Parahyangan Catholic University

Faculty of Social and Political Science

Department of International Relations

Accredited A

SK BAN-PT NO: 451/SK/BN-PT/Akred/S/XI/2014

The Use of International Court of Justice as an Instrument to Achieve National Interest in the Case of Georgia v. Russian Federation

Thesis

By

Antonius Reynaldo Giovanni

2014330088

Bandung

2018

Parahyangan Catholic University

Faculty of Social and Political Science

Department of International Relations

Accredited A

SK BAN-PT NO: 451/SK/BN-PT/Akred/S/XI/2014

The Use of International Court of Justice as an Instrument to Achieve National Interest in the Case of Georgia v. Russian Federation

Thesis

By

Antonius Reynaldo Giovanni

2014330088

Supervisor

Giandi Kartasasmita, M.A.

Bandung

2018

STATEMENT

I, the undersigned,

Name	: Antonius Reynaldo Giovanni
Student Number	: 2014330088
Department	: International Relations
Title	: The Use of International Court of Justice as an Instrument to Achieve National Interest in the Case of Georgia v. Russian Federation

Hereby assert that this thesis is a product of my own work, and it has not been previously proposed by any other party in order to obtain an academic degree. Any idea and information gained from other parties have been officially cited in accordance to the valid scientific writing method.

I declare this statement with full responsibility and I am willing to take any consequences given by the prevailing rules if this statement was found to be untrue.

Bandung, July 9, 2018

Antonius Reynaldo Giovanni

Faculty of Social and Political Sciences
Department of International Relations

Thesis Validation

Name : Antonius Reynaldo Giovanni
Student ID : 2014330088
Title : The Use of International Court of Justice as an Instrument to Achieve National Interest in The Case of Georgia V. Russian Federation

Has been examined in his Final Examination
In the pursuit of Bachelor Degree in Social and Political Sciences on
Friday, 13th July2018
Thereby declared **GRADUATED**

The Board of Examiner
Chairperson and Acting Member
Dr. I Nyoman Sudira, Drs., M. Si. :

Secretary
Giandi Kartasasmita, S.IP., M.A. :

Member of the Board Examiner
Yulius Purwadi Hermawan, Ph.D. :

Legalized by,
Dean of Faculty of Social and Political Sciences

Dr. Pius Sugeng Prasetyo, M.S

ABSTRACT

Name : Antonius Reynaldo Giovanni

Student Number : 2014330088

Title : The Use of International Court of Justice as an Instrument to Achieve National Interest in the Case of Georgia v. Russian Federation

---

On August 8, 2008, the Russian Federation and Georgia engaged in the open conflict known today as the Russo-Georgian War. Taking a look at the history of relations between the Russian Federation and Georgia, and also Abkhazia and South Ossetia, it is apparent that the Russian Federation was trying to achieve its national interests through the Russo-Georgian War to maximize its power. Right at the last day of the Russo-Georgian War Georgia submitted a contentious case against the Russian Federation to the International Court of Justice, and for the first time in the state's history, the Russian Federation complies. As the contentious case's proceeding goes on, it is shown that the Russian Federation was able to shut Georgia's case down and in the end making sure that its actions to achieve its national interests cannot be legally disturbed.

The aim of this research is to elaborate on Russian Federation's success in maximizing its power by complying to legal measures. The findings of this research show that the Russian Federation was successful because it was able to exploit the weakness in Georgia's case, that it lacks jurisdiction. This explains why for the first time in the state's history, it decided to comply and going to court, because it knew it would win. With the Court's ruling in its favor, the Russian Federation's quest for power is complete with its maximized power legally solidified.

Keywords: Russian Federation, Power, National Interest, International Court of Justice, CERD, Russo-Georgian War.

ABSTRAK

Nama : Antonius Reynaldo Giovanni

NPM : 2014330088

Judul : The Use of International Court of Justice as an Instrument to Achieve National Interest in the Case of Georgia v. Russian Federation

---

Pada tanggal 8 Agustus 2008, Federasi Rusia dan Georgia terlibat dalam konflik terbuka yang sekarang dikenal sebagai Perang Ruso-Georgia. Dengan melihat sejarah hubungan antara Federasi Rusia dan Georgia, dan juga Abkhazia dan Ossetia Selatan, nampak bahwa Federasi Rusia berusaha untuk memenuhi kepentingan nasionalnya melalui Perang Ruso-Georgia untuk memaksimalkan kekuatannya. Tepat di hari terakhir Perang Ruso-Georgia, Georgia mendaftarkan kasus hukum melawan Federasi Rusia ke Mahkamah Internasional, dan untuk pertama kalinya dalam sejarah, Federasi Rusia bersedia untuk pergi ke Mahkamah Interaional. Di tengah berjalannya proses hukum, terlihat bahwa Federasi Rusia dapat menghentikan kasus Georgia, dan pada akhirnya memastikan bahwa tindakanya untuk memenuhi kepentingan nasional tidak bisa diganggu gugat secara hukum..

Penelitian ini bertujuan untuk menguraikan keberhasilan Federasi Rusia dalam memaksimalkan kekuatannya dengan mematuhi prosedur hukum. Temuan penelitian ini menunjukkan Federasi Rusia berhasil memanfaatkan kelemahan di kasus Georgia, yaitu tidak adanya jurisdiksi. Ini menjelaskan kenapa untuk pertama kalinya dalam sejarah, Federasi Rusia setuju untuk masuk ke Mahkamah Internasional, karena Federasi Rusia tahu akan menang. Dengan putusan Mahkamah Internasional di pihak Federasi Rusia, pencarian kekuatan Federasi Rusia berakhir dengan kekuatannya yang termaksimalisasi disahkan oleh hukum.

Kata Kunci: Federasi Rusia, Kekuatan, Kepentingan Nasional, Mahkamah Internasional, *CERD*, Perang Ruso-Georgia.

PREFACE

After more than six months spent working on this thesis, it has finally come into complete fruition. The thesis titled “The Use of International Court of Justice as an Instrument to Achieve National Interest in the Case of Georgia v. Russian Federation” was proposed as the final requirement to obtain the Bachelor’s Degree in Political Science from Parahyangan Catholic University’s Faculty of Social and Political Sciences’ Department of International Relations.

The purpose of this thesis is to take a look at the case of Georgia v. Russian Federation in the International Court of Justice from the perspective of international relations, instead of international law. Another purpose is to contribute to the study of international relations in the international law area of the discipline. Therefore, the author hopes that this thesis can serve as a reference for further research on international law in international relations.

The author realizes that this thesis is not without its flaws, and the author hopes for continued guidance and constructive feedback and criticism.

ACKNOWLEDGEMENTS

To my nuclear family, **Mr. Anton Bambang Hadyono** and **Mrs. Ita Carolina Lionita** for being the best parents anyone could ask for, and for supporting me my whole entire life in every way imaginable. Thank you for everything you have ever done. **Olga Larissa Nathania** for being the sister I argue and have fun with. Thank you for all your insights on my life, for if you never introduced me to International Relations I would not have been the man I am today.

To my advisor, **Giandi Kartasasmita, M.A.**, for accepting my request to help me write this thesis in the first place, for all the insights you have given to my thesis, and especially for your lectures on International Law which brought me to write this specific thesis, for all the cooperation during my time as President of HMPSIHI. Thank you for all your guidance and efforts to make sure that I would succeed.

To my thesis examiners, **Dr. I Nyoman Sudira** and **Yulius Purwadi Hermawan, Ph.D.**, for examining my thesis, providing constructive criticism, and allowing me to make my thesis better. Thank you for all of your criticism.

To the Head of International Relations Department, **Sylvia Yazid, Ph.D.**, for all your support during my thesis defense, my quest to continue UNPAR for HNMUN, and during my time as President of HMPSIHI. It's a pleasure to have worked with you, thank you.

To my self-proclaimed bros, **Fairuz Rifqi Abdurahman, Sumantra Mararumi, Ichsan Hafiz Loeksmanto, Muhammad Nur Mahatmanta,** and **Muhammad Gugi Amouresna** for being the brothers I never had, for engaging in all kinds of philosophical conversations about anything and everything, making a three hour drive to see movies on the biggest screen possible, for engaging in all kinds of shenanigans any of us can come up with. Thank your for being the best.

To my ride or die peeps/swole crew, **Ahsya Putri Calissa, Kaulika Hatmadi, Nastya Purawinata, Almo Rizfi Ibrahim, Sumantra Mararumi,** and **Muhammad Gugi Amouresna** for being the go to people when any of us want to do anything, be it suki, or enjoying the outcome of a perfectly distilled and aged plants, you guys will always be there, thank you.

To my study group, **Ahsya Putri Calissa, Sumantra Mararumi, Muhammad Gugi Amouresna, Ichsan Hafiz Loeksmanto, Witsqa Afina Rachman,** and **Qurotta Ainun** for being the friends whose get together almost always involve a feast, thank you for all the feast and especially for the class notes I never took.

To my campaign team, **Aryo Bagas Syahardianto, Saraswati Kartika Malta, Ichsan Hafiz Loeksmanto, Farhan Adipratama, Nur Fitriani Aryaputri, Kenny Nathane, Tasya Enzela,** and **Defta Ananta** for being the best campaign team to have ever walked the earth, no nights were spent without plotting for success, we spent so many hours trying to deliver one of the best campaign at a university level the world has ever seen. Thank your for putting up with my shenanigans and for helping me to be the man I am today.

To the Lord of the Rings, **Adriana Anjani, Saraswati Kartika Malta, Sherly Mega Putri, Claudia Isabella, Andini Putri Rijanto,** and **Andri Watto Putra** for being the best at helping running the organization, and for being friends, not just colleagues. Thank you for all of your voluntary efforts and hard work in making sure that HMPSIHI functioned the way it should be in each of your specific fields.

To my Heads of Departments, **Annisa Laksmintari, Mardika Parama, Daniel Argo Triparmadi, Khalif Rabbani, Daniel Tantra, Zabrina Vicky, Dhanny Ramdhan Kresnaputra, Aryo Bagas Syahardianto,** and **Farhan Yunas** for being the best at what you guys do, for all the innovation and cooperation during our term, and all the energy and effort you guys have spent voluntarily running your departments, thank you.

To UNPAR for PNMHII XXVIII and PSNMHII XXIX **Isabella Revina, Ari Budi Santosa, Agatha Lydia Nathania, Catharina Dheani, Nathaya Anandipa, Stefanie Winarko, Ichsan Hafiz Loeksmanto, Ficky Ernas, Sharon Margriet, Jessica Andriani,** and **Bella Dominica** for the tiring nights spent at *ruhim* doing both everything and nothing and the tiring nights at both UBL and UNJANI, thank you.

To UNPAR for HNMUN 2018, **Aloysius Efraim Leonard, Fransiska Andita,** and **Valensia Prisilia** for sticking with me trough thick and thin, it was not a smooth journey, but we made it to the USA!

To **Nindyo Mara Setiawan, Valentinus Marchelle,** and **Satria Yuma** for being partners in all kinds of creative shenanigans phases I have come up with in my four years of university.

To the whole **International Relations' Class of 2014**, thank you for the wonderful four years.

To everyone in **HMPSIHI 16-17**, thank you for all your efforts and hard work.

To **UNPAR for JMUN 2015, 2016, 2017**, and **JOINMUN 2017** for being the delegation with the most grit on that conference floor no matter the result, thank you for three years of MUN.

To the **allies and friends from MUN**, so many I could not list, thank you for all your support in our quest for meaningless awards, lit social events, and heartbreaking closing ceremonies.

To **Kurt Cobain**, for igniting my deepest love for music, may you rest in peace, and to **Post Malone**, for keeping the love from burning out, rock on, brah.

To the entire **New York Yankees Organization,** the entire **San Francisco Giants Organization, CC Sabathia, Aaron Judge, Luis Severino, Johnny Cueto, Madison Bumgarner, Bryce Harper, Max Scherzer** and **Mike Trout** for reigniting my love for baseball.

To the entire **Green Bay Packers Organization** and especially **Aaron Rodgers** for being the GOAT, **Madden NFL 18** for igniting my love for the sport, **Tom Brady** for being old and about to die and NOT being the GOAT, don't @ me.

To **MLB the Show 18, Madden NFL 18, God of War, Far Cry 5, The Evil Within 2, Wolfenstein II, Fallout 4, .Hack//G.U. Vol.1-4, Metal Gear Solid V: The Phantom Pain, Heavy Rain, GTA V,** and **Life is Strange: Before the Storm** for being the most dope-ass games I have ever played while not working on this thesis.

To **CollegeHumor, Wisecrack, Game Theory, Film Theory, LifeAccordingToJimmy,** and **Key and Peele**, for providing me comedy, philosophy, and theories on YouTube to help me *#staywoke*

To **Bojack Horseman, Rick and Morty, Archer**, and **Family Guy** for being the best cartoons adults like me can enjoy.

To **every kind of committee I have been a part of**, thank you for the valuable lessons and experience.

Last but not least, to everyone who has supported me in every way imaginable that I could not have written here one by one, you are all the MVP.

TABLE OF CONTENTS

ABSTRACT i

ABSTRAK ii

PREFACE iii

ACKNOWLEDGEMENTS iv

TABLE OF CONTENTS viii

LIST OF ABBREVIATIONS xi

LIST OF CHARTS xii

LIST OF TABLES xii

CHAPTER I 1

INTRODUCTION 1

1.1 Background 1

1.2 Issue 4

1.2.1 Issue Description 4

1.2.2 Scope and Limitation 4

1.2.3 Research Question 5

1.3 Purpose and Practical Use of the Research 5

1.3.1 Purpose of the Research 5

1.3.2 Contribution of the Research 5

1.4 Literature Review 6

1.5 Theoretical Framework 15

1.6 Research Method and Data Collection Technique 20

1.6.1 Research Method 20

1.6.2 Data Collection Technique 21

1.7 Thesis Structure 21

CHAPTER II 23

THE RUSSIAN FEDERATION AND THE RUSSO-GEORGIAN WAR 23

2.1 The Russo-Georgian War 23

2.1.1 Russo-Georgian Relations Before the War 23

2.1.2 Abkhazia and South Ossetia 27

2.1.3 Timeline of the Russo-Georgian War 30

2.2 The Russian Federation's National Interest in the Russo-Georgian War 32

2.2.1 Defense 32

2.2.2 World Order 35

2.2.3 Ideological 37

CHAPTER III 40

THE RUSSIAN FEDERATION AND THE INTERNATIONAL COURT OF JUSTICE 40

3.1 Procedures of The International Court of Justice 40

3.1.1 Submitting A Case to The International Court of Justice 40

3.1.2 The Russian Federation and Compulsory Jurisdiction 42

3.2 Georgia v The Russian Federation 47

3.2.1 Georgia's Claim of Violations of Articles of CERD 47

3.2.2 Application of the International Convention on Elimination of All Forms of Racial Discrimination (Georgia v The Russian Federation 50

CHAPTER IV 56

INTERNATIONAL COURT OF JUSTICE AS AN INSTRUMENT TO ACHIEVE NATIONAL INTEREST 56

4.1 Making A Case in the International Court of Justice 56

4.1.1 Legality of Russo-Georgian War 56

4.1.2 Article 22 of Convention on Elimination of All Forms of Racial Discrimination 59

4.2 The Russian Federation's Maximized Elements of Power 61

4.2.1 Military Readiness 61

4.2.2 National Character 62

4.2.3 Quality of Diplomacy 64

4.3 The Use of International Court of Justice to Achieve National Interest 65

CHAPTER V.....69

CONCLUSION.....69

Bibliography.....72

LIST OF ABBREVIATIONS

CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CIS	Commonwealth of Independent States
ECJ	European Court of Justice
EU	European Union
ICJ	International Court of Justice
NATO	North Atlantic Treaty Organization
PCIJ	Permanent Court of International Justice
TcFSSR	Transcaucasian Federated Soviet Socialist Republic
UN	United Nations
UNSC	United Nations Security Council
USA	United States of America
USSR	Union of Soviet Socialist Republics

LIST OF CHARTS

Chart 3.1 Proceedings of Contentious Case……40

LIST OF TABLES

Table 3.1 Comparison of Compliance to Compulsory Jurisdiction Between USSR and The Russian Federation……45

CHAPTER I

INTRODUCTION

1.1 Background

In a world of anarchy, international law acts as the set of rules that the states follow. International law gives a sense of order in a world without no supreme authority to watch over all of the states present in it. International law has been present in the conduct of state practice for a long time, even before there were no states as we know it today. Arguably one of the most important international law in the conduct of state practice is the treaty of Westphalia in 1648.[1] The treaty of Westphalia created sovereign states as we know it, which are still present today. These sovereign states have engaged with one another creating history, and along with it, other international laws to govern themselves.

Up to the first world war, there has been some development that is crucial for international law, such as the principle of *pacta sunt servanda. Pacta sunt servanda* means that a treaty acts as law for its parties.[2] This principle is vital to international law, as states cannot be forced to be a part of any international law, and therefore, the treaties that the states voluntarily become a part of needs to be

[1] Malanczuk, Peter, *Introduction to International Law* 7th Ed (New York: Routledge, 1997), p. 9

[2] Ibid, p.18.

respected and treated as law. From this basic principle alone, international law has flourished in today's world, with the existence of various conventions, treaties, protocols, and other forms of international law that states have created to bind themselves and other fellow states to the same rules.

International law, and the effects of *pacta sunt servanda*, is that in its true nature, international law is not enforced through any kind of law enforcement, but rather, fellow states will usually take actions towards the violator, to show that violating the law is despised, but it is not in any way enforcing the law. International law does not have any kind of law enforcement, however, should there be any disputes that arise from matters of international law, states can obtain justice from the court of law through the international court. In the days of League of Nations, the international court was called the Permanent Court of International of Justice(PCIJ), and today, its successor, as one of the organs of United Nations, is called the International Court of Justice(ICJ).[3]

With states voluntarily bind themselves to international law, it does not guarantee world peace. As with laws on the domestic level, there exist loopholes in the international law which states allow to still give them room to breathe in their conduct of state practice. These loopholes then managed to be misused as legal leverage by states in conducting something that is not supported by the

[3] Gilmore, Grant, "The International Court of Justice" (1946). Faculty Scholarship Series. Paper 2674.

international law that they voluntarily be a part of.[4] States act based on their national interest and the things that states have to do to achieve them are not always embraced by others. Overlapping national interests between states can also arise and become a problem, where the interest of one state is something that another state does not want to happen. In the case of this overlapping interest, various outcomes can be achieved, including violent ones.

States resorting to violence as means to an end is something that does not happen that often, although the world has seen its own share of war in history, especially in the past century with World War I and World War II. During the Cold War, the United States of America and Russian Federation did not actually engage in any actual direct firefight, however, they engaged in various firefights all over the world indirectly through proxy wars. The Korean War and Vietnam War are two examples of numerous proxy wars during the Cold War.[5] This is an example of how the overlapping interest of two states made them resorted to violent means. Nevertheless, to finally achieve their interests, states need power, and while both states struggled for power during the Cold War, United States of America came out on top due to its power.

---

[4] Waldron, Jeremy, "The Rule of International Law", *Harvard Journal of Law and Public Policy,* Vol. 30, No. 1 (2006): 17

[5] Stefanie Becker, "Cold War in Asia: China's Involvement in the Korean and Vietnam War" (master's thesis, University of Kansas, 2015), p. 1.

1.2 Issue

1.2.1 Issue Description

Georgia filed an application into the ICJ after the end of both its and Russian Federation's military confrontation. Russian Federation then gave its consent to go forward with the case and trial proceedings took place, which ended in 2012 in favor of Russian Federation. Russian Federation has achieved its national interest from the events of the Russo-Georgian War alone, and should not need to give its consent to Georgia to go to ICJ, but it did anyway. This becomes an issue, because without going to court, Russian Federation has been able to achieve its national interest, and it did not have to give its consent because it is not mandatory to go to court if charges are brought against a state, which led to this author to believe that the whole process of going to court was important for Russian Federation. The issue at hand is Russian Federation's willingness to go to court to achieve its national interest, and that is what this research will be covering.

1.2.2 Scope and Limitation

The timeframe of this research will be focused on the year 2007-2011. The year 2007 is picked as the starting point in order to pt in events leading up to the Russo-Georgian War and the case submission into ICJ. 2011 is picked as the end point because 2011 is the year that the final judgment on the case was delivered by the ICJ, ruling the case to be over legally by the delivery of the judgment. By

focusing on the timeframe of 2007-2011, we can have a better understanding of the Russo-Georgian War and how Russian Federation approached the war, to get a better understanding on its course of action after the war. Also, we will be able to see if during the trial, since no provisional measures were adopted, Russian Federation's activity in Georgia was still carried out.

1.2.3 Research Question

This research aims to answer the question, “How did Russian Federation achieve its national interest by complying to the legal process of ICJ in Application of the International Convention on Elimination of All Forms of Racial Discrimination?”

1.3 Purpose and Practical Use of the Research

1.3.1 Purpose of the Research

The purpose of this research is to explain the Russian Federation’s use legal loopholes as means for political maneuvering to achieve its national interests in the case of Georgia v. Russian Federation on the Violation of Convention on Elimination of all forms of Racial Discrimination(CERD)

1.3.2 Contribution of the Research

The practical use of this research includes, but not limited to; contributing to the study of international relations in general, and contributing to the studies of

international politics and international law specifically, and being a reference for further research within the respective fields of study.

1.4 Literature Review

There is four literature that the author is going to review, the first one is "Is there room for international law in realpolitik?: accounting for the US ‘attitude' towards international law." from Review of International Studies, Vol. 30, (2004) by Shirley V. Scott, the second one is "Explaining the Strategic Behavior of States: International Law as System Structure" from International Studies Quarterly, Vol. 38, No. 4 (Dec., 1994) by Stephen A. Kocs, the third one is "Application of the International Convention on the Elimination of All Forms of Racial Discrimination" from The American Journal of International Law, Vol. 103, No. 2 (2009) by Cindy Galway Buys, and the fourth and final one is "Universal Exceptionalism in International Law" from Harvard Journal of International Law Vol. 52, No. 1 (2011) by Anu Bradford and Eric A. Posner.

In the first article, Shirley V. Scott, explains the United States of America(USA)’s attitude towards international law through the perspective of Hans J. Morgenthau. The author argues that USA’s attitude towards international law may be different from one presidency to another, however, it is not something that is new, as the author argues that it can be traced back to Woodrow Wilson’s presidency. The attitude towards international law is also something that is rooted in USA’s foreign policy, making it one of the central issues in its

foreign policy. Through the perspective of Hans J. Morgenthau, the author argues that international law is a necessary component in achieving power which could then be exercised through its foreign policy in the political condition that is a struggle for power.[6]

Generally, the realist view of international law is that a state wants other states to comply with international law, while it will comply only when it wants to. Through this perspective, the author argues that the USA has been trying to maximize its power via international law. It does so by influencing the creation of substantive parts of international law, making sure it knows how other states will act accordingly, to then prepare the measures necessary to maximize its power with the help of said international law. It is shown that sometimes the international law that was influenced, was not even signed by the USA, so it serves only as mere components in maximizing its power.[7]

The author concludes that USA uses international law to maximize its power and to play the "two faces" with one being the upholder and initiator of international law, while on the other, acting unilaterally on issues where international law does not benefit the USA in any way.[8]

In the second article, Stephen A. Kocs argues that international law also has a role in the perspective of neorealism, although writings on neorealism seldom

[6] Scott, Shirley V., "Is there room for international law in realpolitik?: accounting for the US 'attitude' towards international law." *Review of International Studies*, Vol. 30 (2004), p. 71-88

[7] Ibid.

[8] Ibid.

mention international law. In the neorealist view of the anarchic international system, international law is seen as something that is a product of anarchy. The example that the author uses is a bilateral agreement between two states, where both states are sovereign units and that there is no higher entity forcing them to make a bilateral agreement. Based on this example, both states also recognize that the other state is also sovereign, which means that the other state also has the same properties as itself. This is also embodied in the principle of international law that is *pacta sunt servanda,* which is the only reason that international law has power over states.[9]

The author argues that there is an alternative to the neorealist view, and the alternative is a law-based systemic approach of international politics. The author then proceeded to use this approach, on neorealist concepts in situations involving international law. When a state declares a war, neorealists view it as a result of anarchy, that states can exercise their power over other states because in an anarchic international system there is no higher unit that can restrict them from doing so. The law-based approach sees this through the approach of international law, although it is true that there is no higher unit that can restrict states, there is the UN Charter that does not allow the use of force against another state. The law-based approach states that a state cannot declare war on another state for the sake of pure power politics, which would usually be the case in neorealist view, that war is initiated by the driving force of power politics. While power politics

[9] Kocs, Stephen A., "Explaining the Strategic Behavior of States: International Law as System Structure", *International Studies Quarterly*, Vol. 38, No. 4 (Dec. 1994), pp.535-556

may be the cause of war according to neorealist, the law-based approach offers two explanations for the cause of a war, the first one is that a renegade state has risen; the second one is that the dispute between the warring states cannot be settled using the means made available to them by international law.[10]

In conclusion, this article serves both as a critic, and also as a support for neorealism, where it supports the premises of neorealism and try to enhance it with a law-based approach, and also pointing out the logical jump made by neorealism during its conception.

In the third article, the author elaborates more on the Articles charged against Russian Federation and how previous cases based on CERD have failed to establish jurisdiction from the perspective of the discipline of international law. The author argues that the legality of the aggression by Russian Federation and the use of force by both parties need to be questioned in order to examine the dispute better, which may yield different results and whether there were violations of humanitarian law, although it does not mean that human rights law such as CERD is automatically ruled out. The author also argues that Georgia's case is the first case based on CERD that was able to establish jurisdiction, previous cases based on CERD such as Democratic Republic of Congo v Rwanda was not able to establish jurisdiction. This is mostly caused by reservations made

[10] Ibid.

towards Article 22 of CERD, which is necessary to establish jurisdiction based on CERD.[11]

First, the author dissects Article 1 of CERD, explaining that the drafters meant for CERD to cover all types of racial discrimination when they wrote Article 1 and CERD as a whole, providing merits for Georgia's case. Then the author moved on to Articles 3 and 6, providing arguments that by looking at what the Articles say, CERD does not apply in an extraterritorial sense, however, it could be applicable due to Russian Federation's participation in the peacekeeping activities in South Ossetia. The author then continued to Article 5, where she states that the Article is written in a way which does not provide limiting languages towards the merits of Georgia's case.[12]

In conclusion, this article goes deep into the legal aspects of each Article, analyzing the Articles themselves through the discipline of international law. Diving deep into the articles, exposing the legal inner workings of them and how they play out in this case.

In the fourth article, the authors go into exceptionalism in international law, and how states with great power are exceptionalists, with the examples of European countries, China and the United States. The authors start with European exceptionalism, the authors take the 2001 United Nations Security Council Sanctions Committee decision for example. The committee, through a security

[11] Buys, Cindy Galway, "Application of the International Convention on the Elimination of All Forms of Racial Discrimination", *The American Journal of International Law*, Vol. 103, No. 2 (2009), p. 294-299

[12] Ibid.

council resolution, declared that all states have a legal obligation to freeze assets of those whose name has been put in the committee's list, and in this case, it is a man named Kadi, who is on the list for being an accomplice of Taliban and Al-Qaeda. Members of the European Union(EU) follow through with their obligations as UN members at first, but after Kadi brought the case to European Court of Justice(ECJ), ECJ ruled out that because Kadi did not have the opportunity to challenge the committee's decision to put his name on the list, moreover, ECJ said that the committee's decision to put Kadi's name on the list does not bind EU members, and therefore, ECJ's judgment had members of the EU to not freeze Kadi's assets, and the ruling was accepted by the members. This is what the authors are trying to point out as European Exceptionalism, showing that European countries and especially members of the EU display exceptionalism towards international law in lieu of their own laws.[13]

For China, exceptionalism in international law is shown through the principle of sovereignty that China upholds. China believes that because of the principle of sovereignty, every state has the right to exercise their own jurisdiction within their own territory without interference from other states, including international law. For China, this means that human rights law will not triumph over sovereignty, moreover, as a non-Western state, China believes that the concept of human rights brought by Western states I incompatible with China. The outcomes of China upholding this principle is expressed towards the world in some of its

[13] Bradford, Anu, and Eric A. Posner, "Universal Exceptionalism in International Law" *Harvard Journal of International Law* Vol. 52, No. 1 (2011), p. 14-25

policies regarding international law. The authors put up an example of this wherein 2007, China used its veto in the Security Council to block a resolution regarding human rights violation in Myanmar. China vetoed the resolution because it believed that the requirements for Security Council to intervene in the case were not met, and therefore, the Security Council should not intervene. Under the same premise, China also vetoed the Security Council resolution to intervene in Kosovo, because China believed that what happened in Kosovo was an internal state affair. Another example is shown through China's absence in the signatories of the Roe Statute. China did not become a party to the Rome Statute because it feels that the complementary principle of the Rome Statute compromises a state's jurisdictional sovereignty.[14]

Lastly, the authors explained American exceptionalism in international law which mostly revolves around human rights and the use of force. USA is known for its commitments in international human rights law, it ratified ICCPR, Torture and Genocide Convention, and other similar treaties which prevent the government from abusing its citizens. Other than international law, its commitment towards human rights is also portrayed in its constitution, which was conceived before the previously mentioned laws. However, USA has also shown exceptionalism towards international law in this area, for example, the USA made a trade deal with China in Clinton's administration under the condition that China has to improve its human rights protection. Along the way, USA withdrew the condition for the deal to stay afloat and no longer forcing China to improve its

[14] Ibid. p. 25-27

human rights protection. On the military side, USA is no stranger to exceptionalism, for example, the bombing of Kosovo with its NATO allies is not clear-cut legal, although arguments in favor of the bombing being legal can be made. The same thing goes for the attack on Iraq in 2003, USA went to the Security Council for approval but was not granted, then it went to great lengths to justify its operation, while on previous operations such as the operation in Afghanistan, USA went to the Security Council for approval and was granted.[15]

In conclusion, although each state has a different approach to being exceptionalist towards international law, the main critique should not be addressed toward exceptionalism, because in the end, the critique will be a critique towards power. This is the result of exceptionalism being the way that states project their value and interests towards international law because that is what great power states do.

What this research is covering, is different from the four literature that has been reviewed. The first literature explains how states, in this case, the USA, chooses to influence the creation of various international laws in order to maximize its power and then backing out of the international law. What this research will cover, is how Russian Federation still uses international law to maximize its power, but not by influencing the creation of international law, but by using the provided legal measures to achieve an outcome that will result in its benefit. Another thing that this research will cover, is explaining why would

[15] Ibid. p. 35-39

Russian Federation voluntarily comply to international law, where it has chosen to comply only when it wants to by not recognizing the compulsory jurisdiction, which is something that the first literature could not explain.

In the second literature, the author pointed out that war cannot be initiated based on power politics alone. However, the Russo-Georgian War is the event that led up to the submission of the Georgia v. Russia case, and in the understanding that Russian Federation used international law to maximize its power through this case, a war was initiated in the sake of power politics. Moreover, this research also aims to explain that neither causes provided by the law-based approach were the cause of the Russo-Georgian War.

In the third literature, the author elaborated on the Articles charged against Russian Federation, and the legal merits they bring. The article was written in the discipline of law and did not cover the case from the perspective of international relations, which is what this research aims to do. This research will be covering the aspects and merits of the case that this article did not include, an international relations perspective and a more complete understanding of the case since the case was still in progress when the third article was published.

In the fourth article, the authors argue that great powers are exceptionalists towards international law and have gone to great lengths to justify their actions in their own different ways. This research will argue that Russian Federation as one of the great powers of the world is not an exceptionalist in regards to international law through its actions and the findings that this research will further elaborate in

the upcoming chapters. This research proposes an alternative view on the relations between great powers and international law, showing that rather than being exceptionalist towards international law, great powers can uphold and obey international law and still achieve their interests

1.5 Theoretical Framework

In order to analyze and achieve the understanding of the issue, this research will be using political realism as the theory, and concepts of power, national interest, and struggle for power, derived from the theory to help analyze the issue at hand. Concepts and theories are used to achieve results that hope to be as close to the truth to answer the research question that the author proposed. Aside from the concepts derived from the theory, the author will also use the concept of indeterminacy of international law.

Hans J. Morgenthau in his book, *Politics Among Nations*, argues that states are always in the condition of a struggle for power, where every state is in a constant effort to maximize their power to achieve their national interest. The concept of power is defined by Morgenthau as, "man's control of the minds and actions of other men". In the international world, states are trying to be able to control other states' actions so that they will be in line with that state's effort to achieve its national interest. Morgenthau defines national interest simply as power, that is why the world is in a constant state of struggle for power according to Morgenthau, because every state is constantly making effort to maximize their

power, and blocking another's way in achieving their national interest, that is inherently power.[16] Power is divided into eight elements; geography, natural resource, industrial capacity, military preparedness, population, national character, national morale, and quality of diplomacy.[17] This research will only focus on three out of eight elements of power, which are; military preparedness, national character, and quality of diplomacy. Those three elements are more relevant to this research than the others.

Military preparedness is the second factor that this research will focus on. National power of a state depends quite heavily on its military because a state needs a military that is able to support its foreign policy. The military's contribution to state power is relative, in the sense that the military does not need too many personnel if it can still support the state's foreign policy successfully, on the other hand, a military with lots of personnel, it cannot perform properly, would still render a state weak in this element. The important thing about military preparedness is not just about the size of the personnel, but also the technology, coordination, and other various aspects that support the military in its actions. Factors such as technology could improve a state's power in terms of military, by filling in spaces that it's lacking on. Coordination can also improve a state's military as uncoordinated branches of the military could result in a strategical failure that required coordination from the branches of the military that are

---

[16] Morgenthau, Hans J., *Politics Among Nations: The Struggle for Power and Peace* 5th edn (New York:Alfred A. Knopf, 1973), p. 13-15

[17] Ibid., p. 80

involved. In order for military preparedness to contribute a lot to a state's national power, the most important thing is that the military can support the state's foreign policies successfully when necessary, and the success relies on so many aspects that are relative.

National character is the third factor that this research will focus on. National character is qualities that show up within a state that are highly valued by said state, which sets them apart from other states. Its contribution to the national power is that it influences policies and policymakers, so the influence of national character to national power does not fade away in time. That is because, as politicians come and go, they possess the same national character as those who came before them, influencing them and the policies they make. Another way that national character influences national power is that the measures state can take to struggle for power in the international scene are tied to their national character. This influences the national power in a way that there are some measures that a state can take that are contrary to their national character, thus denying them from the outcome of said measures.

Quality of diplomacy is the fifth and final element this research will focus on. The previous elements that have been further explained, create and influence the national power in their own way, the quality of diplomacy does not exactly influence the national power in the same way. Specifically, this element represents how well a state combines previous elements and manifesting them accordingly to become actual power. If the conduct of diplomacy for a state is

flawed, then the other elements, no matter how strong they are, will not effectively be displayed as the full power of said state. This makes quality of diplomacy a rather important element, as all the elements that make up national power, needs to be well represented to other states, where a state is trying to exercise control over. Quality of diplomacy can also make states appear stronger than it actually is, making good use of whatever elements a state has at its disposal.[18]

Morgenthau also expresses that states use international law to promote their national interest, and at the same time evading legal obligations that might be harmful to them. The role of international law in the realist view of Morgenthau is something that limits power because international law put states under obligations that they will have to follow through, although they can only be bound by the treaties that they voluntarily agree upon. Seeing international law as a limitation of power does not necessarily mean that Morgenthau excludes international law as something that can be used to maximize state's power. As Morgenthau further argues his points that international law will only be a limitation of power, only if it is duly codified and extended to manage the political relations of states.[19] Morgenthau's argument is also supported by Jeremy Waldron, who stated that a state should only respect what the treaties say, and everything that is not stated within the treaty should be at the liberty of the state because there is no need to stretch or extend the treaty to what is not written

[18] Ibid., p. 80-108

[19] Ibid., p. 212-214

there.[20] Both arguments agree that international law will only be a limitation if it is stretched and/or extended into something that is not inherently what it meant to be.

Another concept that will be used in the research is the concept of indeterminacy of international law. Indeterminacy of international law is a concept in which supportive legal reason can be created for both for both sides of the argument. It is possible for two states in a dispute to prove that what they are doing is legal, while also presenting arguments that what the other state is doing is illegal. Both conclusions are made possible through a great understanding of international law, using loopholes and working a way around the principles that may not be in their favor to arrive at a logical conclusion which proves the legality of a state's action. It is highly important for states to understand the indeterminacy of international law because this concept plays a large role in world politics with the ability to create legally supporting arguments for both sides of the argument.[21]

This theoretical framework works based on the relations between political realism and national interest, and also the relation between political realism and international institution. John Mearsheimer argues that political realism has three core beliefs, one, is that political realism put states as the principal actor in world politics; two, is that the behavior of states is influenced only by its external

[20] Op. Cit., "The Rule of International Law", p. 20

[21] Byers, Michael, *Custom, Power, and the Power of Rules: International Relations and Customary International Law* (Cambridge:Cambridge University Press, 1999), p.37

environment; and three, is that state's thinking is dominated by power and creates competition for power among themselves.[22] Based on the core beliefs and Morgenthau's definition of national interest, the relation of political realism and national interest is established by putting power as the driving force for states. International institutions are sets of rules negotiated by states for them to cooperate and compete, and are imposed by states upon themselves because it is in their interests to do so.[23] By nature, international law is an international institution, and international law is only seen as binding and enforceable when it matches the interests of the state.[24] As for the relation between political realism and international institution, based on the belief that state is the principal actor in world politics, international institution is not accounted for as an actor, but, international institution serves as a tool that has an advantage of legitimacy.[25]

1.6 Research Method and Data Collection Technique

1.6.1 Research Method

This research will be conducted using the qualitative method. The author acts as a key instrument by gathering and examining the data collected throughout this

---

[22] John Mearsheimer, *The Tragedy of Great Power Politics*, New York:W. W. Norton & Company, Inc. (2001), p. 10

[23] Ibid., p. 9

[24] Christian Reus-Smith, 'The Politics of International Law', In *The Politics of International Law,* edited by Christian Reus-Smith, Cambridge:Cambridge University Press (2004), p. 14-44

[25] Nicholas J. Wheeler, 'The Kosovo Bombing Campaign', In *The Politics of International Law,* edited by C.Reus-Smit, Cambridge:Cambridge University Press (2004), p. 189-216

research and applying theories to said date to come to a conclusion. Through combining context and theories, a better, more detailed understanding of the issue will be achieved.[26]

1.6.2 Data Collection Technique

The author collects primarily secondary data for this research. The secondary data will be obtained through literature such as books and academic journals, official reports, official documents, and digital or physical form of news obtained from trustworthy news outlet in the field of academics.[27]

1.7 Thesis Structure

In its entirety, the structure of the thesis will consist of five chapters, to support a better explanation of each variable.

Chapter I will consist of the introduction, covering the issue itself, and also the fundamentals of the research including theoretical framework, purpose and practical use of the research, research method, and data collection technique.

Chapter II will cover the Russo-Georgian War and Russian Federation's national interest in the international stage.

---

[26] Creswell, John W., *Qualitative Research and Inquiry: Choosing Among Five Approaches* 2nd edn, (CA: Sage, 2007), p. 37-39

[27] Hox, J.J. & Boeije, H.R., "Data collection, primary versus secondary.", *Encyclopedia of Social Measurement,* (CA: Academic Press, 2005), p. 596-597

Chapter III will further elaborate the ICJ. Explaining the legal process of the court and the legal obligations that entail.

Chapter IV will answer the research question proposed for this thesis that is "How did Russian Federation achieve its national interest by complying to the legal process of ICJ in Application of the International Convention on Elimination of All Forms of Racial Discrimination?"

Chapter V will conclude all the findings of the research about the fulfillment of Russian Federation's national interest by complying to the legal process of ICJ.