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Compliance, Violation and Contestation: States, International Law, and Factors of Compliance

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ABSTRACT

This article aims to highlight the differences between state practice vis-à-vis their adherence to international law. States relationship to international law is often simply reduced to a binary relationship of violation and obedience to international law which can be problematic and reductionist. It also eliminates the third category which this article highlights, which is that of contestation. Contestation entails the middle path of where states contest to the law by operating in a grey area or using languages of law to justify their violations of international law. Thus, the varying degrees of state practice can be classified into a trifecta of observable categories. They are compliance, violation, and contestation. Drawing on legal analysis of international law and relevant examples, this study finds that a trifecta of approach to international law allows for more precision in labelling state actions and assessing their legality and illegality under international law. Notwithstanding other unique and exceptional factors, this study also gives an overview of eminent factors for state compliance to international law based on what is found in literature.

Keywords: *International Law, Compliance, Contestation, Violation, Obedience*

INTRODUCTION

Unlike the hierarchical nature of domestic legal systems, International law is said to be a horizontal legal system. International law operates in an environment that involves sovereign states where their sovereignty entails no higher authority above them (Klabbers, 2017, p. 74). Hence, the horizontal nature of international law simply means that it regulates relations between equal sovereign states – as opposed to the ‘vertical’ nature of domestic state laws that have compulsory jurisdiction over its citizens. As such, international laws have often been seen to be less powerful than its domestic counterpart (Goldsmith and Posner, 2005: 87). To think of international law as being irrelevant and ignored by states is incorrect and reductionist as states do follow international law but for various reasons.

While the domestic legal systems are binding upon all citizens within the state, international laws are only binding when states have consented to it as international law does not have compulsory jurisdiction like its domestic counterpart. This is clearly evident when we look at the Vienna Convention on the Law of Treaties (VCLT) which governs the creation, enforcement, and application of treaties. Article 34 of the VCLT states that treaties do not create obligations or rights for a third state without its consent (United Nations, 1969). This highlights that consent is of primordial importance for states to be bound to such a treaty unless of course, customary international law embraces a treaty law which may lead a certain norm to become binding on states who are not parties to a treaty. Nonetheless, the separate realms that International and Domestic laws operate in can be further evidenced in Article 27 of the VCLT. Article 27 states that countries cannot invoke its own internal laws as justification for its failure to perform a treaty (United Nations, 1969). States who are party to an international law that they have consented to, cannot justify non-adherence to the law by resorting to their domestic laws as their

domestic laws do not apply to other states due to the sovereign equality of states in the international system (Klabbers, 2017).

If International law is weaker than domestic laws and can only be binding upon states insofar as they consent to it, what then explains states' compliance with the law? As Hemkin aptly stated "Almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time" (Hemkin, 1979: 47). In general states do meet their international legal obligations most of time. For those that do not, their actions fall into two observable categories; violation and contestation. Contestation allows for more precision in labelling states' actions as it enables further research and scrutiny to the law that is being violated and allows for more discussions to take place which could possibly lead to improvement of the law. Hence, it is much easier to assess the legality and illegality of states' actions under international law if we employ a third category that will be able to fill the gap between states adherence, and non-adherence to international law. The 'contestation' category serves to fill this gap since compliance and violation seemingly have a limited black and white meaning of adherence and non-adherence (Chayes & Chayes, 1993; Martin, 2013; Von Stein, 2013) and therefore will be further discussed in this paper. By discussing on these categories and definitions of adherence and non-adherence to international law, this article aims to provide an analytical framework for ensuring precision and accuracy in describing states' actions and its placement under international law.

Drawing on legal analysis of international law along with relevant examples of state practice as a guiding framework, this article aims to address two topics concerning states' adherence to International Law: 1) the differences in states' adherence or non-adherence to International Law, and 2) the factors causing states' to adhere to International Law. The first topic highlights a trifecta of categories of states' adherence to International Law while the latter addresses the primary reasons for adherence as found in literature. Hence, this article will be structured into two sections. The first section will address the meaning of compliance, violation, and contestation, of which the last part will enable us to be more precise in labelling states' practice and assessing their legality or illegality under international law. Simply put, this section attempts to explain states' behaviour when it comes to adherence and non-adherence to international law into three categories: compliance, violation and contestation. The second section will address factors that cause states to comply with International Law. While acknowledging other potential factors, this article covers factors of legitimacy, reputational, reciprocity, interests, enforcement and sanctions. These factors are pertinent because they are commonly observable in modern times.

COMPLIANCE, VIOLATION, AND CONTESTATION – THE DIFFERENCES OF STATE PRACTICE

Compliance

Despite International Law lacking an overarching enforcement mechanism (Morgenthau, 1948; Hart, 1961), states do engage in sustained international cooperation (Axelrod & Keohane, 1986). Compliance with the law is when a state's behaviour or actions conforms to what has been legally prescribed either in treaties, conventions, or international norms (Young, 1979). It is commonly used as a measure of states' obedience to the rules of the international system as well as their participation in it. This includes adhering to international treaties, carrying out legal obligations, and agreeing to be responsible and punished for any violation of a treaty. Hence, compliance to international law is grounded mostly in a liberal view of international relations of institutions and norms regulating state behaviour since a classical realist view of international law would entail an anarchical system devoid of laws which is far

from the current system that we have in the world today. International laws do matter and states' compliance to them are evident of this (Beck, 2009).

Adhering to treaties can include both bilateral and multilateral treaties. The US extradition treaty with India (1997), and the 1951 Refugee Convention with 149 state parties (UNHCR, 2019), are both examples of a bilateral and multilateral treaty. India and US would be expected to carry out their legal obligations towards each other in their extradition treaty that they have agreed upon and consented to (mutual obligations), while similarly the parties within the 1951 Refugee Convention agree to adhere to has been prescribed in the convention. This includes carrying out legal obligations such as not sending back refugees to their countries of origin for fear of persecution or harm that may befall them. Doing so would be contrary to the principle of *non-refoulement* found in Article 33 of the convention. Not adhering to what has been prescribed by a convention or a treaty would make the state party to it suffer consequences and penalties either through the UN Security Council or through other penalties contained within a treaty. For example, in most serious cases, involving the use of force to breach the territorial integrity and sovereignty of a state, the state would have the right to use force in self-defence as enshrined in Article 51 of the United Nations Charter (1945), or resort to help by the UN Security Council.

Von Stein asserts that compliance is not a dichotomy (of adhering to and not adhering to) as it entails the degree to which states' behaviour conforms to their legal obligations (2013). Compliance is also something that is empirically difficult to measure (Chayes & Chayes, 1993; Martin, 2013). For example, where states operate in a grey area that international law does not explicitly cover, what then constitutes compliance? Do we label the action as non-compliance? Or do we revert back to the closest principle available in existing international law and use it as a reference point? International lawyers and scholars have debated over this and the general trend is to revert to the closest principle of international law to assess such actions until a more concrete framework leads to a treaty or a customary form of international law (Carty, 2009; Eggett, 2019).

Furthermore, in understanding what compliance to international law entails, it is important to consider the reasons behind state compliance. There can be many explanations for compliance such as reputational concerns, domestic incentives, convergence of interests, and opportunism. Thus, just because states' behaviour corresponds with international laws, it does not necessarily entail direct causal connections with the above reasons as these explanations are merely descriptive rather than explanatory (Clark et al., 2018). Compliance as a measurement does not establish any direct linkages or causal connections as it does not provide any indication as to the reasons for adhering to international laws. Not to mention, compliance is mostly socially determined and so the variations and degrees of compliance tend to be difficult to assess (Clark et al., 2018).

Hence, what Clark et al argues for is to not look at compliance as merely black and white when analysing factors that causes states to comply, rather consider dimensions of legitimacy and effectiveness to better explain compliance. In line with Martin (2013), to better understand the difference between contestation and violation of International Laws one should stick to compliance as a legal concept whereby it is more focused on the degree of conformity to legal requirements rather than focused on explaining why states comply. Simply put, conformity to legal requirements is the preferred definition for measuring compliance from which we can derive a more precise definition.

In my view, to keep things parsimonious and straightforward, compliance is simply states' adherence to their international legal obligations both through state policies and practices. This means that states policies and practices whether it be at the domestic level (e.g. human rights), and international level (e.g. diplomatic relations with states) are in line with what has been prescribed according to international law to which they have responsibilities towards and have consented to. This definition of

compliance is partly similar with Keohane's view of international cooperation – which for him, entails mutual policy adjustment (1984). Mutual policy adjustments in the sense that states adjust their policies to accommodate their obligations and duties under international law towards other states. Thus, states complying with international law can also choose to incorporate these norms into their domestic legal systems through adjusting and adapting their policies where suitable.

Koh speaks of this 'internalization of norms' as a form of enhancement for compliance (1997, p. 2659). Moreover, compliance to international legal obligations should not be conflated with political cooperation (Martin, 2013). States can choose to comply with international law but can choose to not cooperate. Similarly they can choose to cooperate but not necessarily comply with it. For example, states can choose to comply with international conventions but can choose not to attend summit meetings or multilateral meetings (politically not cooperate).

Violation and their reasons

Violation can be viewed as non-compliance with an international norm, or legal obligation. It can include violating both bilateral or multilateral treaties and conventions. To 'violate' international law, a state must have departed from what has been legally prescribed to through contrary actions or behaviour (Shen, 1999). Common cases on states' violation of international law often centres around laws of war (*jus ad bellum*) and the laws on the use of force (*jus in bello*). The former referring to laws on the right to use force, while the latter refers to laws regulating armed conflict or International Humanitarian Law (IHL). Violation of international laws usually tend to be outright observable and easier to assess as there is a clear act or breach of states' legal obligations.

Iraq's invasion of Kuwait in the 1990 is a clear textbook example of Iraq violating International Law on the Prohibition of the Use of Force as prescribed in Article 2(4) of the UN Charter. By invading Kuwait, Iraq went against norms and standards of legal behaviour by using armed force against another state not in an act of self-defence. It violated Kuwait's sovereignty which is sacrosanct in the United Nations Charter. While Saddam's pretext for invasion was that Kuwait had violated OPEC quotas agreement and reduced Iraq's capacity to repay its debts, Saddam opted not to push further to resolve the dispute through diplomatic means (Bahbah, 1991). It is not just the act of invasion but the continuous occupation of Kuwait by Iraqi forces which also represents a form of continued violation (Peevers, 2013). The UN Security Council had imposed economic sanctions and called for Iraq to withdraw from Kuwait which it did not do. As a result of the defiance to multiple calls of unconditional withdrawal from Kuwait, UN Security Council Resolution 678 finally empowered a coalition of states to use all necessary means, including the legal use of force, to force Iraq out of Kuwait. This legal authorization on the use of force as a punishment for states' violating the sovereignty of other states falls under Chapter VII of the UN Charter.

Like the Iraqi invasion of Kuwait, violation of international laws are clear, observable behaviours of states that leaves no doubt on its violation as it directly contradicts what has been prescribed by relevant international treaties and conventions. Another example would be Syria's usage of Chemical weapons on its population which is contrary to the 1997 Chemical Weapons Convention that prohibits the use of Chemical Weapons (United Nations, 2019). Moreover, past examples of clear violations can also be when both sides of World War I violated the 1899 Hague Declaration Concerning Asphyxiating Gases and 1907 Hauge Convention on Land Warfare, through their usage of chemical weapons in warfare. Germany's use of nerve gases in prisoner of war camps also constituted a violation and a war crime in their genocide campaign of minority groups such as the Jews during World War II

(Mikaberidze, 2013, p. 93). It was not just a violation of all the aforementioned conventions (including the 1925 Geneva Protocol) but also violated IHL on the treatment of Prisoner of Wars.

Another example of a clear violation would be a state consistently violating international law and continues to do so with impunity. Israel's illegal settlement building in the Occupied Palestinian Territories is a flagrant violation of Article 49 of the Fourth Geneva Convention (1949), where an occupying power is prohibited from transferring its own civilian population into the territory it occupies. Hence, all illegal settlements that it has built on the Palestinian territories it militarily occupies are illegal. The illegal settlements have also been declared as having "no legal validity" in UN Security Council Resolutions 446 and 2334. (United Nations Security Council (UNSC), 1979, 2016). These forms of violations are thus clear, observable, and contrary to international law.

There are different reasons for explaining why states violate or fail to comply with their obligations. Mearsheimer (1994), for example, argues that states diverge from their treaty obligations because it is not in their immediate interests. Since due to the lack of overarching authority, there is no effective sanctions mechanism as it is based on self-help and is decentralized in nature (Morgenthau, 1948). In terms of interest guiding states to violate international law, Beck (2009) has argued that this may be a more realist view of international law where 'might is right' since powerful states with a strong network of allies and a strong military may face little to no costs associated with violating a particular international law. For instance, Israel's violation of international humanitarian law in the occupied Palestinian territories, where it does not, at present, face sanctions or punishment by the international community is an anomaly in international law.

Moreover, states may tend to violate international laws because they might view it as illegitimate and unfair (Franck, 1988). Brunnée and Toope is also of the same view and suggests that legitimacy of international law has a compliance pull on states to abide by it (2010, p. 95) On the other hand, the Managerial School argues that states may be predisposed to violating treaties because of the ambiguity of a treaty, lack of capacity to carry it out, and too little time given to adapt to a new ruling (Chayes & Chayes, 1993). The language of a treaty can often be complex and ambiguous for states as one scholar noted in regard to the 1936 London Protocol regulating submarine warfare – "ambiguous terms which did not address the practicalities of submarine warfare" (Parks, 1977). Environmental emissions treaties such as the Kyoto Protocol might impose upon parties regulations that are beyond their capacity to meet and also potentially give them a limited temporal framework to work with.

Contestation

Contestation is the middle ground between Violation and Compliance. While violation entails states' behaviour as clearly going against what has been legally prescribed in international treaties, conventions, and norms, contestation refers to states' disagreement with certain parts of the international law. This disagreement can be either directed towards a specific clause in a treaty, a broader international institution, or simply when it is convenient to the interests of a state (Chayes & Chayes, 1993; Clark et al., 2018; Gammeltoft-Hansen, 2014; Kinsella & Mantilla, 2020; Lorca, 2020; Martin, 2013; Morrow, 2007; Peevers, 2013;). Contestation in this regard does not mean that the international laws are ineffective and discarded, rather it still stands and continues to regulate states' behaviour, but states' 'protest' to or refuse to abide by some parts of it. States still believe in the legitimacy of the legal system as a whole but they refuse to follow or disagree with certain provisions simply because it suits their interests or to either avoid international retaliation or set a precedent where they could also be disadvantaged in the future.

For example, Russia's engagement in hybrid warfare in Ukraine purposely involves carefully exploiting areas of uncertainty in International Law especially in their placement of unmarked 'little green men' (Lanoszka, 2016). This allows it to operate above the law and bypass IHL regulations as it can claim to not be a direct participant in hostilities. It does not mean Russia completely disregards the UN Charter's prohibition on the use of force against another state's territorial integrity, rather it resorts to grey-area tactics that circumvent the law of war (*jus ad bellum*). Since Russia still avoids from directly participating by not using its own 'uniformed' armed forces in the annexation of Crimea and its involvement in the Eastern Ukraine conflict (Lanoszka, 2016). Thus, if it directly annexed Crimea and invaded using its own armed forces then it would be a clear outright violation which it does not want to be seen as committing such violation. Therefore, employing grey-area tactics, as well as denying involvement in the conflict allows it to hide under the guise of uncertainty.

Another example of contestation can be seen by strenuous relations between some member states of the African Union and the International Criminal Court (ICC). Member states of the African Union also might refuse to fulfil arrest warrants issued by the ICC because they might believe that ICC targets African states. This does not mean their wholesale withdrawal from norms and values of punishing crimes against humanity. It just means they are contesting the ICC due to their perceived targeting of African states which instills a sense of illegitimacy of the institution (Lorca, 2020). We may also see this contestation in IHL where there is always disagreement between what is the ideal balance between military necessity and proportionality (Kinsella & Mantilla, 2020). For example, these principles of military necessity and proportionality found in IHL led to much serious debate about the legality of the United States actions when targeting Iranian General Qassem Soleimani in a third state, Iraq (Pfaff, 2020). Thus, while states may adopt and abide by international laws, they may contest some principles of it at an opportune moment. The particular incident above however, generally only applies in unique cases and mostly involving powerful states, as states mostly abide by international law (Klabbers, 2017).

Similarly, like the previous example, United States is not a party to the International Criminal Court because it does not believe in giving rights to the ICC to trial its citizens. This form of contestation is states disagreeing and refuse to abide by some parts of the international law or an institution empowered by international law (ICC). Another form of contestation can be seen when the US invaded Iraq in 2003 without legal authorization by the UN Security Council. Not only did US fail to obtain a security council authorization for war against Iraq it had also fail to obtain evidence of Iraq developing Weapons of Mass Destruction (Kramer, Michalowski, & Rothe, 2005). This differs from outright violation, because during the time, US constantly kept on speaking in the language of law to justify its invasion of Iraq. As part of its broader 'War on Terror' the US, the UK and other coalition states went ahead to invade Iraq with these states justifying publicly their legal reasons and campaigning to gain support.

Furthermore, contestation can also be seen in the form of partial disagreement to a body or a regime of international laws such as, International Refugee Laws. One would expect states with liberal values to fulfil their legal obligations and duties without any issues. However, many states have challenged the refugee regime by imposing stricter border controls and refugee determination processes to deter asylum seekers from coming into their territory. Australia for example, engages in offshore asylum processing policies and tighter migration control policies to distance itself from its legal obligations while appearing compliant (Gammeltoft-Hansen, 2014). States feel compelled to legitimize their actions by speaking in legal terms and finding loopholes in existing laws to avoid outright violation. Such policies shift burden to other states and reduces their legal responsibilities and operating in a grey area. From interception to high seas and more stringent visa controls, they are challenging the

principle of ‘non-refoulement’ while still avoiding their protection obligations (Gammeltoft-Hansen, 2014).

Contestation can also explain certain state behaviours where they are ‘selective’ in their compliance and contest to other international laws in the form of not adhering to it or not politically cooperating. For example, North Korea plays by the rules of International Law in participating in the International System through diplomatic missions in various countries, as well as the UN General Assembly (e.g. North Korean embassies around the world, and participation in the UN General Assembly). It abides by the Vienna Convention on Diplomatic Relations (1963) in regards to respecting the foreign embassies and diplomatic missions in its territory and acknowledging diplomatic immunity. However, it does not cooperate when it comes to allowing international agencies such as the International Atomic Energy Agency to inspect its nuclear weapons program (IAEA, 2019) and persistently continues to develop its nuclear weapons program in contrary to the international law treaty on the Non-Proliferation of Nuclear Weapons (1968). Although, it withdrew from it in 2003, its actions is still contrary to international norms of proliferating and acquiring weapons of mass destruction.

REASONS BEHIND STATES’ COMPLIANCE WITH INTERNATIONAL LAW

Legitimacy

International law has a legitimacy effect where once a legal obligation has been accepted by a state, states usually abide by it. Following the norm-based perspective, international law generates a form of “compliance pull” that drives states to comply with law. This is derived naturally from an internalized sense that rules are legitimate (Franck, 1990; Koh, 1997). Hence, states are more likely to comply with international law and view it as legitimate when the law itself has both been accepted as practice and legally domesticated through internalization of international laws (Chayes & Chayes, 1993; Koh, 1997). Koh speaks of this ‘internalization of norms’ as a form of enhancement for compliance to international law (1997, p. 2659). When states stop viewing laws or institutions associated with the law as illegitimate that is when they stop following it. For example, the International Criminal Court (ICC) has been seen by the member states of the African Union as being biased and targeting African leaders. Hence, they have refused to fulfil arrest warrants issued by the ICC (Lorca, 2020). A country like Germany, might view the 1951 Refugee Convention as wholly legitimate and readily accepts asylum seekers and implement more liberal refugee policies.

Legitimacy also can be applied with fairness. States might accept a rule or law as legitimate if it believes it has come into existence in accordance with the right processes (Franck, 1988). The law must also be made through a fair and agreed-upon procedure that the organized community accepts (Franck, 1988, p. 752). For example, China might not heed to the ruling made by the Permanent Court of Arbitration in granting Philippines victory over its South China Sea dispute with China as it does not see the process as legitimate. The coalition led by the United States to repel the Iraqi occupation of Kuwait in 1991, could also be coalition states viewing Chapter VII of the UN Charter as legitimate and fair in aiding Kuwait re-establish its sovereignty.

Some liberal states may have a monist view of international law where international law operates within the same sphere as domestic laws especially those states that give effect to international laws through domestic legislation (Klabbers, 2017). Thus this makes international law readily viewed as legitimate especially if a state often give effect to international laws automatically through domestic legislation. For example, France a monist state might easily give effect to International treaties and agreements of the European Union pertaining environmental regulations through its domestic legislation (Marsden, 2011; Jancic, 2013). Accepted international norms can also be gradually

internalized to condition states' behaviour which reinforces the legitimacy of international law and enhances compliance (Gammeltoft-Hansen, 2014; Koh, 1997, p. 2659).

Viewing laws as legitimate without internalization is also possible. Johnston argues that successful persuasion by other states often results in compliance without internalization (2001). Here, perceptions of other states and matter in inducing compliance. For Johnston, persuasion is the act of changing attitudes and minds without resorting to overt coercion (2001, p. 496). This argument is in line with the Constructivist view as beliefs and acceptable values are obtained and shaped through socialization (Finnemore & Sikkink, 1998).

Reputation and Reciprocity

States to some degree value their reputation within the international system. Their prestige and power matters especially in a realist world where they have to rely on self-help. This reputation can be extended to questions of enforcement – especially if a state is a hegemon, or a regional power (Brewster, 2013). The foreign policy of states involve maintaining expectations that it will live up to international legal obligations and norms (Henkin, 1979, p. 52). For example, the US would not run the risk of being viewed as abandoning its allies especially in the case of South Korea and Japan (Cha, 2000). North Korea frequently violates territorial sovereignty through provoked attacks and threatening the use of nuclear weapons hence the US needs to enforce International laws in the region. A similar example is with freedom of navigation in the South China Sea, where the US frequently sails ships in spite of Chinese claims and militarization of it (Colin, 2016).

This is especially important not just for states' adversaries (if it has any) but also for its allies and regional partners. Honouring legal commitments enables other states to view it as a consistent and reliable partner. This can have potential spill over effects in terms of investment and trade where reputation in adhering to international law entails lower risks for investors (Simmons, 2000). For example, in countries where there is a strong body of laws to safeguard intellectual property and good legal institutions on par with World Trade Organization standards will mean greater predictability for any potential investors. States may comply with Article VIII of the International Monetary Fund (IMF) treaty regarding protection of property rights because doing so would enable market actors to perceive them as trustworthy (Simmons, 2000). A reputation of predictability and reliability may facilitate the perception that a state is a reliable trading partner (Keohane, 1984) and consequently allows for greater cooperation (Guzman, 2008). Since, a positive reputation reassures market actors that a particular state is willing to maintain the same policies in the future (Von Stein, 2013).

Not to mention, reputational factors of compliance ensures stability and reciprocity in its foreign relations. For example, states that are eager to comply with international law where their reputation would compel them to do so, would likely adhere to it as part of a criterion for group membership within the international system (Scott, 1994, p. 322). For example, Balkan states such as Bosnia, Albania, and Macedonia, might ensure compliance with international law to bolster their credentials as law abiding states to increase their chances of acceding to the European Union and enjoy its benefits. Reciprocity as a factor of compliance is also a compelling argument especially in regards to the use of force or International Humanitarian Laws. Article 2(4) of the UN Charter allows for states to resort to force in the act of self-defence. States that are attacked can also refer to the help of the UN Security Council for coercive action. Thus, reciprocity in this sense can be illustrated since states would want to abide by not resolving disputes through use of force since then it entails the recipient state the legal right to retaliate using force which can incur significant costs.

However, reputational factors can be difficult since states can choose to ignore their reputation out of national interest through ‘compartmentalizing’ it (Fisher, 1981, p.130). European states still rely on Russian gas to meet its energy demands despite Russian violation of International Law in Ukraine. Not to mention, reputational factors may only be associated with a particular government, that in a democracy, can change. Despite this, it is important to not neglect reputation as a factor as it is an important predictor of future policy directions. For example, Germany and Sweden’s reputations as liberal democracies that are open and tolerant towards refugees and migrants through its refugee-friendly policies.

Interests and Domestic Factors

States may also comply with International laws and their legal obligations out of their national interests. Since the application and enforcement of international law can be uneven (Von Stein, 2013) where states with power and influence may escape punishment for transgression. While the weaker states may receive severe punishments and have no other options but to comply. For example, Iraq may be met with severe punishment for invading Kuwait in 1990, and rightfully so. However, when the US invaded Iraq in 2003, without legal authorization by the UN Security Council, and relied heavily on claims of weapons of mass destruction by Iraq, it was not met with reprisals or heavy sanctions. In this case then it seems national interests and distribution of powers are important factors in causing states to comply, especially powerful states (Morgenthau, 1948; Goldsmith & Posner, 2005).

Domestic factors can also compel states to comply with International Laws. Especially in a liberal democracy with a high degree of civil and political rights that allow for demonstrations, protests, freedom of speech and an open press. Simmons (2009, p. 355-354) describe this domestic push as a form of “compliance pressure” where domestic groups such as NGOs, and other interest groups compel states to sign up to an international law or obligation. Convention Against Torture (CAT) and Convention on Elimination of Discrimination Against Women (CEDAW) are notable examples in Simmon’s study that domestic groups have had greatest degree of change in practice by the government. Domestic pressure can also result in states conforming to international laws such as prohibition on the use of chemical weapons. This can be seen in mass protests and demonstrations in the use of Agent Orange by the US during the Vietnam War.

Enforcement and Sanctions

Enforcement and sanctions are also factors that can cause states to comply with the law. States particularly weaker states may be reluctant to face significant political or economic costs for violating an international law. Not to mention if it involves violation of *jus cogen* principles or laws on the use of force and armed conflict. These can include crippling sanctions ranging from bans on imports and exports (as faced by Iran and North Korea due to its Nuclear Program) as well as heavier sanctions such as no-fly zones and political or diplomatic alienation. With the agreement of a UN Security Council and the General Assembly, countries impose commercial and financial punishments or ‘Economic sanctions’ against a targeted country that is deemed to violate international law (Hufbauer, Schott, & Kimberley, 1990; Kaempfer & Lowenberg, 2007). These sanctions can be targeted towards a state’s economy and trade to prevent them from benefiting from global trade until they change their behaviour.

For example, while the UN Security Council resolutions prevent North Korea from importing armaments and other industrial machinery, it also prevents other countries from importing North Korean goods such as agricultural products (Albert, 2018; Carbaugh & Ghosh, 2019). However, the humanitarian nature of international law recognizes the general population and refrains from collective punishment (Hufbauer & Oegg, 2000) which is why while sanctions are imposed, humanitarian

assistance can still flow into North Korea. These types of sanctions usually are designed to punish leaders or government officials that are responsible for violating international law (Hufbauer & Oegg, 2000).

States that are weaker cannot afford to resort to self-help thus would have no other choice but to comply with international law as it would be in their best interest and ensure survivability. We can see this with China, it has grown to become more assertive especially in the South China Sea region. Before it became the number two strongest economy in the world, it was more compliant and less assertive with its claims in the South China Sea due to its weaker power.

CONCLUSION

This article so far has offered discussions on states adherence and non-adherence to international law by adding the third category of 'contestation' where it serves as a more accurate middle ground between violation (complete non-adherence) and compliance (complete adherence). In the international system, the prevailing assumption of the dichotomy of states' adherence and non-adherence to international law has proven insufficient to address the gap of explaining the middle ground where states' adhere to but are selective in their adherence. States practices vis-à-vis international law is clearly observable beyond the mere dichotomy of adherence and non-adherence. As have discussed, this article highlights the 'contestation' practice by states in selectively navigating international law commitments that they do not necessarily agree with. By having this third category of contestation, it fills in the gap between outright 'violation' and 'compliance' of international law. It allows for more precise labelling of states' actions and practices which would reduce any uncertainty not to mention allows for further scrutiny of state policies.

The difference between contestation and violation may appear to be subtle and nuanced. Contestation may look like a 'sugarcoated' violation. However, it really is a form of way states can bypass their international law obligations without severe condemnation by the international community or severe reputational damage. Contestation allows for states to subtly refrain from carrying out their international obligations (i.e. abiding by international law) by either operating in a 'grey-area', loophole wherein the law is not readily available to rule on a particular matter, or by employing the language of law to justify their actions.

Violation is the outright non-compliance of legal obligations and the continued act of it without any attempt to legal justification. It is also easily observable, clear-cut, and discernible when states' actions run contrary to a clear principle of international law. However, contestation involves disagreements with a particular clause, treaty, and institution. It also involves continuous justification in legal terms by the perpetrator in defending or denying their actions. Not to mention, contestation is a form of partial disagreement and states' that contest to international laws usually operate in a grey area or exploit a loophole within international law to avoid legal obligations and responsibilities. Their actions and behaviour involve exploiting loopholes which may or may not contradict legal obligations. Lastly, the evolutionary nature of international law means norms and acceptable behaviors are constantly changing due to various factors such as technological and material progress (e.g. autonomous weapons systems in armed conflict and cybernetics). Much like states can be selective in complying (adhering) to certain international laws, they can also be selective in 'contesting' and 'violating' certain international laws.

Furthermore, this article has also offered discussions on various factors that explain states' compliance with International Law. The various factors that I have stated above that cause states to comply with the law are factors of legitimacy, reputational, reciprocity, interests, enforcement and

sanctions. Legitimacy factors entails states' belief that the laws are legitimate and fair thus reasonable to follow. Reputation factors means states' comply with their legal obligations to maintain their credible reputation and consequently benefit from reciprocity by other states. This in turn would increase predictability and make it easier for states to navigate foreign relations. Interests stem from its own national interests and as well as domestic pressure which could potentially influence their policy directives to make states comply with their legal obligations. Enforcement and sanctions entails coercive fear and costs and benefit calculations on the states since non-compliance would be incur potential diplomatic, social, and economic costs. Not to mention, sanctions can potentially destroy a state by crippling its economy thus hinder development. All of these factors may overlap and are not exclusive of one another.

More empirical research would be needed to further explore how prevalent 'contestation' to International Law is as well as uncovering further reasons behind states' compliance beyond the mere factors that I have highlighted in this article. Acknowledging certain factors as universal to state practice and some may be context-based, explaining reasons behind states' compliance to international law is difficult without a thorough empirical study based on multiple case studies. This can prove challenging as there are more than 150 sovereign states in the international system, and hence, a systematic study would need to be able to take into account variations in state policies and theoretical understandings of explaining state behaviours.

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