

Peace under Law in the International System: A View from Africa

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Abstract

“Peace under law” had remained elusive, yet desirous all through the ages (centuries). The paper did set to examine its thrust which primarily centers why peace under law had remained elusive to humankind. The current international system is a legitimization of “power” over “social justice” thus the system being laden with the problems of poverty, diseases, terrorism, shelter, human rights abuses, disparities in wealth and incomes, climate change and internecine wars, thus the necessity for “peace” under “law”. All of these problems are intricately woven or connected with the global inequalities – social, political and economics and the unbridle desire of the leading states in controlling the current global system. The interplay of the problems had further exacerbated the quest for “peace under law” as the global inequalities had attracted elicit several methodologies and approaches that had followed the pattern of global north versus global south, thus, the question why has peace under law remained elusive to humankind in the current global system. The attempt at proffering answers to the question led the paper to several conclusions thus the recommendations canvass herein.

Keywords: International System, International Law, International Adjudication and Arbitration, International Court of Justice, Colonialism and Imperialism, Conflicts and Wars.

1. Introduction

There is a deafening cry against the “modus oprandi” or methodologies adopted toward achieving the perpetual “peace” under “law” in the current international system. The posture and modalities to peace under law is greatly skewed in favour of nations with power. These nations have continued to determine the thrust, direction of development and policies in the international system. The nations with power had been able to achieve this feat through the instrumentality of international law, clandestine politics and economic policies that had been projected over time in the regions of the third world. The huge cry against the current methodology that gives primacy to international law is primarily coming from the nation of the “global south” (third world). In a structurally divided world – global north and global south- the methodologies and approaches had taken towards achieving peace under law had followed the pattern rivalry between the global north and south thus the need for the examination of Africa’s viewpoint as it concerns the search for the perpetual “peace under law”.

“Peace under law” is not a new buzz sentence in the international system. The concept and word is as old as the international system (state) as it encapsulates the intent and desires of state and non state actors to regulate and operate within the confines of international law. The current international system dates back to treaty of Westphalia (1648) that ended the thirty years war that engulfed Europe and also rivalry amongst the actors. The treaty also put seal to the end of the empire system. But the snag was that the realities of the empire system merely transmuted (regenerated) into new forms and realities in the state system. These new form and realities culminated into new challenges and rivalries that need new methodology and responses from the state system, as the failures in dealing with these challenges and realities by the state system had resulted in the system witnessing two world wars, thus, necessitating Boutros Ghali description of the 20th century as a “culture of death”. In corroborating Burtons Ghali position and views, Kegley and Eugene (2004) posited that the 20th century recorded an estimated 130-142 million wars related death, with an

estimated 214-226 million of government killings in non-war situations. From the standpoint of the killings and deaths related to wars and conflicts, it follows that the state system (current international system) is laden with potentials for wars and conflicts. The potentials for wars and conflicts stemmed from the diversity of cultures and people, poverty, unemployment climate change governance and government, structural division of the global system human right and terrorism etc. These potentials therefore jolted humankind after the Second World War to the need to accelerate and develop some parameters for “peace under law” that culminated with the coming into being of the United Nations (1945). The United Nations (UN) not wanting to be caught off geared borrowed part of the template of its predecessor (league of nation) decide to saddle the international court of justice (ICJ) with the responsibilities of adjudication and arbitrating in disputes amongst states in the international system. The coming into being of the United Nations system did marked the commencement of a new international legal framework whose thrust and direction had been laid out by the clandestine politics of nation with power. The new international legal framework with the ICJ at its apex that embodies the hopes and aspirations of states and non-state actors, seeking the growth and development of “peace under law” through international law had been dashed through the unbridled desires of nations with power to maintain and controlling the international system (Dienye, 2015; Kegley and Eugene, 2004; Gamble et al, 1976). The dashed hopes and aspirations have the underpinning of difference in culture of peoples that make up the current international system, politics and economics and the dynamics of power. It is these underpinnings that gave impetus to Gamble et al (1976) to lead the charge of scrutinizing the international system and international court of justice (ICJ). Gamble et al (1976) consequently came to several conclusions which includes state actors shying away from sending their disputes to the ICJ for adjudication and arbitration, coupled with the selective enforcements of the judgments of the court (ICJ), thus the question is why the apathy by nations and what factors underpins the apathy. Further question raked includes - why are African states not being able to resolve their disputes and whether the monolithic approach to peace under law can engender peace.

1.1. Peace under Law and the International Environment

The current international system is a single Community vis-à-vis the extent to which advancement in technology sciences and communications had been able to bring nations people and other economic actors into a complex web of interdependent relations. In other words, the world political and economic is a mixture of wealth and poverty, progress and despair, exploitation and assistance, dependence and interdependence, hope and hopelessness thus Aja (1998) giving more flanks to the above logic by positing:

Structurally, the word political economy is divided broadly into two – the developed and the underdeveloped countries. In general term, a country is said to be developed when it has the capacity to provide for its own needs and solve problems of natural, economic human technological and scientific development. In another sense, a country is developed to the extent that it has achieved autonomous, independent capacity to control, exploit and manage its natural, economic and human resource.

The United Nations human development report (UNDP, 1992) was more explicit in its thoughts while corroborating Aja’s (1998) position and views with the revelations that while 20 percent of world’s population in the developed countries received 82.7 percent of the total world income as compared to the 20 percent of people in the poorest countries receiving only 1.4 percent in 1989; the average income of the 20 percent of people living in the richest countries was 60 times higher than that of 20 percent living in the poorest countries. This ratio had double since double by the 1990s. The kernel of the logic of Aja (1998) and the UNDP (1992) report is the fact that the current international system and environment is greatly trouble with emerging “new security taxonomy” - democratic, economic, demographic; environment, agricultural and military security. It is in this international environment that peace under law was expected to strive unhindered. But the salient point to note, especially as it concerns these new emerging security taxonomy is that they have become expanding since the commencement of the state system (1648). The undercurrent of the ever expanding of “notion” of “security” was the imperative for humankind to deal with the ever expanding realities of the current international system. The desire to deal with these new realities and challenges necessitated the coming into being of the United Nations. The United Nations charter is a

multilateral treaty and the binding force of any international treaty is premised on the principle of *pacta sunt servanda*-principle of good faith. The preamble of the UN charter indicates that the “UN” was born out of the poisonous sociological and historical moments (conditions) that precipitated the devastating war known as the Second World War. The “preamble” holds out “hope” for a lasting “peace” based on the recognition of fundamental human rights, equality of all sovereign states, better economic and social conditions for the millions of victims of oppression and exploitation, good faith, acceptance of charters obligations, peaceful settlement of disputes, the non use of force or the threat of force for aggressive purpose, the support for UN enforcement actions and the non intervention by the United Nations in matters that are essentially within the domestic jurisdiction. Together these hopes and principles constitute the basic rules of international conduct that all members must respect, adhere and observe (Sharo, 1997; Kappor, 2005; Zing et al 2005, Dienye, 2015). Premise on the first line charge of the United Nations – maintenance of global peace and security – the body quickly swung into action by framing and bringing into being a new international legal framework under the auspices of the international court of justice (ICJ). The court (ICJ) was saddled with the responsibility of adjudicating in cases amongst states/nations (international actors) brought before it. In other words, the International Court of Justice (ICJ) was to bring about global peace and security through “peace under law”, but snag is that the scorecard of the (ICJ) international court of justice has remain worrisome especially on part of Nations without power. The weak states that are found in the global south have raise the fears and concerns over the “posture” and “structure” for “peace” under “law” that gave primacy to international law is greatly flawed. Their concerns are that most third world states, especially, during the colonial period of issues were incorporated into the current international system through clandestine politics of “gun boat diplomacy” and forceful imposition of treaties that they knew nothing about. These treaties now constitute a pillar and source(s) of international law used in the governance of the current international system hence their difficulty in comprehending. In the African continent, the manner in which the colonial master deployed treaties was bizarre; as the local population were considered ponds in the politics of colonialism and imperialism. The politics of colonialism was essentially to fragment, dominate, and accelerate the incorporation of the local population into the global system and to exploit local population for the benefits of the colonizing states. The carryover of these purposes of colonialism into the United Nations system had become worrisome to third world states, as the judgments of the (ICJ) international court of Justice following the pattern of global “North” versus “South”, which essentially is to re-enforcing the continued management and control of the international system by European powers. The fears and issues raised by these states had equally amplified the following realities that (i) international law is an instrument(s) in the hands of powerful nations used in penetrating the affairs of weaker states (ii) international law lacks universal philosophy (iii) international law encourages and justifies the competitive pursuit of national advantage without regard to morality (iv) international law is an instrument in the hands of powerful nations in determining the direction for the international system. The amplification of these realities had exacerbated the already existing tensions in the environment of “peace under law”. The operating environment of “peace under law” as engendered by the United Nations is rancorous, laden with bias against “nations” without “power”. Premised on this nature and environment of “peace under law” in the current international system, Adibe (1993) deemed it fit to flag and raise concerns over the “notion” of security in the current global system been fluid and limitless and with the dire the consequence(s) of making or positioning weaker states (states without power): making them recipient of history. The ever expanding notion of security had given leverage to powerful states to penetrate affairs of weaker states, thus, the claim by weaker states of powerful states (European powers) making the global system “monophobic”. The analysis of Adibe (1993) did rake up a salient concern of methodology or approaches to “peace under law” as the current monolithic approach fall short thus his recommending an approach that would be multi layer (level), multifaceted and multidimensional; requiring a synergy between all the levels layers (tiers). Again, the analysis did bring fort a pertinent question – why are some states going against or undermining “peace under law”.

If the approach to “peace under law” is multifaceted and multidimensional, it means that efforts of non states actors, states actors must compliments efforts of the UN. But the snag here is that

the world is incapable of getting over the structural division of the global system developed and underdeveloped thus the intense rivalry between developed and underdeveloped states/nations. The actions of non state actors at the micro level of society in the international system had become controversial, as non-state actors are seen to be wearing the legal person of the home state (domicile) where such actors are base. At the micro-level of society at the international system, most of the organizations (non actors) intervening in conflict(s) areas across the globe are domicile and resident in leading capitals of European powers, thus, their intervention efforts been construe and seen from the lens “we” versus “them”, rich versus poor “developed” and “underdeveloped”. For most humanitarian efforts currently underway in conflicts areas across the globe and under the auspices of the several international organization are caught up in these controversies and suspicious for the response of sovereignty, non intervention and the non use of force. In Africa and South East Asia and the Latin Americas, these international organizations are seen as foot soldiers of the European power (parent states) in the clandestine motive and politics of penetration into affairs of weak states in the global system as exemplified in the Syrian crisis. The suspicious and controversies did reconfigure to the former secretary general Kofi Anan in a speech to the general assembly of the UN in September 1999 alerting the global body to need of developing an international norm to forcibly protect civilians and weak from risk of genocide and killings (Bellamy, 20006, Chesterman, 2001, Weiss, 2007, Wheeler, 2000). Again, the current posture of the United States of America and her allies recently is sending a worrisome signal across the global as President Trump with his mantra of “America first” is on a journey of destroying or dismantling all collective or global efforts at “Peace under law”. First, Trump took on the United Nations while addressing the 72th general assembly of the UN where he drew the attention of global body to its several in capabilities and flaws, especially, in face of serious hurricane / humanitarian disasters across the globe and nuclear threats of North Korea. After taking a swipe at the UN efforts at “peace” under “law” with his speech of “making the UN great again”, Trump did inadvertently set the tone and thrust for the projection of America’s foreign policy under his administration which in all intents and purposes is for the repudiating of (multilateralism) all multilateral efforts at global “peace under law” involving the American nation, choosing in its stead UN lateral (Unilateralism) approach. Since that speech, America under Trump had gone on to repudiate the Trans nuclear deal and the “INF” treaty (intermediate range nuclear forces treaty) with Russia. Aside repudiating these treaties, trump had taken on its traditional allies (European Union) and her neighbors (Mexico and Canada) over security, immigration and trade issues. The signal at the level of society in the international system is that humankind is fast galloping toward another major war due to the discordant tune and postures of leading powers in the system. Again, the discordant tunes and posture of these powers is intricately connected to the projections of their national interest (core values) in the global system thus, for any reason there is clash of interest with those of the UN, those of UN ends up in the “repairer’s shop”. In other words, the world is fast moving away from the multilateral framework of the UN to unilateralism at an increasing pace. Currently, all efforts at “peace under law” are almost non-existent, as unilateralism had rendered them impotent. The discordant tune at the global level had trickle down to the state level – Iran versus Saudi Arabia, Yemen versus Saudi-Arabia, Iran versus Britain, North Korea versus South Korea and Russia versus Ukraine. The current postures of states in relation to peace under law at all levels of analysis is wobbling, as the big five in the security council of the United Nation do not see this wobbling outside the confines of their interest.

1.2. Africa and Peace under Law

Africa’s position in the current international system is precarious and sympathetic; as the continent had become the “Achilles” of the system. For the reason(s) of history and international politics, Africa had been position for the taking. All through the known the historical and sociological vistas, Africa had been at the receiving end of history (actions) and clandestine politics, socially, politically and economically, the backward status of Africa is assuming legendary status in the international system. Africa is socially, economically and politically lying prostrate in the international system. To scholars like Akinjide (1983), Bessle (2001), Ekpuku (2009), Adibe (1993) and Dienye (2018) the legendary backwardness of Africa stemmed from the inter play of several local and external factors. But the impact of the external factors on the local factors is so intense, as it keeps

raking up conditions and situations that position the African continent, as “recipient of history. Whatever the toga and qualifications of Africa might be, it does drive home the reality of Africa’s vulnerability in the global system. The continent is considered only good enough for its human and economic resources. The helplessness and vulnerabilities is what prompted an earlier description by Kaplan (1980) of Africa as the “coming anarchy”. Though the poor historical and social precedent necessitated all of these names and qualifications but in relating these various names of Africa to the global efforts of “peace under law”, one glaring fact(s) that comes to the mind when cognizance is given to the thinking of Copper (2000) quoted in Mbeki (2012) is neo – colonialism and imperialism. Copper had noted inter alia:

How should we deal with the pre-modern chaos, as manifested in various areas of the world? What form should intervention take? The most logical way to deal with chaos and the one most employed in the past is colonization. But colonization is unacceptable to post modern states (and as it happens to some modern states too). It is precisely because of the death of imperialism that we are seeing the emergence of pre-modern world... all conditions for imperialism are there, but both the supply and demand for imperialism have dried up. And yet the weak still need the strong and the strong still need an orderly world. A world in which the efficient and well governed export stability and liberty and which is open for investment and growth... what is needed then is a new kind of imperialism, one acceptable to a world of human rights and cosmopolitan values.

The pitfall of Copper’s (2000) analysis is the fact that neo-imperialism and colonialism is already with us in the global system, thus, question whether neo imperialism and colonialism is in tandem with modern cosmopolitan values? Again, does modern cosmopolitan value(s) required a people, culture and continent being relegated to the back waters of global politics and economics and exploited. Because of the precarious position of the African continent in global politics and economics, Africa had remained a recipient of global efforts at “peace under law”. At the global level, no African state is a member of the Security Council of the “United Nations”. At the global level, Africa’s efforts at “peace” under “law” is pedestal and passive, as the continent had been position to be a recipient of all efforts of the custodians of the international system and the UN. The voice of the African continent is very faint at the global level, even though, the continent had suffered greatly from the multiplier effect of the projections of the foreign policies by the custodians of the international system. In Africa these projections had reconfigured to the continued tying of African states to the apron string of the custodians of the system. This singular fact is the undercurrent behind the recent serving of notices of withdrawal(s) by some African states to the “Rome status”. Most of these African states see the “Rome status” or the international criminal court treaty as a projectile of “colonial treaties” that put seal to the African fate in the global system during the colonial period, and to the current age (period). Again, the salient fact that needs noting is the fact that treaties played a vital role in the subjugation and interiorizing the continent and its peoples during colonial rule. Colonial treaties were the instrument used to legitimize all colonial efforts in the continent and post - colonial treaties had continued in similar fashion and stead, consequently, Africa’s voice being stolen and stifled. Africa being relegated to the back ground of international politics and economics had consistently followed a systematic clandestine politics and policies of the custodians of the international system (western European states) in Africa (Mbeki, 2000, Dienye, 2018, Ake, 2001, Adibe, 1993).

Again, going by the analysis of Adibe’s (1993) Africa’s contribution towards “peace under law” – military, economic, democratic, agriculture and demographic and environmental security – does give the custodians of the international system the advantage and platform to intervene in African affairs. The intervention in the affairs of African states at the level of society had left most African states worst off especially in the United Nation System. The United Nations System especially in its efforts towards “peace under law” had left the African states to the whims and caprices of states with power in the international system. At the state level, African states are totally confused and chaotic when it comes to governance and at the workings and operations of democracy. Democracy in Africa is about access to state treasury, as the strand of liberal democracy foisted on Africa encourages the looting and corruption. Politics in Africa is crude brutish and violent, oscillating between mediocrity and self aggrandizement of leaders and managers of the state. The characters of African states had robbed them of any meaningful contributions towards peace under

law.

2. Conclusion / Recommendations

The positioning of Africa as a “recipient” of “history” had in no small measure contributed in the abysmal record of the continent in the effort toward peace under law, but the reality of the situation is that Africa is still a pot - pourri of all foreign policy projections of European states (powers). These projections of the European powers (states) into Africa had further exacerbated African conditions. Africa is economically, socially and politically short chained and victim through all historical all known vistas, but currently Africa is being short chained by international law (global law) in the current international legal framework of peace under law.

The international legal framework like the colonial legal framework share common but simple objective of reducing, interiorizing, exploiting and the tying of African continent – economically, socially, and politically, to apron string of the European powers. Further, objective(s) of the current international legal framework is to continue the tightening of the basis of Africa’s incorporation into the global system – master/servant relationship. The posture and objectives of the current international legal framework had rendered Africa’s efforts and contributions towards “peace under law” almost marginal and unrecognizable. While the logic of the Africa continent accepting everything European had persisted, the continent must not lose sight and fact that history would judge her harshly if she fails to make an attempt of liberating itself.

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