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International Law Promoting Pafic Settlement of Disputes - A Study of Territorial Conflicts

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International Law Promoting Pacific Settlement of Disputes - A Study of Territorial Conflicts

Swati Singh Parmar

International law may not seem to be a viable substitute for military strength and credible threats of force to secure peace mainly because of two reasons; first, the shadow of military power is an ever present influence over such bargaining processes and second, that the security aspect of the dispute compounds this issue as the leaders will be reluctant to sign any agreement that they believe might decrease the safety of their state or make them appear weak to future adversaries.

These and other related challenges force the scholars to believe that international law is not a primary explanation of state behavior, especially in the high-stakes realm of international security. Nevertheless, political engineers and legal luminaries have sought to explain how international law can be effective under these conditions.

The strength of a state's territorial claim, defined as its bargaining power in a dispute, offers one explanation for why and when states escalate territorial disputes to high levels of violence. This bargaining power depends on the amount of contested land that each side controls and on the military power that can be projected over the entire area under dispute . Strength of a state's legal claim to the disputed territory relative to its adversary's and one party's 'clear legal advantage' are the factors that facilitate pacific settlement under international law.

The measurement of the abovementioned concept of legal advantage can be attempted only by looking into the theoretical literature. The majority of the existing theoretical literature in resolution of international security-related disputes peacefully, even within the rationalist paradigm, has focused on studying compliance with international law and treaties regarding human rights, international trade, or the environment.

Only recent authors such as Legro, Mitchell and Hensel, Morrow, Simons and Valentino, Huth and Croco have begun to address theoretical questions about the effect of international law on state compliance in the realm of security policy. Considering the early state of this literature, there is a clear need for more focused theoretical and empirical analyses the role international law might play in the resolution of international security disputes .

Territorial Disputes and the Pacific Path to Settlemet:

The context of territorial disputes is an appropriate test of the potential for international law to influence state behavior. Territorial disputes are usually highly salient to domestic political audiences, regardless of the strategic or economic value of land in question. Leaders' inefficiency in deriving mutually acceptable solution and sometimes, unwillingness to do so, accompanied by ego-clashes create a strong incentive for many leaders to refrain from compromise of any form. It is mainly for this reason that interstate disputes centering on disagreements over territory are more likely to escalate to war than dispute over other issue.

Territorial disputes thus provide a high bar for theories of international law to clear because they represent a bargaining situation in which many scholars would expect the likelihood of compliance with law among all parties in a given dispute to be low.

Territorial disputes arise mainly when two conditions are met-

(i) When an official executive lay claim to the territory of another state or contest its very sovereignty; and

(ii) In response, the targeted governments' leadership rejects the territorial claim of another.

For each dispute, the state dissatisfied with current territorial status quo is referred to as 'challenger' and a 'target' is the state that would prefer to maintain the territorial status quo. Some disputes may have both the parties contesting for the territory in question and are therefore, both coded as 'challengers'.

In this relation, three interrelated yet distinct phases of 'pacific mode' of dispute settlement may be identified-

THE FIRST PHASE: It can also be referred to as "challenge the status quo" phase, which involves possible choices available to the challenger(by either calling for

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negotiations or threatening military force or maintaining status quo without actively confronting the other party with diplomatic or military challenges.

THE SECOND PHASE: The existing dispute shifts to the second phase, when the challenger pursues to talks, which may be referred to as "negotiations phase". This phase brings into a change from earlier 'challenger-centric setup' to the now 'dispute-centric setup'.

It becomes pertinent to investigate at this stage that whether an asymmetry in the relative strength of states' legal claim affects the probability of the dispute being resolved peacefully through either type of agreement.

THE THIRD PHASE: The choice of settlement or the 'mode of settlement' of dispute models the decision to end the dispute through either-

(a) Direct negotiations; or

(b) An agreement to settle the dispute by a formal process of legal dispute resolution either by way of arbitration panel or the International Court of Justice by issue of a ruling on competing territorial claims.

Theoretically, the central question is whether the strength of a states' legal claim is enough to influence the leader's choice of settlement mode .

Theory:

It is important to inquire as to how International law helps state leaders identify a solution to the problem of dividing the contested territory, thereby enabling them to move towards a settlement agreement. There can be drawn evidences from history in this regard, where such costs of division of contested territory has been severely criticized and termed as 'political' and 'partial', as in 'The Rann of Kutch Arbitration Award' . Therefore, it becomes significant to forward that international law will facilitate a friendly or pacific path to settlement only when it is able to assist the leaders to solve distribution problems- that is, when it can precisely and accurately provide a clear solution on how to divide the contested tercritory between the disputants. It is most likely that it will perform this role when two important conditions are fulfilled. First, the relevant legal principles are embodied in any legal document (whether a bilateral agreement or any such other legal instrument) must be unambiguous, in the manner that it is capable enough of providing a single way solution to the division of contested territory between the parties. This 'unambiguity' and 'clarity' in the principle to provide a solution would reduce the friction between the parties which would be comparatively of greater magnitude if parties negotiate in absence of any such legal principles. Further, it reduces the chances of strength of one party's political or any other dominance in influencing the settlements.

Second, one party must have a definite legal advantage over its opponent. As soon as these two conditions are met, a meeting point based on international law is likely to emerge as both parties investigate the strength of their legal claims. This meeting point, in turn, will shape the course of dispute settlement by granting the legally advantaged leader substantial bargaining leverage.

Bargaining and Meeting Points:

Interestingly, leaders must solve distribution problems if they are to reach an agreement as scholars have argued, allowing a dispute to continue can carry considerable political and military costs.'

Distribution issues are most relevant to a territorial dispute for several reasons . First, any piece of contested and can be divided an infinite number of ways. Second, leaders will have conflicting preferences over which of the possible solutions usually private information over the minimum amount of territory a leader is willing to accept, it is possible for the states to misrepresent their bargaining positions. And due to these common aspects, it is not surprising that disputes are resolved over long period of time through regular series of offers and counteroffers as leaders try to avoid concessions while holding out for a better deal.

Usually where legal principles act as meeting points, they resolve the distribution problem swiftly and break the bargaining impasse by indicating how the territory is to be divided between the contesting parties. This argument is based on the two main reasons. First, international law can help leaders identify which legal principles are relevant to the dispute. In doing so, international law provides a way to frame the problem by focusing an evidence and agreement that establish the legal merits of each states' claim to the territory in question. Once these legal principles have been indentified, states can begin to design an agreement based on merits of the legal claims.

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Second, as Schelling argues, meeting points help leaders overcome distribution problems by providing them with a way for leaders to 'coordinate their expectations'. The need for convergent expectations is critical because many failures to settle stem from the fact that bargaining "includes maneuver, indirect communication, jockeying for positions, or speaking to be overheard or a multitude of participant s and divergent interest."

If the parties are to reach an agreement, Schelling points then they must\identify a single point (or narrow range of points) within the bargaining range that neither side expects the other to reject. Recognizing this strategic phase of bargaining wherein one party attempts to predict the others' expected offers, as well as how this facilitates the convergence of expectations, is crucial to understanding how meeting points can help parties overcome distribution problems.

Furthermore, the ability of the meeting point to narrow the range of possible outcomes also helps make negotiations more productive by limiting the ability of state with weak legal claims to persist in misrepresenting the strength of its bargaining positions over a possible settlement.

Meeting Point and International Law:

Several scholars have argued that international law is capable of providing a meeting point to help leaders divide the contested territory. This notion is supported by two assertions regarding the characteristic of international law. First, international law and legal principles are common knowledge among states, having been established through either formal channels like agreements, treaties, court decisions or less formal channels like customary international law, general principles, common practices, and writings of publicists. Second, international law provides a common set of standards to assess the relative merits of competing claims. This feature is specifically important for solving the distribution disputes as it provides means of identifying which of the many possible outcomes to divide the territory contested, the leader should choose.

Scholars have questioned the potency of international law acting as an exogenous force on state behavior because critics claim, it is often created by powerful states to further their own interests. Nevertheless, there are reasons to disregard this viewpoint. First, although the great powers may have intended the legal principles to work for their own interests, it is possible that those same principles may work against their interests in a different set of disputes arising in the future. Second, international law is not merely an image of past or current great power preferences; the roster of great power change over time through war and other types of power-shifts, as the world has witnessed in the post World War II period. Third, the rulings from International Courts and other formal bodies are built upon unbiased ideologies.

Conclusion:

The application of international law in territorial dispute settlements has to address complex issues, because of the lack of clarity of such laws or fields, but also due to the state-centred approach that still dominates in international discourse. The relative strength of a states' legal claim comes out to be a strong predictor of a leader's behavior. Leaders with strong legal claim are most likely to push for negotiations and less likely to resort to force when they are dissatisfied with the status quo than are leaders who lack a clear legal advantage. Similarly, disputes involving asymmetry in the strength of parties' legal claims are more likely to be resolved than disputes where neither side can marshal a compelling legal case for the contested territory. Finally, even when asymmetric legal claims did not lead to a final agreement, territorial disputes where one side had a legal advantage were less violent.

The strong and consistent performance of the international law variables, even in the presence of several important controls, such as relative military strength, poses a clear challenge to theoretical approaches that question the impact and importance of international law. Further, a legal advantage is more beneficial to state leaders than is a decisive military advantage in securing territorial interests in the process of peacefully settling such disputes. International law under the right conditions is a more powerful force for order and peaceful change than is military strength or any other strength.

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