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Implementation of International Law and the Question of Equity, Justice and Fairness: The Charles Taylor Experience

[1]John T. Kalama & [2]Famous S. Eseduwo
[1&2]Department of Political Science
Federal University Otuoke, Bayelsa State, Nigeria

Abstract

Constant conflict between states and organizations at the regional and global levels no doubt makes the study and application of international law very necessary hence; this study examined the implantation of international law and the question of equity, justice and fairness: The Charles Taylor experience. The paper argues that for international law and its judgments to be accepted, citizens and states must be treated equally irrespective of the colour of their skin and the continent or religion they belong to. Data for the study were derived from secondary sources while the constructivist theory was adopted as the theoretical framework to guide the study. The descriptive research method was also adopted while the analysis was done qualitatively. Findings from the study revealed that international law and the judgements from the International Court of Justice (ICJ) and the International Criminal Court (ICC) has helped in checking the excesses of states and state actors hence, leading to conflict prevention at the regional and global level. In the same vein, the study also shows that some citizens especially, Africans have expressed dissatisfaction over the discriminatory, principles, processes and legal rules adopted during the trial of citizens and nationals from the third world countries. Thus, there is need for the United Nations to democratize its agencies such as the ICJ and ICC to ensure openness, transparency, equity and fairness to all irrespective of colour, race, religion or cultural background.

Keywords: *Implementation, International law, Conflict, Regional, Global, Equity, Fairness and justice*

Corresponding Author: John T. Kalama

Background to the Study

The emergence of new states coupled with the growth and development of modern states in terms of science, technology and power potentials no doubt makes the study and application of international law very fundamental. In a highly competitive and complex international system where there is no form of control or regulation, weak and vulnerable states will exist at the mercy and instance of stronger states. Idealists contend that an unregulated international system will create room for more anarchy and conflict which will in turn create what scholars refer to as a Hobbesian society. Therefore, the role of international law in a hostile and volatile international system cannot be over emphasised. However, law within a particular country are referred to as municipal laws while laws that operate outside and between states, international organizations and in certain cases, individuals are referred to as international law which is divided into conflict of laws (private international law) and public international law. A careful study of the international system shows that several actions and threats could have degenerated into uncontrolled conflict if not for the intervention of the United Nations and its agencies. For instance, the border dispute between Nigeria and Cameroon over the ownership of Bakassi Peninsular went on for many years before it was finally resolved amicably by the international court of justice ICJ through its historic ruling of 10th October 2002. Prior to this period, both countries deployed its armed forces to the troubled Bakassi Peninsular where they wasted both human and material resources in what Schelling (1966) described as engaging in the diplomacy of violence and brinkmanship.

It is in the light of this background that this study examined the implementation of international law and the question of equity, justice and fairness with a view to identifying the gaps and the challenges involved in the administration and application of international law.

Theoretical and Conceptual Analysis

Theoretical framework is like a key that drives any research process hence, Lieber (1992), contends that behind every concept or an analysis, there is a theory or view point, which makes it possible for the presentation and interpretation of facts. Clearly therefore, for there to be reliability in an investigation, there is need to come out with models, or the formulation of theories, for empirical theory seeks to create knowledge that is impersonal, retraceable and cumulative (Lieber, 1992:p.12). Despite the above, there are a number of reservations associated with theoretical framework/models in the analyses of state relations hence; he cautioned that though the use of models is seen as a useful analytical tool, care must be taken not to exaggerate its importance. This according to Lieber (1992) is because the discipline of international relations is made up of many more complex variables that cannot be quantified or verified. Thus, to solely based an enquiry on models and theoretical analysis in state relations is an exercise that is less rewarding and less illuminating when compared to economics, biology etc.

And The question of which theory is best in explaining state relations is yet another major problem associated with theory. Therefore, the big question: which is the best? Hoffmann cited in Rosenau (1965) argued that it is near impossible to squeeze the whole camel of international relations through the eye of one needle. According to him, each one of the approaches has

something to contribute; none is the only right answer. Aaron (1966) also argued that in all aspects of social sciences and indeed international relations, facts gathered are too numerous, too open to conflicting interpretations: too unstructured to fit only on scheme of analysis. Aaron (1966) therefore reiterated that there is no intrinsic advantage of one model of analysis of world politics but that the value of choosing a particular framework or reference for any enquiry is not that it get us any closer to the ultimate truth of the matter, rather, it provides a ground on which to stand. On their part, Rosenau (1967) and Smith (1997) cited in Jackson and Sorensen (2003) emphasised that the question of which theory is best is meaningless since in their words, different theories (such as realism, idealism, and liberalism) are all different games, played and enjoyed by different players. Thus, it is the light of these contentious viewpoints that this study adopted the constructivist theory as the tool of concerned with shared values, norm creations and the material social structure which provides a more credible explanation for the source that was first elaborated by Onuf (1989). Basically, constructivism takes a sociological approach to the study of international relations. Constructivism undermines the idea that anarchy is an objective 'given' of international reality or a structural precondition for state interaction, and presents it as a historical contingent and socially constructed way in which states interpret and understand their engagement and interaction with each other.

According to Wendt (1992), constructivism emphasises the importance of ideas, norms and worldviews for actors' interests and also that decision makers perceptions, identities and interests are shaped in domestic processes of social learning and norm diffusion (Parke and Risse, 2007:p.95). Constructivism therefore, provides a useful theoretical lens in understanding the sources of any conflict. For instance, constructivists like Finnemor and Sikkink (2001) suggest that in order to understand group rebellion, one must get a sense of the rebels' worldview, their motivation within a normative material social structure. This explains why this theory was adopted in the study to unravel why injustice persist in the application of international law among states. This theory is relevant to the study because for constructivists, the main conditions that create a conducive environment for the maintenance of security regimes include norms and institutional factors hence; there is need for more reforms at the global level to ensure that international conventions and principles are developed with inputs from all nations.

Conceptual Analysis

While tracing the growth and development of international law Adei cited in Gasiokwu, (2007) posited that modern international law was called into being to order the relations of the independent nation-states which emerged from renaissance and reformation, and in consequence it has always been conceived as a system whose primary subjects were sovereign states. According to him, international law was built on the twin foundations of Roman law and the Law of nature, its general acceptance was part of the diffusion of Roman law over Europe, and it carried great authority. In his words:

The problem, therefore, has not primarily been to secure obedience to such law as there was, but to bring about its enlargement into a more adequate system; though of course the two problems are interrelated, and the late professor Brierly put his finger on the truth of the matter

when he said (in 1928), the regular observance of the international law of peace is explained only too easily: it is generally observed because there was little temptation to violate it, because its yoke lay easily too easily on the state (Adei cited in Gasiokwu, 2006:p.39).

He reiterated that if international law is to be effective there must be courts to interpret the law and to apply it to particular disputes: and the more developed and sophisticated the law, the greater is the need. According to him, but it is not enough to have an international court, it is also necessary that its jurisdiction be obligatory in the sense that one party to a dispute may take his adversary to court whether he be willing or not. This was the case of Cameroon vs Nigeria over the Bakassi Peninsular at the international court of justice at The Hague. Wondering why states often refuse the decisions of the court he stated thus: Both at the setting up of the Permanent Court of International Justice in 1920 and of its successor, the International Court of Justice in 1946, determined attempts were made to introduce a measure of compulsory jurisdiction into the courts statutes but both attempts were frustrated. In his words: Reliance has therefore had to be placed upon the compromise solution of the so-called 'optional clause' of Article 36 of the statute of the international court, by which states members of the court are enabled if they wish to make declarations accepting compulsory jurisdiction without the need for a special agreement in respect of other members who have accepted a similar obligation… (Adei cited in Gasiokwu, 2006:p.48). Gasiokwu (2006) added that a major step in the development of international law took place when the international law commission was established. According to him, it was after the second world war that an important new advance was made when the General Assembly was charged in Article 13 of the Charter of the United Nations with the obligation to initiate studies and to make recommendations for the purpose of … encouraging the progressive development of international law and its codification; and the international law commission was established as the Chief instrument for the carrying of this obligation… It is therefore imperative for the international law commission to design frameworks that will compel states to honour and implement all judgments and policy actions of the international court of justice or its agencies/institutions. However, a major weakness in international law is the lack of compulsory jurisdiction which has made the means of enforcement difficult.

Implementation of International Law and the Question of Equity, Justice and Fairness

International law is defined as the body of legal rules and principles which applies between sovereign states and other entities possessing international personality. According to Kalama (2015) the subject-matter of international law is that, it is an entity capable of possessing international rights, duties and has capacity to maintain its rights by bringing international claims. In his words: the sources of international law are numerous and include those listed in Article 38(1) of the statutes of the international court of justice (ICJ). Available records show that the United Nations through its agencies and institutions have contributed immensely towards the development of international law. Kalama (2015) added that the General Assembly of the United Nations, many resolutions of which had a progressive development forward thrust: the international law commission which has equally worked on the codification and progressive development of international law and the international court of justice. Apart from the international court of justice and the international law commission Kalama (2015) identified the following United Nations organs used for the development and advancement of international law:

(a) The United Nations General Assembly and its committees;
(b) Conferences Convened by the United Nations;
(c) The International Law Commission and;
(d) The international court of justice.

Procedure Adopted by the ICJ in its Cases

The primary function of the international court of justice is to adjudicate over cases brought before it by state parties within the international system. This is provided for in Articles 92–96 of the UN Charter. It is imperative to state that the statute of the court came into force on the 24th October 1945 hence; the procedure adopted by the court in contentious cases is defined in its statute and in the rules of the court adopted on 5th December, 2000. The proceedings of the court includes a written phase in which aggrieve parties file and exchange pleadings while the second phase involves an oral phase consisting of public hearing during which agents and counsels will address the court. The court may deliberate in camera and deliver its judgment at a public sitting. The judgement of the international court of justice is final and without appeal. However, should one of the states involved in a dispute fail to comply with the courts judgement, the other party many have recourse to the security council of the United Nations. In terms of structure and composition, the court is composed of fifteen (15) judges elected to a nine (9) years term of office by the United Nations General Assembly and the Security Council sitting independently of each other. Elected judges do not represent their government but are independent magistrates who must possess the qualifications required in their respective countries for appointment into the highest judicial offices, or be jurists of recognized competence in international law.

Trial and Conviction of Charles Taylor and the Question of Equity, Justice and Fairness

Charles Taylor was a major actor in the civil war that ravaged Liberia from 1988–1992. As leader of the National Patriotic Front of Liberia (NPFL) he was accused of genocide, war crimes, use of child soldiers and various human right abuses hence he was arrested and tried at the International Criminal Court (ICC) special court in Sierra-Leone. The trial which lasted for five years witnessed series of intrigues, manipulation and subterfuge which led to the dissenting opinion expressed by Senegalese Judge, Justice El Hadji Malick Sow. It will be recalled that on the 16th of May 2012, the International Criminal Court in Sierra-Leone sentenced Charles Taylor to 50 years in prison. While discrediting the process and methodology adopted by the justices of the court, Justice El-Hadji Malick Sow who sat on the bench with three main judges who presided over the trial in rotation argued that the process leading to the judgement was not transparent and credible. In his words:

> *I haven't seen the proof of guilt of the accursed, I am a professional judge and I am bound by the evidence. I have serious doubts about the evidence… The prosecution case is altogether very unsatisfactory, inherently disharmonious, and filled with too many confusions and inaccuracies… When the system is not functioning we must say it, it is the duty of judges to do so, if the judges don't say it, who will say it? If judges don't tell the truth, who will tell the truth? If you don't see the truth, at least you must see the lies, too many deceptions, countless contradictions and manipulations in this trial (Justice Sow, 2012: p. 46 – 47).*

In his dissenting opinion, the Senegalese Judge also raised the issue of external influence and nocturnal meetings as factors that influenced the judgement and subsequent sentencing of Mr Charles Taylor. According to him, the judges did not adhere to the standard procedure in the drafting of a final judgement at the end of any trial process. In his words: I was told then that other meetings will be organized later to discuss the drafts but that never happened. All the judges of the court knew about this problem. It is when we reached the most important part of the deliberations… which was the criminal responsibility of the accused that the other judges started to hold meetings, but not in the deliberation rooms, but in their offices. And I wasn't called to those meetings. But I knew of those meetings because the legal officers told me about them. That's how I discovered that they were hiding to meet, and I did complain in writing. I did not hear much about why all the legal officers who attended the trial, except one, left before the decision was written. Why did all these people go? It is true that I was forwarded drafts of the judgments but not all of them. I received different versions about the same issues, and in the end it was impossible to know who gave the instructions to draft one way or the other, and which draft was the final one. This again clearly shows that the process leading to the conviction of Charles Taylor was characterised by issues bothering on lack of fairness, equity, transparency and credibility in the entire process.

The testimony of Justice El Hadji Malick Sow further revealed that external actors also influenced the implementation of international law through direct and indirect means. According to him, in the trial of Charles Taylor funds came in from several sources. In his words:

> *We do have a management committee that can see how and when the money came in, because I think it was a problem in this trial. How did we get the money from donors and from other countries just to finish the trial? As a judge, I am not concerned about this issue. I am concerned with the evidence, what is the evidence, what is the truth? And when you see it, you must say it. This is the oath you take as a judge…As for a judge who attended this trial for five good years, and who worked harder than anyone else…I worked harder than anyone else because I took it very seriously. For me, it was a very important trial because I was the only judge from the West African Sub-region, and as such, I couldn't come back home, face my people, and tell them lies about what I didn't see or cannot justify (Justice Sow, 2012: p. 52 – 53).*

The activities of highly industrialise European countries through non-governmental organizations and financial institutions have also influenced the impartial implementation of international law as reflected in the dissenting opinion of Justice El Hadji Malick Sow. This also explains why the appointment or nomination of judges and justices of the International Court of Justice and other international or legal organizations are done in secrecy without input from most countries especially third-world countries. The tables below show the judges of the International Court of Justice and the International Criminal Court:

Table 1: Past and Current Presidents of the International Court of Justice (ICJ)

S/N	President	Start	End	Country
1	José Gustavo Guerrero	1946	1949	El Salvador
2	Jules Basdevant	1949	1952	France
3	Arnold McNair	1952	1955	United Kingdom
4	Green Hackworth	1955	1958	United States
5	Helge Klæstad	1958	1961	Norway
6	Bohdan Winiarski	1961	1964	Poland
7	Percy Spender	1964	1967	Australia
8	José Bustamante y Rivero	1967	1970	Peru
9	Muhammad Zafarullah Khan	1970	1973	Pakistan
10	Manfred Lachs	1973	1976	Poland
11	Eduardo Jiménez de Aréchaga	1976	1979	Uruguay
12	Humphrey Waldock	1979	1981	United Kingdom
13	Taslim Elias	1982	1985	Nigeria
14	Nagendra Singh	1985	1988	India
15	José Ruda	1988	1991	Argentina
16	Robert Jennings	1991	1994	United Kingdom
17	Mohammed Bedjaoui	1994	1997	Algeria
18	Stephen Schwebel	1997	2000	United States
19	Gilbert Guillaume	2000	2003	France
20	Shi Jiuyong	2003	2006	China
21	Rosalyn Higgins	2006	2009	United Kingdom
22	Hisashi Owada	2009	2012	Japan
23	Peter Tomka	2012	2015	Slovakia
24	Ronny Abraham	2015	2018	France
25	Abdulqawi Yusuf	2018	2021	Somalia

Source: https://en.wikipedia.org/wiki/International_Court_of_Justice

Table 2: Current composition of the International Court of Justice As at 22 June 2018

Name	Nationality	Position	Term began	Term ends
Abdulqawi Yusuf	Somalia	President	2009	2027
Xue Hanqin	China	Vice-President	2010	2021
Peter Tomka	Slovakia	Member	2003	2021
Ronny Abraham	France	Member	2005	2027
Mohamed Bennouna	Morocco	Member	2006	2024
Antônio Augusto Cançado Trindade	Brazil	Member	2009	2027
Joan Donoghue	United States	Member	2010	2024
Giorgio Gaja	Italy	Member	2012	2021
Julia Sebutinde	Uganda	Member	2012	2021
Dalveer Bhandari	India	Member	2012	2027
Patrick Lipton Robinson	Jamaica	Member	2015	2024
James Crawford	Australia	Member	2015	2024
Kirill Gevorgian	Russia	Member	2015	2024
Nawaf Salam	Lebanon	Member	2018	2027
Yuji Iwasawa	Japan	Member	2018	2021
Philippe Gautier	Belgium	Registrar	2019	2026

Source: https://en.wikipedia.org/wiki/International_Court_of_Justice

Table 3: Judges of the International Criminal Court (sortable)

Names	Country	Took office	Term End	Division	Remark
Reine Alapini-Gansou	Benin	2018	2027	Trial and Pre-Trial	
rTomoko Akane	Japan	2018	2027	Trial and Pre-Trial	
Solomy Balungi Bossa	Uganda	2018	2027	Appeals	
Chung Chang-ho	South Korea	2015	2024	Trial	
Luz del Carmen Ibáñez Carranza	Peru	2018	2027	Appeals	
Chile Eboe-Osuji	Nigeria	2012	2021	Appeals	President
Robert Fremr	Czech Republic	2012	2021	Trial	First Vice President
Geoffrey A. Henderson	Trinidad and Tobago	2014	2021	Trial	
Olga Venecia Herrera Carbuccia	Dominican Republic	2012	2021	Trial	
Piotr Hofmański	Poland	2015	2024	Appeals	
Péter Kovács	Hungary	2015	2024	Trial and Pre-Trial	
Antoine Kesia-Mbe Mindua	Democratic Republic of the Congo	2015	2024	Trial and Pre-Trial	
Howard Morrison	United Kingdom	2012	2021	Appeals	
Raul Cano Pangalangan	Philippines	2015	2021	Trial	
Marc Perrin de Brichambaut	France	2015	2024	Trial and Pre-Trial	Second Vice President
Kimberly Prost	Canada	2018	2027	Trial and Appeals	
Rosario Salvatore Aitala	Italy	2018	2027	Pre-Trial	
Bertram Schmitt	Germany	2015	2024	Trial	

Source: https://en.wikipedia.org/wiki/Judges_of_the_International_Criminal_Court

Conclusion

The study examined the implementation of international law and the question of equity, justice and fairness: The Charles Taylor experience. To address the subject-matter, the study was divided into the following sections: Abstract, introduction, theoretical and conceptual analysis, implementation of international law and the question of equity, justice and fairness, the trial and conviction of Charles Taylor and the question of equity, justice and fairness, conclusion and recommendations. Data for the study were derived from secondary sources while the constructivist theory was adopted as the theoretical framework. The study was based on the descriptive research method while the analysis was done qualitatively through content analysis. However, findings from the study revealed that international law and judgements from the International Court of Justice (ICJ) and the International Criminal Court (ICC) has contributed immensely in checking and moderating the excesses of states and other international actors at the regional and global level hence, leading to less inter-state conflicts and conflict prevention at all levels. In the same vein, it was also observed that some citizens especially Africans have constantly expressed dissatisfaction and displeasure over the discriminatory principles, legal rules and processes adopted during the trial of their citizens/nationals thus indicating that external influence and other factors remains a major challenge in the adjudication and implementation of international law at various levels. It is in the light of these challenges that the study proffered some recommendations that will strengthen the application and implementation of international law at all levels.

Recommendations

The complex and sophisticated nature of modern states no doubt makes the legal control of states and state actions necessary and fundamental hence, the following recommendations will go a long way in ensuring equity, justice and fairness in the administration and implementation of international law at all levels:

1. Decisions and judgments of the international court of justice, the international criminal court or any international legal organization/agency should be based on facts, evidence available and not sentiments as reflected in the case of Charles Taylor as contained in the dissenting opinion of Justice El Hadgji Malick Sow.
2. Member states of the United Nations should be treated equally since they are all sovereign independent states hence, the issue of veto and other discriminatory policies of the United Nations that gives undue advantage to some states to the detriment of others should be discarded forthwith.
3. There is also need for a review of all cases and judgements passed in the past fifteen (15) years at the ICJ and ICC with a view to ensure equity, justice and fairness including the sanctioning of erring justices and judges. This will no doubt serve as deterrence to incoming judicial officers at the international level.
4. The activities of the United Nations and its agencies should be conducted in a more transparent and open manner to ensure transparency and accountability in the process of implementing and enforcing its Charter, principles and resolutions. This will give a sense of belonging to all nations.
5. The African Union, ECOWAS and other regional organizations should closely monitor the proceedings of the International Criminal Court and the International

Court of Justice to ensure that the court adhere strictly to its statutes and laid down international standards. Observers should also be despatched to monitor such proceedings if the need arises.

6. International treaties and protocols are never compulsory hence; African states and its leaders should study such international treaties, protocols or conventions before endorsing their signatures on them. It is therefore necessary for African states to set up a technical committee to review and re-appraise all international treaties it had signed including the Rome statute which established the International Criminal Court with a view to determining the social, political and legal implications.

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