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RESEARCH ARTICLE

Treaties and Third State Obligations under International Law

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Abstract

The notion of “sovereign equality among all states” is central to modern international law. Some states have the legal authority to impose rules of behaviour on non-contracting parties, which contradicts the values of equality as well as autonomy in a society based on coordination among members. Accordingly, in the words of L. McNair, “both legal principle and common sense are in favour of the rule *pacta tertiis nec nocent nec prosunt*, because as regards States which are not parties (commonly referred to as Third States & apos) a treaty is *res inter alios acta*”. The implementation of this ancient Roman law principle is now widely recognized and respected worldwide. This broad rule serves as the primary framework for analysing the relationship among international treaties and non-party states. The differences in attitudes towards international law-creation and its obligation to those of the international community highlight the socio-political divide between the Western world, new states, and socialist countries. However, the traditional rule “*pacta tertfis nec nocent necprosunt*” is inherently misleading. Law-making is a process of liberating legal norms from the constraints of strict consensus. This paper examines how third countries execute international law. There is legal, practical, and scholarly support for third-state remedies.

Keywords: International Law; Non-Parties; State Sovereignty; Third State; Treaties; Party Obligations

Art.2 (1) (h) of “the Vienna Convention” defines a third state as one that is not a party to the treaty, which is a widely accepted definition. While, third state remedies appear to promote international law, they can sometimes have harmful consequences. The international community has the difficulty of creating an efficient third-party enforcement system with minimal negative consequences. Treaties, whether general, regional, or specific, impose standards of conduct on contracting parties, requiring them to avoid activities that violate their responsibilities. The civil law maxim “pacta tertiis nec nocent nec prosunt” is derived from Roman law. Agreements only apply to the parties involved and cannot bind or grant rights to third parties. The legal effects of an agreement should only apply to the contracting parties, as per the cited principle. This rule's basis in Civil Law is based on the concept of contract law. International law is further supported by the laws of sovereignty and independence of states. International treaties typically only apply to contracting states and do not provide rights or duties to non-party states. The notion of consent as the cornerstone of treaty obligations is widely recognized in state practice, international tribunal decisions, and jurists' writings.²

In the case of “*German Interests in Polish Upper Silesia*”,³ the Permanent Court of International Justice stated that “it is impossible to assume the existence of such a right in the case of the Armistice Convention. A treaty merely creates law between its parties”.⁴ The Court ruled that Poland could not benefit from the Armistice Agreement because it was not a party to it. Similarly, in the case of “*Factory of Chorzow*”, The Permanent Court ruled that Poland could not use the articles of the Armistice Convention to which they were not a party.⁵

“Pacta tertiis nec nocent nec prosunt”, a principle in modern international law, is linked to the idea of non-interference in third states' internal affairs.

The time before World War II

Before World War II, international law usually only allowed countries directly affected by a legal violation to seek remedies. However, some legal scholars, like Hugo Grotius and Elihu Root, believed that certain actions—like illegal use of force—could be challenged by any country, not just those directly harmed.

“The Wimbledon case, which permitted third-party members of multilateral treaties to intervene, is frequently cited. Germany refused to allow a British vessel under charter to navigate the Kiel Canal for a French business. The Applicants (Great Britain, France, Italy, and Japan) sued Germany under the Treaty of Versailles' provision. The applicants contended that the Treaty safeguarded their right to navigation. The Court ruled in favor of the Applicants, awarding France compensation. The Court upheld their participation in the dispute due to their status as Treaty parties. Poland intervened in accordance with the PCIJ Statute, as a party to the Treaty, without establishing a legal stake. The case suggests some support for third-party rights and duties”⁶.

The time after World War II

Following World War II, there was increased support for third-state rights and duties.

The United Nations Charter outlines a position within the United Nations. Additionally, the Vienna Convention on the Law of Treaties limits the participation of third nations in treaty law.

THE UNITED NATIONS SYSTEM

Treaties allow governments to authorize third parties to implement international law. This can be accomplished by governments acting independently or by collective decisions. The United Nations Charter calls for collective action by third nations to address international law transgressions.⁷ The Charter allows governments to report circumstances that threaten international peace and security to the Security Council. The Charter allows the Security Council to enforce ICJ judgments if a state fails to fulfil its duties, as requested by the victorious state. The Security Council's decisions may impose duties on other Charter member nations.

HUMAN RIGHTS

Jus cogens law has mostly focused on international human rights law, which has undergone significant changes after WWII. Human rights legislation does not always follow jus cogens or erga omnes principles. Without third-party remedies, many aspects of international human rights legislation would be ineffective. State accountability is a classic international law that covers maltreatment of one state's nationals by another. Human rights legislation has developed to address A state mistreats its own citizens. Without third-party remedies for infringement, state actors cannot enforce them. Without a remedy, such a statute may be null and void. Fortunately, third nations have the power to respond to human rights violations under international law.

EXCEPTIONS TO THE MAXIM

The question of whether the norm "pacta tertus nec nocent nee prosunt" allows for exceptions in international law has long been a source of debate. The members agreed that a treaty cannot create obligations for non-parties on its own. However, they disagreed on whether a treaty can confer rights on a non-party. In practice, exceptions can be split into two categories:

There are two types of treaties:

those that impose responsibilities on third states and

those that provide them rights.

TREATIES OBLIGATED FOR THIRD-PARTY STATES (PACTA IN DETRIMENTUM TERTII)

The Vienna Convention established the idea that a treaty cannot create obligations or rights for a third state without its assent. "An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing."⁸

This rule highlights two conditions that must be met for a non-party state to become bound by the treaty:

"the States parties to the Treaty must have intended the provision in question to be the means of establishing an obligation for the State not a party to the Treaty.

the third State non-party to the treaty must have expressly agreed to be bound by the obligation".

A second collateral agreement exists between the treaty's parties and a third state. The collateral agreement appears to serve as the legal basis for the latter's commitment, rather than the treaty itself.

Certain instances may arise where a treaty imposes liabilities or creates an unfavourable position for a third state. Parties to a treaty may agree to do their best efforts to ensure that third-party states follow suit. This is the exact principle expressed as “The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security”.⁹

In this case, the third state has no direct obligation to the issue as it is not a party to the agreement. The pact does not absolve the persons involved. Efforts should be made to ensure that the third state adheres to the provisions of the treaty, as long as this is not illegal. It's important to note that treaty provisions do not impose any responsibilities on third-party states.

The Vienna Convention addresses the revocation or modification of obligations incurred by a third state. As follows:

“The obligations may be revoked or modified only with the consent of the parties to the treaty and of the third State unless it is established that they had otherwise agreed.”¹⁰ This rule applies when the third State tries to withdraw or alter the commitment. When parties attempt to withdraw an obligation, obtaining consent from a third State becomes more complicated. In cases when participants were simply reaffirming their right to demand performance. It could be argued that the third State's assent is unnecessary for fulfilling the commitment. It appears doubtful that any difficulties will occur in this case. The International Law Commission believes that simple cases in international relations are uncommon. In most cases, a third State's obligation involves a complex relationship, requiring mutual consent for any changes.

TREATIES PROVIDING FOR RIGHTS FOR THIRD STATES (PACTA IN FAROREM TERTII)

The Commission generally agreed that there are no exceptions to the concept of the third State's permission in the case of obligations led to a debate on whether a treaty can impose rights on non-parties. A treaty can have this impact if the parties desire it, but non-parties have no obligation to sign or exercise the right (according to one set of members). Another section of members believed that the non-party only has rights if they accept them. The Commission's disagreement stemmed from a debate regarding the impact of favorable provisions. The concept of third states remains a source of debate among international law experts. While most agree that treaties can provide benefits to third countries, there is still debate about whether the third country must accept the benefit to be entitled to it.

ISSUES ARISING FROM THE VIENNA CONVENTION AND THE PRINCIPLES

The Vienna Convention does not specifically address treaties that establish actual regimes in international law. Considering the importance of custom in extending the application of treaty principles beyond the signatory States, the Convention states that, “nothing in its articles precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such”.¹¹ The classical principles of “pacta in favorem tertii and pacta in detrimentum tertii” are no longer applicable in today's international relations and mutual relationships between states. Modern international treaties are becoming increasingly complex in terms of their legal structure.

“Although the rules elaborated in the Vienna Convention have, undoubtedly, their importance, it seems that the most important role is now and will be in the future connected with the problem of conventional rules becoming binding as customary rules of international law or as the so-called *ius cogens*, i.e. peremptory norms of general international law”.¹²

ANALYSIS OF THE TREATIES ON THIRD STATES OBLIGATION

Treaties can benefit or harm other states in two ways: It might have an adverse impact on the interests or on the legal posture of states that are not party to them.

“Lack of Legal Instruments to Oppose Treaties: While third-party states may be politically or economically influenced by a treaty, they cannot seek legal remedy unless it violates peremptory norms. For example, an ally may endanger the security of other third states, or a trading relationship may be detrimental to third-party trade interests; yet, these alliances or trade deals remain legitimate as long as they do not violate peremptory norms. Third states, as described in the agreement, can only protest diplomatically, with no legal tools to prevent the adoption of such treaties”.¹³

“Retroactive Effects on Interests: While some treaties do not impose legal responsibilities on third-party governments, others may influence their interests. For example, the defence agreements that exist between NATO members influence non-member governments' security perceptions, and third countries typically respond politically rather than legally. This is demonstrated by the Soviet Union's stance towards NATO and the WEU (Western European Union) treaties: while the Soviet Union expressed alarm, it was unable to modify the legal character of these agreements”.¹⁴

“Difficulty in Participation or Opposition: Even if the treaty benefits the third state or advances this state's interests, participation is not guaranteed. While states may be interested in joining multilateral treaties, they do not have the right to participate because they are not considered treaty parties. Parties who are not treaty members generally lack complete authority to enjoy treaty benefits or change treaty terms”.¹⁵

“Customary international law against treaty obligations: While treaties do not bind third countries, norms drawn from them can become customary international law if generally accepted. Third states must, however, acknowledge these regulations as customs in order for them to be obligatory. There is an ongoing dispute on whether certain multilateral treaties, particularly those linked to peace and security, impose responsibilities on non-parties due to their widespread relevance”.¹⁶

CASE STUDIES

South West Africa Cases (Ethiopia v. South Africa)

In the aftermath of World War I the League of Nations started to establish mandates for the German and Ottoman territories. South West Africa (now Namibia) was put under mandate and South Africa was placed as the mandatory responsible for the government and wellbeing of the people of the said land. As time went by it was evident that South Africa was not meeting her obligations as required under the mandate. However, South Africa was criticized for taking apartheid policies to affect the well-being of the indigenous people in South West Africa thus attracting the concern of the international community. In 1960, Ethiopia and Liberia two Afro countries that were members of last League of Nations laid complaints against South Africa to the ICJ alleging that the latter had violated its compulsory duties under the terms of mandate. Neither of the two countries concerned claimed to have been directly injured and but relied on

collective rights of members of the League of Nations to enforce the provisions of the mandate. Thus, “it is conceivable that injury to the legal rights of otherwise disinterested third states could be found under specific rules of customary international law. To this extent, the Judgment is limited, yet it permits the further evolution of the rule of third state remedies”.¹⁷

Continental Shelf (Libya v. Malta)

“The Statute of the ICJ provides two types of intervention:

Article 63 allows intervention when the construction of a convention to which the intervening state is a party is in question.

Article 62 allows intervention when a state has a legal interest that may be affected by the decision”.

Malta tried to mediate in a conflict between Tunisia and Libya on the grounds that their boundary dispute might impact on the country’s shelf rights. The International Court of Justice did not allow Malta to involved the case, and it considered the case only in terms of the dispute between the parties Tunisia and Libya. Likewise, Italy attempted to involve itself in the delineation of boundaries between Malta and Libya noting that the outcome may be in a way that is prejudice to its own interest. That is why the ICJ rejected the request and brought the case to reflect a conflict between the parties.

This was in a case between Nicaragua and the United States but it states that it has the consent of El Salvador to intervene since the actions of Nicaragua extended to its territory and endangered its political existence. The requested at the Jurisdiction Phase in which the ICJ denied the right of El Salvador to intervene for the same reasons, arguing that the Court’s right to intervene was limited, and its interest in the case’s issues were not directly connected to the jurisdictional issues. The Court determined that the state target of an armed attack must request intervention from a third state for collective self-defence. The Court carefully characterised the cases to only include disputes between states parties. of its decisions, however, the Court did aim to avoid commenting on the limits of locations known to be the states claimed and denied intervention. The document acknowledged the importance of the third state issue by explicitly mentioning intervention decisions.¹⁸

Israel-Palestine Conflict and International Humanitarian Law:

The international Conventions which are subject to the regulation of the conduct of warfare and occupation are binding the states. But what of those who are not state parties in the treaty, yet are in conflict, they may not be bound by treaty but they are obliged to respect the principles of customary IHL. The example of present day’s Israeli–Palestine conflict brings out how other actors or groups in a conflict such as Hamas can never be direct signees to certain treaty provisions yet they are still obliged to respect general principles of international law.

The Iran Nuclear Deal (JCPOA):

JCPOA was a deal signed between Iran and seven western states known as P5+1 comprising of China, France, Russia, the United Kingdom, the United States of America and Germany. And when U.S. decided to withdraw from the agreement unilaterally in 2018, it created issues with how others, both remaining parties and third states should proceed in their actions. Some of the effects of the JCPOA and its collapse have affected other states that are not signatories to the deal, especially those in the Middle East. These states were not party to it but they have fallen to it geopolitical implications which show the exceptions of “pacta tertiis.”

SUGGESTIONS

Future discourse should focus on clarifying the balance between state sovereignty and global interests, especially in areas like human rights, environmental protection, and collective security. There is a need to refine treaty frameworks under the Vienna Convention to explicitly address the scope of third-state obligations. Greater reliance on customary international law and recognition of peremptory norms could strengthen enforcement, while mechanisms within the UN and regional organizations should be enhanced to ensure fairness when treaties impact non-parties. This would help create a more coherent and equitable system of international treaty law.

CONCLUSION

The analysis of the treaties and third state obligation under international law exposes the issues of applicable legal standards to non-party states. This is in line with the principle of “*pacta tertiis nec nocent nec prosunt*” which establish the independence of third states but there are situations where a third state maybe directly affected by a treaty and be bound by it or gain from it without their consent. The historical development of international law especially that after the second world war brought about an understanding of the role and position of the third party particularly in human rights together with collective security. Nevertheless, problems in legally defining and adjusting the concept of ‘fairness’ in treaty relations and in regulating non Party consequences of treaties are still observed in different case-studies and in the framework of the modern international legal system. This analysis vindicates the need to engage in further refinement of such international legal instruments that aim at striking the right balance between sovereignty of states and international interest as concerning treaty execution and non-execution of their treaty obligations, influence of third States in international legal processes.

Footnotes

1. Lord McNair, *The Law of Treaties*, (1961), p.309. ↩
2. dr. Zdzisł and w. Galicki, “International treaties and third states”. ↩
3. Publications of the Permanent Court of International Justice; Judgments, Orders and Advisory Opinions (1926), Series A. No.1, pp. 24-29. ↩
4. Id. ↩
5. P.C.I.J. Publications (1928), Series A. No. 17 pp. 43-46. Annual Digest 1927-28, Case No. 286, pp.416-417. ↩
6. Ibid. ↩
7. Charter of the United Nations. ↩
8. Article 35, The Vienna convention. ↩
9. Article 2, paragraph 6, of the United Nations Charter. ↩
10. Article 37, the United Nations Charter. ↩
11. Article. 38, The Vienna convention. ↩
12. Zdzisław W Galicki, ‘International Treaties and Third States’ (1977) 27 *Polish Yearbook of International Law* 55. ↩
13. Theodor Schweisfurth, ‘International Treaties and Third States’ (1988) 22 *German Yearbook of International Law* 23. ↩
14. Id. ↩

15. Id. ↪
16. Id. ↪
17. South West Africa Cases (Ethiopia v South Africa; Liberia v South Africa) (Second Phase) [1966] ICJ Rep 6. ↪
18. Id. ↪

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