexible enough to accommodate any changes since the world is changing at the rapid pace.

International law is a huge umbrella now and as of today, it demands further efforts to be made on the part of diplomacy to work for the betterment of not a single state but the whole world. This is only possible when diplomacy is involved in politics and not politicking any issues pertinent specifically to the human race, and generally to the environment.

LITERATURE REVIEW

In order to understand the crux of the relationship between international law and diplomacy, we first need to look at the thoughts presented by the researchers so far in this regard. Much work has been done in the past few decades by the researchers to explore the relationship

between international law and diplomacy. In the prevalent era, international law is not merely a subject only to be studied by social scientists. It has become of immense importance and has far reaching political implications. In this regard, few of the worth-mentioning researchers are highlighted below in this section.

As pointed by Hurd (2011), a state talking about the businesses of other states is termed as diplomacy. The structure of international politics is based on the notion of diplomatic relationships among states. Peaceful dialogue between the states over serious issues is beholden of Diplomacy. However, the importance of international law in the practice of diplomacy cannot be overlooked.

Hurd emphasizes on the fact that when states practice diplomacy and are involved in diplomatic ties with other states, make use of International Law to defend their actions. The courses of action adopted while carrying out peaceful negotiations with other states are developed in accordance with the international law. Therefore, international law is to be considered as the most important pillar for carrying out peaceful negotiations among states.

According to Slaughter (1995), international relations in the world of liberal states are backed by international law. The applicability of international law is not only restrained to the diplomatic relationships between states, but is also extended to the non-state actors and their interaction with their transnational counterparts.

There exists no specific institutions that set these international laws; rather it is a continuous process. International treaties, precedence and societal norms are the most important factors that shape international laws. A specific institution does not maintain the enforceability of international laws; rather the compliance to international laws is more of a moral obligation. Presently, the case of Melian Dialogue can be used as the best example to describe the

situation of international diplomatic relationships and the role of international laws in it (Wassermann, 1947). Mostly, powerful states have low or negligible pressure to abide by the international laws, whereas this is not the case with weaklings.

International Laws and Tracks of Diplomacy

As soon as diplomatic relationships among states gained recognition and were formalized, the nature of diplomacy and the tactics used in it began to evolve. In the early decades of initiation of formal diplomacy, after the ratification of Vienna Convention, diplomats figured out that Government-to-Government negotiations are not enough to cater the needs of conflicts among states. The increasing trend of multilateral diplomatic ties also triggered the rapid growth of conflicts among states (Böhmelt, 2010).

Once the states recognized diplomacy as a tool to find out the solutions of their long lasting problem, they started utilizing it, though not efficiently. The backend support of Vienna Convention and the element of reciprocity helped the states to carry out negotiations in a secure environment. However, despite being international laws at their service, states were unable to resolve many of their prime issues.

Joseph Montville in 1981 coined the terms Track 1 and Track 2 diplomacy that soon turn out to be a great twist in the field of diplomacy (.McDonald & Bendahmane, 1987) Track 1 diplomacy referred to the interaction among the governments of two states. All the diplomatic activities carried out between two states officially are to be termed as Track 1 diplomacy. The concept of Track 1 diplomacy is more of formal relationships that involve the interaction among high profile government officials of the states to address the issues of serious nature. On the other hand, Track 2 diplomacy referred to the idea of informal diplomatic activities

that were carried out by the non-governmental organizations and people. More commonly the track 2 diplomacy is referred to as the diplomacy among non-state actors.

This distinction was made by Montville to aid the process of negotiations among states. After the distinction of tracks of diplomacy, diplomats started to identify the nature of problems according to their track of diplomacy i.e. by which track the problems needs to addressed. This helped the diplomats to address severe problems in a subtle manner through track 2 diplomacy. The track two relations between US and Iran is the prime example of track 2 diplomacy in action. Another example to illustrate the importance of diplomatic tracks is the Track II diplomacy between India and Pakistan. Despite the rise of tension on borders of the neighboring countries, the track II diplomacy was not only unaffected, but also turned out to be helpful in neutralizing the on border agitation between the countries. Moreover, it also enunciates the strengths of track 2 diplomacy.

It is pertinent to mention here that the rapid evolution of the field of diplomacy has introduced many new tools of conflict resolution. Recognition of the importance of tracks of diplomacy helped the researchers to innovate the ideas of track 1.5 diplomacy, track 3 diplomacy and multi-track diplomacy, each having its own merits and strengths. With the development of further tracks and innovative tools, the researchers have minimized the risk of failure of diplomacy to a lower level (Mapendere, 2005).

Although, international law is considered to be a support to maintain diplomatic relationships, however, the role of international law is much more restricted when it comes about the different tracks of diplomacy. Only track 1 diplomacy is the official form of diplomatic activities between states and are subject to the laws and regulations laid out by the international community. The form of somewhat official diplomacy is track 1.5 diplomacy,

where state and non-state actors are both involved in carrying out negotiations hence it is also subject to international laws.

The other tracks of diplomacy in which non-state actors like public, NGOs, Multinationals and transnational organizations are involved are not bound by the international laws. The non-official tracks of diplomacy have strength to address severe issues in a subtle manner, but do not have any binding force. Due to the absence of a binding force, the process of negotiations sometimes goes haywire and inconclusive, thereby stressing on the importance of international laws and binding forces in carrying out diplomacy (Diamond & McDonald, 1996).

Success of Contemporary Diplomacy and International Law

The availability of the option of adjudication is indeed a gift to contemporary diplomacy. The establishment of International Court of Justice proved to be a catalyst in carrying out peaceful negotiations successfully. The initiation of war between two states can be viewed as the failure of diplomacy, but by no means can it be considered as the end of diplomacy.

The two most destructive world events known to mankind are World Wars. The subsequent event of World War II was due to the absence of any central authority. The establishment of UNO and its bodies together with the clause of enforceability of international laws in its charter turn out to be a blessing in disguise for the states.

Vienna Convention is indeed the least controversial document we come across in the studies of International relations and diplomacy, however, the true power of Vienna Convention lies on the presence of International Laws. The increase in the success rate of peaceful negotiations among states through arbitration, good offices and the other tools of contemporary diplomacy is beholden of International Laws up to some extent. Other factors

of the success of contemporary diplomacy include multi-polarity of power, good governance, globalization and governments entering frequently into treaties and forming alliances.

The view of international law aiding contemporary diplomacy to successfully meet its milestone can further be proved with the help of recent global events. “Dikko Affair” is the most illustrious example of the case when international law came in handy to carry out peaceful negotiations between Nigeria and United Kingdom. The situation was certainly not manageable if there wouldn’t have been Vienna Convention serving as a protector to eliminate the possibilities of a possible war (Akinsanya, 1985). In the presence of international laws and its binding forces, such a situation was only resulted in a two years of disconnection of diplomatic relationships between the two countries, thereby, signifying the important role of international laws in contemporary diplomacy.

Extract of Available Literature and Global Political Scenario

A quick peep into the recent history of the global political events strongly suggests that diplomacy has become of prime importance in today’s world. The increasing importance of diplomacy is because of its ability to resolve issues of serious nature over table talks. Nevertheless, the success of diplomacy is said to have been dependent on international laws. The structure and enforceability of international laws with reference to diplomatic activities is playing a vital role in the success of contemporary diplomacy.

Diplomats employing the tools of contemporary diplomacy have faith on international laws that are watching their backs. History suggests that before the establishment of United Nations and International Court of Justice, there was absence of a central authority that could enforce international laws. Such an absence of a binding force was the reason why the diplomacy had lower success rates. Therefore, proper structure of international laws (i.e. on

the basis of reciprocity) and enforceability of laws were considered as the integral part of diplomacy and related activities.

Not only the historical events point towards the importance of international laws, but the available literature also suggest strong correlation between international laws and contemporary diplomacy. The failure of 'League of Nations' taught many lessons to the states, enunciating the importance of international laws.

CONCLUSION

The summary of the above discussion pinpoints us to few important yet neglected points by the contemporary diplomats. Firstly, diplomacy itself has no power unless backed by the international laws. It is the power of treaties and laws that enables the diplomats to carry out their diplomatic activities freely inside the territorial boundaries of host countries. Secondly, the nature of prevalent diplomatic activities indicates the lack of vision and homework. It is only the global political pressure and international agencies that help the countries to reach to a unique solution, or else the countries themselves are not self-sufficient to take care of the issues of serious nature.

Therefore, the above discussion concludes that law internationally is evolving on continuous basis due to the creation of new decisions and treaties that are taken in the light of continuously evolving and happening current events. In the recent times, there has been a shift and now there is a visible trend to apply international law in states foreign policy as well as protection of rights on individuals. This shift is pronounced by two examples which are the application of international humanitarian law and the international criminal law. These two laws have ensured that international law is now sought after as part of governance in states as well rather than as being used as a medium of interaction between states.

Hence, we can conclude that diplomacy provides a pivotal position between agency and structure in the legal and political framework. It's a social norm which fulfills the requirements of a state and is pragmatic enough not only to maintain interstate relations but also fuel the practical needs of a state. On its own, it's a public activity and utilizes world resources and the interactions between them. Countries in today world protect their image by adhering to these practices and are using this adherence as viable marketing tools. Diplomacy, to sum up, has been the world changer and is affecting the global political and economic scenario in a positive manner.



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