

International Disputes must still be solved by Political Means

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Abstract

This article considers the (in)ability of international law to ensure compliance from United Nations (UN) Member States, absent political influence. It examines whether concepts such as sovereign equality, normativity and concreteness give legal authority to international law, and further whether this 'authority' is respected by Member States and strictly enforced by UN governing bodies and international courts. The article explains that where sovereign rights or national interests collide the International Court of Justice (ICJ) is often unable to give a ruling or advisory opinion based solely on legal grounds, and demonstrates that the contemporary international regime is incapable of removing politics from international legal proceedings. Furthermore, the article analyses the United Nations Security Council's (UNSC) failure to enforce ICJ rulings against the US and the inability to prevent the US-led invasion of Iraq in 2003. With respect to the Iraq invasion, it highlights how this invasion occurred in the face of existing international norms and rules which purported to curb unauthorized use-of-force by UN Member States. The paper deduces that existing international rules and structures which seek to ignore state politics cannot settle contemporary international disputes.

Introduction

The strength of obligations under international law has remained the subject of numerous debates amongst international lawyers, jurists and scholars. After the Cold War, there was no doubt as to 'the existence of international law',¹ rather, the only remaining questions was what were the sources of this 'law'² and whether such a legal system was effective in binding states. As was made apparent by the US-led invasion of Iraq in 2003, the disapproval of both the international community and the UNSC did not stop states from breaching international laws which impeded national political interests. This invasion left holes in the theory that the UN Charter³ created binding obligations on states and showed how fragile the 'consensual nature'⁴ of international law can be when conflicts of national interests are involved. This consent component stems from the ideal of an international community with 'equally sovereign states creating law through consent and practice'⁵. It will be argued that this idea of sovereign equality and the requirement of state consent are the key factors for the continued influence of global politics in the international legal system.

The first section of this paper provides an analysis of sovereign equality and the rulings given by international courts when adjudicating on territorial disputes which involve colliding or overlapping sovereign rights; examples will be drawn from case law. The second section of discussion outlines the nature of normativity, concreteness and rule of law in the international regime. Attempts to balance these concepts will be analysed through examples drawn from International Conventions as well as the ICJ's Advisory Opinions and Proceedings. Finally, this paper will

¹ Duncan B. Hollis, 'Why State Consent Still Matters—Non-State Actors, Treaties, and the Changing Sources of International law', (2005) 23 Berkeley JIL 137, 137

² Ibid.

³ Charter of the United Nations, (24 October 1945), 1 UNTS XVI

⁴ Matthew Lister, 'The Legitimizing Role of Consent in International law', (2011) 11:2 Chicago JIL 663, 664

⁵ Hollis, (n1), 138

examine the fragility of international legal decisions and the implications of these fragile decisions. This third section of the paper underscores just how lacking contemporary international enforcement mechanisms are in constraining the use of force; this is demonstrated through an in-depth analysis of the *Nicaragua v USA*⁶ case and the US-led Iraq invasion of 2003. Ultimately, the discussion concludes with the proposition that international rules which purport to ignore state politics will fail to explain state behaviour and to resolve cross-border disputes.

The Principle of Sovereign Equality

The UN Charter clearly establishes that the organisation was founded 'on the principle of the sovereign equality of all its Members'.⁷ Accordingly, as per *The Case of the S.S "Lotus"*,⁸ 'in the absence of [formal] principles'⁹ which prohibit state action at international law, the state is 'free'¹⁰ to 'do as they please'¹¹. In short, sovereign equality means that states have the freedom to decide what rules they desire to be bound by. This freedom may be exacted through the formation of treaties, conventions or through the use of general international law principles. It is generally accepted that international treaties may bind states because they are formed through an express 'consent to be bound'¹² and must be complied with under the principle *pacta sunt servanda*. However, the principle of sovereign equality often fails to give a clear legal resolution to disputes between states, which arise under rules of

⁶ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (Merits) (Judgment) [1986] ICJ Rep 14

⁷ UN Charter, (n3), art.2

⁸ *The Case of the S.S "Lotus"*, [1927] PCIJ Rep Series A No 10

⁹ *Ibid.*,31

¹⁰ Martti Koskenniemi, 'The Politics of International law', (1990) 1 EJIL 4, 18

¹¹ Jan Klabbers, 'Clinching the concept of sovereignty: Wimbledon redux', (1996) <<http://www.helsinki.fi/eci/Publications/Klabbers/JWimbledo.pdf>> accessed 3 January 2017,8

¹² José A. Cabranes, 'International law by Consent of the Governed', (2007) 42 Valparaiso University Law Review 119, 131

customary international law. The pure fact view of sovereignty sees the principle as 'something external to the law';¹³ international law must accept the principle but cannot regulate it. Under this view, sovereign rights are a result of the existing factual reality.¹⁴ Conversely, the legal view places the principle of sovereignty within the 'law's substance',¹⁵ and sovereign rights flow from what the applicable rules determine.¹⁶ However, the principle of sovereignty fails to highlight 'whose interpretation of the criterion [...] should be given precedence'.¹⁷ As such, states often claim the same sovereign rights in international disputes and a resolution cannot be obtained solely by reference to the pure fact or legal viewpoints of sovereignty. The political outcome of the resultant deadlock is demonstrated by the following cases.

In the *Eastern Greenland* case,¹⁸ the Permanent International Court of Justice (PCIJ) had to determine whether Norway or Denmark could claim territorial sovereignty over Eastern Greenland. Counsel for Norway submitted that their sovereign rights arose through their 'effective occupation'¹⁹ of the territory from July 10th, 1931. On the other hand, Denmark based its claim through existing conventions, signed by Norway, which gave them authority over Greenland. For example, counsel for Denmark submitted that the Universal Postal Conventions of 1920, 1924, and 1929, signed by Norway, established 'the Faroe Isles and Greenland, as being part of Denmark'²⁰. Also, '[f]rom 1921 to July 10th, 1931'²¹,

¹³ Koskenniemi, (n10), 14

¹⁴ *Ibid.*, 16

¹⁵ *Ibid.*, 15

¹⁶ *Ibid.*, 17

¹⁷ *Ibid.*

¹⁸ *Eastern Greenland* case, [1993] PCIJ Rep Series A/B No 53

¹⁹ Koskenniemi, (n10), 15

²⁰ *Greenland*, (n18), 68

²¹ *Ibid.*, 63

KENT STUDENT LAW REVIEW Volume 3 2017

Denmark had 'displayed and exercised [...] sovereign rights'²² in the territory. Denmark's submission was targeted at proving a stronger claim of sovereign territorial rights, by showing that they had effectively occupied Greenland prior to Norway. Additionally, Denmark fortified their position through references to 'bilateral agreements [...] and [...] various multilateral agreements [...] in which Greenland had been described as a Danish colony'²³.

Nevertheless, the court chose not to focus on the sources of international law presented before them, and instead ruled on the interpretation of the 'Ihlen declaration'²⁴. This declaration refers to a statement made on July 22nd, 1919 by Norwegian Minister of Foreign Affairs, M. Ihlen, to the Danish minister which stated that 'the Norwegian Government would not make any difficulties in the settlement of the [Greenland] question'.²⁵ The International Court held that the declaration was an 'affirmative'²⁶ and 'binding'²⁷ statement on Norway with an 'unconditional and definitive'²⁸ promise formed. Furthermore, the declaration was backed by another statement by the Norwegian Minister on November 7th, 1919, where he highlighted that Norway was pleased 'to recognise Danish sovereignty over Greenland'²⁹. Thus, the court ruled that Norway's occupation in Greenland was unlawful, not due to existing treaties or conventions which claimed that Norway had given their sovereign rights over to Denmark, but because of the 'Ihlen declaration'. The court even went so far as to state in their conclusion that there was 'no need'³⁰ to consider the legal questions in the instant case. The ruling was political and safeguarded Norway's

²² Ibid.

²³ Ibid.,68

²⁴ Ibid.

²⁵ Ibid.,71

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.,72

²⁹ Ibid.,73

³⁰ Ibid.,74

sovereignty. The court avoided the process of navigating through the pure fact or legal viewpoints of sovereignty which would have forced them to examine the legal questions and sources of international law presented before them. Instead, the court in the instant case decided that Norway had lost their case because of their own recognition of Danish sovereignty in Greenland evident in the 'Ihlen declaration', a political statement made by Norway's foreign minister.

Similarly, in *North Sea Continental Shelf*³¹ the International Court of Justice (ICJ) had to resolve a dispute regarding the North Sea Continental Shelf shared by Germany, the Netherlands and Denmark. The Netherlands and Denmark submitted that they had coastal rights over the Continental Shelf area as per the principle of equidistance outlined in Article 6 of the 1958 Geneva Convention;³² conversely, Germany argued that the application of the equidistance principle would have an inequitable result on their coastal rights and that they were not bound by Article 6 of the Convention³³. The ICJ refuted the claim submitted by Denmark and Netherlands because Germany had not ratified the Convention³⁴ and as such, absent state consent they could not be bound by its rules.

A further contention made by Denmark and Netherlands was that Germany was still bound by Article 6 of the Convention³⁵ even if not party to it, since the Convention formed customary international law due to State practice.³⁶ To support this assertion 'fifteen cases [were] cited [...] in which continental shelf boundaries ha[d] been delimited according to the equidistance principle'. This submission was also rejected. The ICJ stated that the submitted cases did not suffice *opinio juris*

³¹ *North Sea Continental Shelf* (Judgment) [1969] ICJ Rep 3

³² Convention on the Continental Shelf (29 April 1958), 499 UNTS 311, art. 6

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Continental Shelf*, (n31), [70]

required to prove a customary international law and highlighted that even if these cases may have represented a 'settled practice[s]' in the international community, they did not prove that States carried out these practices because they felt obligated to do so in accordance with some rule of law.³⁷ In this vein, the ICJ stated that 'many international acts [...] are performed [...] only by considerations of courtesy, convenience or tradition, and not by any sense of legal duty'.³⁸ Absent this subjective feeling of legal duty, there could be no customary rule in international law.

Notably, in the instant case the ICJ had affirmed the pure-fact view of sovereign rights that 'the rights of the coastal State [...] exist *ipso facto* and *ab initio*'³⁹; such rights were 'exclusive', with any other state requiring 'express consent' of the coastal state to utilise this territory.⁴⁰ However, due to the ambiguity of the applicable rule the pure-fact view was abandoned.⁴¹ The issue with such an application was that relevant facts could only be deduced *ad-lib* because there was no obligatory codified method.⁴² Therefore, with 'no other single method of delimitation...which is in all circumstances obligatory', the ICJ ruled that delimitation between the parties was to be 'effected [...] in accordance with equitable principles'.⁴³ Ostensibly, the ICJ's reliance on the principle of equity within the law,⁴⁴ *infra legem*, created a judgment which was based on an 'arbitrary'⁴⁵ and subjective notion of justice rather than an objective application of legal concepts. Thus, this ruling was inconsistent with the factual matrix under Rule of Law and could only be described as political.

³⁷ *Ibid.*, [77]

³⁸ *Ibid.*

³⁹ *Ibid.*, [19]

⁴⁰ *Ibid.*

⁴¹ Koskenniemi, (n10), 19

⁴² *Ibid.*, 18

⁴³ *Continental Shelf*, (n31), [101]

⁴⁴ *Ibid.*, 48

⁴⁵ Koskenniemi, (n10), 19

Consequently, international jurisprudence has demonstrated that conflicts which arise when state bodies attempt to claim their sovereign rights are generally unresolvable through a strict application of international law. This is due to the frequent 'lack [...] or [...] ambiguity of the relevant rule'⁴⁶. Therefore, the international courts' decision will often be resolved through a political viewpoint of what constitutes equity and justice when resolving conflicts of sovereign rights, as shown in the *Eastern Greenland*⁴⁷ and *North Sea Continental Shelf*⁴⁸ cases.

Furthermore, the effectiveness of normative and concrete international rules is often diminished due to global power politics. This is examined in the next section of this paper.

Normativity and Concreteness in International Law

According to Lord Bingham, the substantive rule of law 'requires compliance by the state with its obligations in international law as in national law'⁴⁹. An application of the rule of law to relations between nations refers to the use of 'legal concepts, standards, institutions and procedures'⁵⁰ to resolve disputes, in place of 'arbitrary power in international relations [or] settlement by force'⁵¹. To be effective, the international rule of law must be based on 'verifiable and determining rules'.⁵² Such rules must be both 'concrete' and 'normative' to avoid the rule of law falling victim to international politics. For the law to be concrete, it must reflect verified state practice. Yet, for the law to be normative, it must be applicable to states despite their own

⁴⁶ Ibid.

⁴⁷ *Greenland*, (n18)

⁴⁸ *Continental Shelf*, (n31)

⁴⁹ Lord Bingham, 'The Rule of Law in the International Legal Order', *The Rule of Law* (Allen Lane, 2010), 110-129, 110

⁵⁰ Ibid., 111

⁵¹ Ibid.

⁵² Koskenniemi, (n10), 5

KENT STUDENT LAW REVIEW Volume 3 2017

individual national interests. Any law that is overly concrete, based solely on state practices, will appear political because it loses normativity and ability to bind states against self-interests, thereby becoming 'an apology'⁵³ to the less powerful. On the other hand, if a law is too normative, it will appear political in another sense due to its 'utopian'⁵⁴ nature and inability to reflect the social realities within states. Thus, in international law, it is difficult to prove that a rule is entirely objective and free of any kind of political influence. Consequently, international legal concepts have constantly failed to provide conclusive resolutions in cross-border conflicts. To support this claim, an examination of international jurisprudence and state practice is necessary.

Attempts to balance normativity and concreteness within international rules often lead to a lack of state accountability due to numerous exceptions being made. This is illustrated within the construction of International Conventions and Advisory Opinions of the ICJ. For example, the Genocide Convention⁵⁵ seeks to resolve disputes and punish parties responsible for genocide, a *jus cogens* prohibition, yet the US was able to insert a reservation that required any party wishing to sue them to first obtain 'the specific consent of the United States'.⁵⁶ As a result, the ICJ indicated that US' reservation prevented Yugoslavia from suing them under the Genocide Convention in 1999 and as such refused the case⁵⁷ on a jurisdictional issue; this meant that Yugoslavia could not hold the US accountable for conducting targeted bombings in Yugoslavian territory, even though US' action was a clear violation of the international obligation to not use force against another state.⁵⁸ The

⁵³ Ibid.,11

⁵⁴ Ibid.,8

⁵⁵ Convention on the Prevention and Punishment of the Crime of Genocide (9 December 1948), 78 UNTS 227

⁵⁶ Sean D. Murphy, 'The United States and the International Court of Justice: Coping with Antinomies', *The United States and International Courts and Tribunals* (Cesare Romano, 2008), 21

⁵⁷ *Legality of Use of Force (Yugoslavia v. United States)* (Provisional Measures) [1999] ICJ 916

⁵⁸ Ibid.

KENT STUDENT LAW REVIEW Volume 3 2017

*Advisory Opinion on Nuclear Weapons*⁵⁹ reached a conclusion similarly clouded by political influence. The ICJ held that possession of nuclear weapons was not prohibited under customary international law, i.e. the concrete rules based on state practice, but use of them was unlawful under international humanitarian law, i.e. the normative rules found in The Hague and Geneva Conventions⁶⁰. Nevertheless, the ICJ concluded that although use of nuclear weapons was inconsistent with general principles of international law, there may be 'an extreme circumstance of self-defence' where such use may be lawful.⁶¹ Thus, the conclusion was legally inconclusive. The court's political decision permitted the 'anti-nuclear movement[s]' to continue in support of disarmament in accordance with international humanitarian laws, whilst providing 'powerful states' with a defence for their refusal to disarm.⁶²

Additionally, any attempts to ensure a coherent international rule of law would require efficient enforcement procedures which guarantee that all States conform to international rules and abide by the decisions of international adjudicating bodies. Unfortunately, current enforcement mechanisms such as UNSC decisions and the ICJ rulings have failed to prevent powerful nations from disregarding international laws that are out of touch with their own national interests. Weak enforcement mechanisms make it evident that international laws have a weak constraining force against powerful nations and vice-versa. The fragility of contemporary international proceedings is examined in the subsequent section of this article.

⁵⁹ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) [1996] ICJ Rep 226

⁶⁰ Hague Convention(IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (18 October 1907); Protocols Additional to Geneva Conventions of 12 August 1949 (8 June 1977) 1125 UNTS 3

⁶¹ *Nuclear Weapons*, (n59), 266

⁶² Murphy, (n56), 34

The Fragility of International Decisions and Rulings

In *Nicaragua v USA*⁶³ the ICJ had to determine the legality of United States' actions in Nicaragua during 1983 to 1984. In accordance with Article 38 of the Charter,⁶⁴ the court carefully examined state practice to determine the *opinio juris* of non-intervention and use of force as per 'international custom'.⁶⁵ Evidence of these principles as *opinio juris* was proven through the prohibitions in the following conventions: the Declaration on Principles of International law concerning Friendly Relations & Co-operation among States,⁶⁶ the Montevideo Convention on Rights and Duties of States,⁶⁷ and the Conference on Security and Co-operation in Europe.⁶⁸ Moreover, the International Law Commission stated that the prohibition of the use of force could now be understood as a 'having the character of *jus cogens*'.⁶⁹ As such, the ICJ held that the United States' (US) attacks in Nicaragua during 1983 to 1984, namely their 'laying mines in the internal or territorial waters of the Republic of Nicaragua'⁷⁰ and 'embargo on trade with Nicaragua' in 1985, constituted a breach of Nicaraguan sovereign rights as well as obligations under customary international law.

However, the court's ruling in Nicaraguan favour did not grant a real solution to the dispute with the United States. Despite the US' previous affirmation that the principle of non-intervention and use of force was 'a universally recognized principle of international law' and a 'principle of *jus cogens*'⁷¹, they rejected the judgment of

⁶³ *Nicaragua*, (n6)

⁶⁴ UN Charter, (n3), art.38

⁶⁵ *Nicaragua*, (n6), 97

⁶⁶ (24 October 1970) A/RES/25/2625

⁶⁷ (26 December 1933) 165 LNTS 19

⁶⁸ Organization for Security and Co-operation in Europe (OSCE), *Conference on Security and Co-operation in Europe (CSCE): Final Act of Helsinki* (1 August 1975)

⁶⁹ *Nicaragua*, (n6), 100

⁷⁰ *Ibid.*, 147

⁷¹ *Ibid.*, 101

the ICJ in the instant case. This was followed by a withdrawal of compulsory jurisdiction from the court in the following year. The legal resolution had failed to provide a practical solution in the world of politics. In an effort to hold the US accountable, Nicaragua used the UN Charter provision 'to submit non-compliance with the [ICJ] ruling'⁷² to the Security Council, where it would be scrutinized. Still, this effort failed when the US vetoed the Council's resolution condemning their actions.⁷³ The inability of the ICJ and Security Council to bind the US to the concrete rules of international custom, established in the present case, revealed that these norms had succumbed to power politics and became 'an apology for the interests of the powerful'⁷⁴ i.e. the United States.

The US-led invasion of Iraq further confirmed the weak constraining force of normative international rules. In 2002, under the administration of President Bush, the United States confronted the UN Security Council (UNSC) with a request to 'take action against Bagdad'⁷⁵ for their refusal to disarm. Consequently, the Council formed Resolution 1441⁷⁶ which stated that Iraq was in 'material breach'⁷⁷ of prior resolutions 678 and 687. Inspectors implementing Resolution 1441 returned after investigating for eleven weeks with the view that there was no evidence of Weapons of Mass Destruction in Iraq, contrary to what had been claimed by the US. Nevertheless, in the February of 2003, the US told the UNSC that they would be entering Iraq to institute 'regime change'⁷⁸ with or without their approval. The Council then released a resolution stating that Iraq had failed their obligations under

⁷² Murphy, (n56), 31

⁷³ Ibid.

⁷⁴ Koskenniemi, (n10), 11

⁷⁵ Michael J Glennon, 'Why the Security Council Failed', (2003) 82:3 Foreign Affairs 16, 17

⁷⁶ UNSC Res 1441 (2002) UN Doc S/RES/1441

⁷⁷ Ibid.,3

⁷⁸ Glennon, (n75), 18

Resolution 1441, but the resolution did not authorise the use of force in Iraq. The US invaded Iraq in the March of that year nonetheless.

As per Article 51 of the UN Charter, states have the right to self-defence only 'if an armed attack occurs against a Member State of the United Nations'.⁷⁹ Therefore, the US announcement in 2002 that they were prepared to 'act preemptively'⁸⁰ was unlawful. Furthermore, article 2(4) of the Charter explicitly prohibits the use of force, with the only exception being an authorisation by the Security Council under Chapter VII of the Charter. Notably, the ICJ held in *Advisory Opinion on Namibia*⁸¹ that 'the language of a resolution [...] should be carefully analysed before a conclusion can be made to its binding effect'⁸². The fact that the UNSC had authority to approve affirmative action in Iraq was not disputed. However, Resolution 1441 did not explicitly authorise the use of force and the decision cannot possibly have been made with the intent of encouraging an invasion which caused 'widespread loss of life, and [...] destabilize[d] the area'.⁸³ The US' actions in pursuit of national security showed a blatant disregard of the 'use of force' prohibitions in the Charter.⁸⁴ As such, it may be said then that 'an obligation on the state exists only as long as it is in the interest of the state'.⁸⁵ Once states no longer see the need to be bound by an obligation, it becomes a *utopian* paper rule, that is, a rule which can neither invoke state practice nor explain the realities of geopolitics.

⁷⁹ UN Charter, (n3), art.51

⁸⁰ Glennon, (n75), 20

⁸¹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) [1971] ICJ Rep 16

⁸² *Ibid.*, 53, [114]

⁸³ Bingham, (n49), 126

⁸⁴ UN Charter, (n3), art.2

⁸⁵ Klabbers, (n11), 14

Conclusion

The purpose of this discussion was to demonstrate that international law is incapable of resolving disputes between states without the influence of politics. Sovereign equality remains relevant since it is the free will of states to be bound that gives international law binding force. Yet sovereign equality also represents a key reason for the failure of legal resolutions because 'actual consent' is often required to give these rules authority.⁸⁶ In addition to this, the UN's differentiation of 'right-thinking states' from 'second-class sovereign states' or civilised nations vis-à-vis 'undemocratic (or uncivilized) states'⁸⁷ shows that even *true* sovereign equality is questionable. In this system, international norms apply differently to states depending on their 'position [...] in the legal order'⁸⁸. This was evident in the US-led invasion of Iraq, where the US' conduct breached international law and ultimately forced Iraq to accept the Security Council's Resolution 1441. The principle of sovereign equality would have required Iraq's consent for the imposition of Resolution 1441. However, Iraq, as an 'outlaw state',⁸⁹ could not rely on the sovereign principles of 'territorial integrity and political independence'⁹⁰ to prevent the US' intrusion. Consent or the lack thereof appeared to be valued more from the US than from Iraq. In this case, sovereign equality succumbed to power politics.

Furthermore, sovereign equality permits states to 'withdraw' from any previously accepted rule.⁹¹ The US conduct in Nicaragua and their invasion of Iraq demonstrated how international norms can dissolve into 'apologism'⁹² when there is

⁸⁶ Lister, (n4), 665

⁸⁷ Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (CUP, 2004), 20

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, 10

⁹⁰ *Ibid.*

⁹¹ Klabbers, (n11), 3

⁹² Koskenniemi, (n10), 21

a lack of disincentives to prevent breaches of international law. Another issue is the need for 'consent to jurisdiction'⁹³ of the international courts. Of the current Security Council Members, only one, the United Kingdom, has given the ICJ compulsory jurisdiction. This abstinence by the remaining members safeguards their political interests, as it becomes almost impossible to hold the state accountable for a breach of international norms if there is no court to adjudicate the matter. Arguably, a major flaw in the quest for international rule of law is the lack of 'compulsory recourse'⁹⁴ to the ICJ.

Ultimately, an examination of international jurisprudence shows that states often only abide by international laws and obligations that appeal to their national interests. The *Advisory Opinion on Nuclear Weapons*⁹⁵ clarified that the 'state survival remain[s] the highest objective'⁹⁶ of the international legal structure, suggesting that it is impossible for an international rule of law to exist without the influence of international politics.⁹⁷ Very often, international norms feature as 'a symptom of State behaviour' rather than 'a cause' of it.⁹⁸ Therefore, to develop a strong international legal regime, it may be necessary for international rules to 'flow from political commitments'⁹⁹ since these will often determine which international rules are observed by the state. This will ensure that perceived normative 'working rules'¹⁰⁰ do not become 'mere paper rules'.¹⁰¹ Until then, the International Courts'

⁹³ Lister, (n4), 665

⁹⁴ Bingham, (n49), 128

⁹⁵ *Nuclear Weapons*, (n59)

⁹⁶ Martti Koskenniemi, 'What is International law For?', *The Politics of International law* (Hart Publishing, 2011), 247

⁹⁷ Koskenniemi, (n10), 5

⁹⁸ Anne-Marie Slaughter, 'International Relations, Principle Theories', *Max Planck Encyclopedia of Public International law* (2011), 6

⁹⁹ Glennon, (n75), 31

¹⁰⁰ *Ibid.*,24

¹⁰¹ *Ibid.*,31

KENT STUDENT LAW REVIEW Volume 3 2017

inability to resolve state disputes through the sole use of legal concepts will continue to prove that '[s]ocial conflict must still be solved by political means'.¹⁰²

¹⁰² Koskenniemi, (n10), 7