

South Africa and International Law: South Africa's Multilateral Response to the Russia-Ukraine War

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Abstract

This study aims to review South Africa's multilateral response to the Russia-Ukraine war concerning the discourse of international law and South Africa's national interests. The response was met with significant backlash. However, it elucidates several imperatives, notably, the power politics of international law, South Africa's advocacy of multilateralism, and its obligation to the BRICS bloc. This research adopts a qualitative research approach and uses the theory of Realism. Recent 2023 developments in South Africa concerning International law and the Russia-Ukraine war have sparked huge debates across international relations and academia. Topics of war crime, alliance, BRICS summit, and international law have continued dominating the mist surrounding these events and their impact. Arguably, in international relations, post-economic crisis tends to compel states to adopt a realist attitude towards their foreign policy to see through their national interests. However, due to the geopolitical and global economic crisis, protectionism in the international space has become contemporaneous, where every country enforces Realism in their foreign policy using their sovereign capacity and influence in the international space. However, such creates a beggar-thy-neighbour effect on their counterparts. South Africa finds itself being affected by these foreign protectionist policies. When the International Criminal Court (ICC) issued a warrant of arrest to South Africa against the President of Russia, this was followed by debates on notions of law and litigation; however, at the center of these debates is the South African dilemma between international law and economic cooperation with the BRICS bloc. The arguments following the dilemma have alluded to South Africa hosting a successful BRICS summit, and the execution of the warrant as South Africa remains a signatory of the Rome statute. In assessing the justification of this warrant was the relevance of international law to South Africa.

Keywords: International law, South Africa, Realism, Multilateralism, and ICC

Introduction

This research aims to thematically review South Africa's multilateral and balanced approach to simultaneously achieving its international obligation through international law and protecting its national interests. The study uses the Russia-Ukraine war to demonstrate how states will always be propelled to see through their national interest at all times. South Africa seeks a way out of this multifaceted problem while maintaining good relations with its trade partners and allies. The country is challenged to review its national interests and foreign policy against the principle of international law. To assess whether the signatory to institutions or courts of international law makes the country more resilient or more susceptible to future geopolitics as South Africa is building its operational resilience after the geopolitical risks caused by the Russia-Ukraine war.

The Russia-Ukraine war is exhibiting far-reaching effects on the global community. Through this war, developed and emerging states find themselves scrambling for means to circumvent the geopolitical

impact of the war and its blanket effect globally. The war continues to exhibit contemporaneous effects of a realist foreign policy, which has now compelled many other states like South Africa to function similarly within the political international system. The synchronized impact of the war pertains to the compromised position South Africa finds itself in, resulting in the reconfiguration of its foreign policy. This means that, as powerful countries continue to employ a realistic approach to their foreign policy, such as Russia and the United States, one instigated the war against Ukraine, the United States continues to use numerous instruments and their position to coerce smaller states through sanctions and the element of international law.

Consequently, the approach by the superpower exacerbates geopolitics and infringes on states already affected by the Russia-Ukraine war. The power struggles emanated from the latter power struggle in a hostile environment. South Africa finds itself through the cracks as more powerful countries fulfill their interests. These can be attributed to the mode of survival of many superpowers. The USA's recent uproar towards South Africa signals this realism mode of survival in the international community. This embroiled South Africa in several dilemmas and probed its global alliance, trade partnerships, foreign policy, BRICS membership, and obligation to the principle of international law through the ICC.

Literature Review

International law is divided into two main categories: conflict of laws or private international laws, which focuses on cases within specific legal systems analyzing the application of foreign law, and public international law, generally termed international law, which focuses on state relations from every angle "from war to satellites" and is responsible for regulating international institutions' engagements or work (Shaw, 2008:1-2). The Writing Center (2019:2) states that public international law or international law can be defined as "the body of rules and principles of action which are binding upon civilized states in their relations with one another." Slomanson (2011:2) states that "international law plays a critical role in fostering stability and order in international relations and in providing a framework for cooperation among States in addressing common challenges, thus contributing to the maintenance of international peace and security." According to Shaw (2008:3-4), international law has no legislature, meaning it operates without standard rules, laws, or regulations, and "There is no unified system of sanctions in international law in the sense that there is in municipal law, but there are circumstances in which the use of force is regarded as justified and legal." However, international law is made up of four primary sources: international conventions or treaties, customary international law, general principles of law, and judicial decisions and qualified publicists (The Writing Center, 2019:3). Additionally, international law is established by international agreements developing rules that bind signatories, and customary law. States operate independently, signing treaties and participating in actions that may or may not be viewed as legally binding. Therefore, international law comprises a set of rules "from which States pick and choose" (Shaw, 2008:5).

Law generally reflects its society, primarily focusing on its environment's conditions, cultural traditions, and social, economic, or political values. Therefore, international law is also framed, reflecting the environment in which it operates. The central reflection is the "basic state-oriented character of world politics" (Shaw, 2008:43). Similarly, Slomanson (2011:3) states that law is an expression of the political system of a particular society. Therefore, national law expresses a national political system in a national culture. Thus, international law represents a specific culture and its political system. International law is responsible for governing independent States relations and is made up of a set of rules which, at certain times, are incorporated into their co-dependent relations (Slomanson, 2011:4). Historically, international law only governed the relations of States; however,

now it has extended to govern non-state actors such individuals, international organizations, and corporations (Slomanson, 2011:8). This was also highlighted by Shaw (2008:43) that international law has expanded to include individuals, groups and private or public international organizations.

According to the Writing Center (2019:4), there is a connection between international law and national law, which is understood using two main approaches. The first is the monist approach, whereby international law cannot be separated from national law. It bridges into it automatically, and dualism, whereby the states ensure that international law is separated from its national law. Slomanson (2011:17) pointed out the same perspective that there is an interaction between the application of international law and national law, which can be clarified using two perspectives: the monist perspective, whereby international law is automatically inherited by national law, and the rejection of its principles is unacceptable, and dualism which rejects the views of monist and believes that international law and national should be applied as two different legal systems. In the South African context, Tladi (2016:310-312) highlights the following using the Al Bashir saga: The South African Constitution is highly regarded as the most internationally law-friendly constitution in the world. The duty of S.A. to arrest Al Bashir under international and South African law has been questioned. Conclusions are drawn "highlight the importance of a proper approach to the interpretation and identification of International law by South African Courts."

The foreign policy priorities and objectives of South Africa, according to the Department of International Relations and Cooperations (DIRCO), are centralized around the human rights perspectives. This principle is derived from the constitution of South Africa. The maxim prominently speaks to redress from the past injustices of the apartheid regime (DIRCO, 2024). Regarding wars and conflict, the country's foreign policy notes that South Africa strives to enhance international peace and security, support sustainable development and adherence to and strengthen international law, and promote democracy. South Africa's foreign policy further advocates for a multilateral approach toward resolving global challenges and supports the call for the United Nations reform, including the UN Security Council (DIRCO, 2024).

South Africa's response to the Russia-Ukraine war raised much criticism and a divide among analysts. Orderson (2024) argues that foreign policy practice is complex, and the Russia-Ukraine war revealed how states tend to apply a zigzag approach towards the matter of international relations since the facultative and complex nature of international relations at times makes it challenging for states to be consistent. Orderson (2024) states that "South Africa has no principled approach towards these global conflicts," wrote Greg Mills and Ray Hartley, analysts at Johannesburg-based think-tank the Brenthurst Foundation, in a recent op-ed in the local paper the Daily Maverick. "It professes to want to mediate, but it picks and chooses when and which of its principles apply. It is a matter of time before another indiscretion undermines the spin doctoring." (Orderson, 2024). Contrary to this view, Zwelethu Jolobe, an associate professor of politics at the University of Cape Town, agrees with the seemingly two-policy approach, saying the country is "trying to promote an alternative world order" due to its enduring belief in a "multipolar society." "South Africa knows the world is a complex place ... and for us to have world peace, multilateral diplomacy is the best way to have international relations, which is at the core of its foreign policy doctrine"(Orderson, 2024). The two contrasting views on this matter flag the complex practice of aligning a country's foreign policy and its international obligation since international law and power politics are intricate to the practice and can be challenging for states to fathom.

Theoretical Literature

The theoretical framework guides the research by providing a theory that strengthens the writer's ideas regarding how they understand and plan to research their topic (Grant and Osanloo, 2014:13).

The theory is significant as it clarifies the importance of the study. Therefore, the realism theory informs this study. Realism is a school of thought that clarifies international relations concerning power (Falode, 2009:2). In addition, Realism is a school of thought that highlights the competitive and conflictual side of international relations (Antunes and Camisão, 2018:1). "The exercise of power by States towards each other is sometimes called 'realpolitik' or 'power politics'" (Falode, 2009:3). About the study, the current competition between the U.S., China, and Russia to gain more influence and power on the global system is a practical illustration of power politics. In this case, SA is caught between its international obligation to abide by international law as "instructed" by the US through the ICC to arrest President Putin or protecting its national interests by ensuring that its response to the Russia-Ukraine war does not impact its interests. Therefore, SA is a pawn in the game of power politics, whereby the U.S. and China are currently the two most powerful nations in the world, and they want to enhance their power and influence further, especially in Africa.

Realism suggests that the global system is anarchical as the States conduct relations without any global government. Therefore, to understand international relations, it is essential to focus on the power distribution among states (Falode, 2009:3). The global system has no government; therefore, states are anarchy. Thus, each State performs and makes decisions that will Favor its interests and enhance its power. SA's response to choosing a multilateral and balanced approach to the Russia-Ukraine war was calculative as it did not give in to the arrest warrant and chose a neutral stance, clearly illustrating its protection for its national interests and using its foreign policy to avoid neglecting international law. Whereas, all along, the U.S. is playing global government by instructing S.A. through the ICC to arrest President Putin; this is all for its interests and power masked as its obligation and respect for international law.

In addition, power is a significant concept realists use to explain international relations, and the uneven distribution of power in international relations clearly illustrates power politics. According to Falode (2009:3), "realists believe that power determines which country prevails; they hold that politics is aimed at increasing power, keeping power, or demonstrating power." Realists believe that power is significant over morality as "politics is directed towards keeping, increasing and demonstrating power" (Antunes and Camisão, 2018:2). The belief is that policies that place morality or are based on idealism lead to weakness and domination of a State by a competitor. The current decision taken by ICC under international law influenced by the U.S. shows that politics is directed at keeping, increasing, and demonstrating power. The U.S. seeks to keep, improve, and demonstrate its power, especially towards its competitors, China and Russia, neglecting its moral obligation to respect and promote international law. It seeks to prove its influence and control over the ICC through international law. Therefore, the US used SA to fulfill its indirect pursuit of keeping, increasing, and demonstrating power. This case was the demonstration of its power. Unfortunately, SA's international obligation to abide by international law was tested. Therefore, SA's choice of a balanced and multilateral approach to protect its national interests was seen as threatening the US' pursuit of power. According to Antunes and Camisão (2018:1), there are four assumptions surrounding the realism theory; these are as follows:

- The nation-state is the leading actor in international relations, meaning other actors are available, such as organizations and individuals; however, their power is limited.
- The State is a unitary actor; regardless of internal and domestic politics, it will focus on maximizing its national interests using one voice.
- Decision-makers are rational thinkers; therefore, they make decisions and manage relations in a manner that enables them to survive in a competitive environment.

- States are anarchical; therefore, no one is in charge globally. The States rely on themselves. There is no legislature indicating how States are expected to conduct themselves. Hence, SA's decision to respond to the Russia-Ukraine war in a balanced and multilateral approach was independent and based on its foreign policy and national interests.

Falode (2009:10) states that most realists are linked to political philosopher Thomas Hobbes (1588-1679), who believed that there is no order in the absence of a government, individuals pursue their self-interests and that humans by nature have the desire to dominate and be more potent than others. Realism believes that foreign policy is established through reasonable calculation about the State's interests (Scott, 1994:12). Politics is a power struggle; therefore, it is wise for States to frame their foreign policy around the 'Darwinian country-eat-country world' whereby power is significant for national survival (Falode, 2009:24). Antunes and Camis o (2018:1) posit that leaders main concern is to ensure national security, therefore, to achieve this, the leader needs to be able to handle both external and internal threats by being a lion and fox. These are significant for conducting foreign policy, as the lion signifies power, and the fox signifies deception. The U.S. identifies China and Russia as more tremendous threats to their power and national security; therefore, it pursues its national interest to dominate the global system. Hence, the US acted as a fox and lion, trying to use its power to manipulate SA's response to the Russia-Ukraine war. Acting as a fox trying to promote international law, but all along, it was a lion in pursuit of power. However, as the realist believes that foreign policy is established through calculation about the state's interests, this was proven true through SA's use of its foreign policy to formulate its calculative response to the Russia-Ukraine war.

Scott (1994:1) states, "Realism dismisses international law as being virtually irrelevant to matters of high politics." Realism links international law to power, suggesting that it is an instrument used by the most powerful State (Scott, 1994:2). Realism believes that international law is insignificant and fails to understand why States obey it. International law is an instrument powerful States use to dominate and gain greater power. It is also a conceptual disguise for the State's political policy whose interests were shaped by the control of the status quo (Scott, 1994:7). Therefore, as suggested by Realism, international law is an instrument used by the most powerful State in this case the U.S. to dominate, gain more power and pursue its interests. International law is the main factor of comparable power positions in international politics. Realism believes that States obey international law when it aligns with their power interests. The relationship between international law and power precisely clarifies State behavior. Therefore, as Scott (1994:12) stated, "Power is not a consideration distinct from international law. It appears that the idea of international law is an important form of power in international politics". The U.S. is not promoting the application of international law for the interests of the global system; however, it seeks to eliminate Russia from the power competition by destroying its relationship with S.A. The U.S. promotes the arrest of Putin by the S.A. regardless of the critical consequences that the S.A. will face in the future. Eliminating Russia means it will only compete with China, decreasing its pressure. Therefore, international law, in this case, Favors U.S. interests, proving, as stated by realists, that it is an instrument used by the most potent State to pursue its selfish interests and increase its power.

Critics believe that the realism idea that power is the most significant instrument that states seek in the international systems needs to be reevaluated as States at times seek security and economic development over power (Falode, 2009:23). However, the critics neglect the idea that it is easy to have security and economic development when one has power. Realism focuses on States being the main actors in international relations, which neglects the role played by organizations and other actors as well as global issues that are unrelated to State survival (Antunes and Camis o, 2018:2). However, international organizations and other actors are easily manipulated by the powerful states, i.e., the US using the ICC for its power pursuit masked as its promotion of international law.

Additionally, Realism can lead to the creation of the violent and aggressive world that it describes as it assumes the uncooperative human nature and the anarchical system, which encourages leaders to act in a manner framed around suspicion, power, and force.

Methodology

Research methodology is used to solve a research problem systematically (Mishra and Alok, 2017:1). It provides a breakdown of the different techniques that will be used to achieve the aim and objectives of the study. The study "SA and International Law: SA's Multilateral Response to the Russia-Ukraine War" aims to thematically review SA's multilateral and balanced approach to simultaneously achieving its international obligation through international law and protecting its national interests. The topic of international law and SA may have been studied. However, the context and focus of the study are new and exciting. The study is significant as it provides an in-depth understanding of SA and its international obligation to abide by international law while maintaining its national interests in the current ever-changing global economy, power politics, increased focus on geopolitics, BRICS, lavish attention on the arrest warrant issued by the ICC against President Putin, and the current domestic elections situation in SA which may have an impact on its foreign policy. Therefore, the study provides an in-depth understanding of the importance of a state's foreign policy, i.e., SA, international law, and its work. There is no global government, but through this study, there will be a clear indication and understanding of which State has power and control over international law. The study employs a qualitative research method based on an explanatory research approach. The qualitative research method provides a deeper understanding of a situation by collecting reliable information to provide a description and understanding of human actions under situations (Jackson, Drummond, and Camara, 2007:22). Therefore, the study plans to gather enough reliable information to describe and provide an understanding of SA's decision to use a multilateral and balanced approach to respond to the Russia-Ukraine war even though it may have had an impact on its bilateral relations, i.e., US-SA relations.

The study is primarily framed around the explanatory research approach as it tries to understand the relationship between international law and S.A. Explanatory research explores reasons for something occurring using limited information, enhances the understanding of a particular topic, and seeks to provide a complete understanding of the relationship between variables (George and Merkus, 2021). The study relies on secondary sources to gather reliable and relevant information. Secondary sources include research studies and academic literature pertinent to analyzing the relationship between international law and S.A. Travis (2016) states that secondary research takes place when the writer reviews existing literature about the topic of the study. These will include journal articles, books, newspaper articles, and speeches about international law, Realism and international law, South Africa, and international law.

The study will also employ a document analysis method to review and analyze documents on S.A. and international law, especially concerning its response to the Russia-Ukraine war and the arrest warrant issued against Putin. According to Bowen (2009:27), document analysis is essential for revising and analyzing printed or electronic documents. These methods and approaches are significant and relevant in gathering efficient, appropriate, and significant information for this study.

Implications of South Africa's non-alignment stance

The height of the Russia-Ukraine war has pronounced major global shifts in economic configuration. Evidence recorded in recent months on the geopolitical fallout of the war, specifically to South Africa, has reflected the need for strengthening the sovereign capacity of the country's priorities,

the legislative transformation of international law, and the constant revision of South Africa's foreign policy.

As the war broke out in Russia, the United Nations (U.N.) and the rest of the world were compelled to employ peaceful resolution mechanisms to ensure the de-escalation of war and subdue the heightened food insecurity caused by the war (White and Holtz, 2022). The U.N. was composing a comprehensive resolution based on the charter of the United Nations by passing votes aimed at condoning Russia's invasion, which was sponsored by 96 States and passed with 141 voting in favor and five against and 35 absentees (Weiss, 2022). Nonetheless, these resolute efforts did not circumvent or reverse the impact on individual states or de-escalate the war.

The current climate in the international arena reflects the contemporaneous effect of geopolitical imbalances internationally, with its impact reaching the South African grounds. The authors argue the latter for the following findings. Firstly, South Africa is compelled to take a stance at the U.N. Security Council. This pertains to how the country was criticized for its non-alignment (Eligon, 2023). Secondly, the arrest warrant issued by the International Criminal Court was ambushed with heightened criticism, mainly directed toward international law and its legal quality (The International Institute for Strategic Studies, 2023). Lastly, the accusation of South Africa providing weapons to Russia during the time of war in December 2022 was a clear indication of an uproar from America towards South Africa and most certainly invited uncertainty over South Africa's stance on war crimes and lowered confidence across economic markets (Van Niekerk, 2023). Concurrently, South Africa was bewildered to act in the country's interests and maintain global bilateral and trade relations while circumventing a declaration of war with Russia by not executing the warrant of arrest.

Borger (2023) notes that at the height of South Africa being challenged to oblige to the Rome Statute, the presidency expressed displeasure by labeling the ICC and international law as having double standards, especially towards African states. This came as no surprise as the whole discourse of international law has been criticized mainly for its legal quantity (Armstrong, Farrell, and Lambert, 2012). Theorists like John Austin and Morgenthau have expressed skepticism over the weak and sluggish enforcement while questioning the power and hegemonic dynamics intricated within the discourse (Armstrong et al., 2012).

When two bulls fight, the grass suffers

The war established a series of security dilemmas worldwide; we can resonate the current climate in the international community to ideals of realism where states conduct themselves in a manner that foresees their national interests using their sovereign capacity and influence on the global stage (Williams and McGuinnis, 1992). This blanket effect caused by the war on every state instigated a hostile climate on the international ground, which obligated states to exhibit their national interest simultaneously in the global arena, establishing a synchronized pattern of realism worldwide and leading to a collision of national interests in the international arena/field.

These are the peculiarities in which South Africa found itself, constrained between the interests of the USA and Russia, with limited self-determination to define South Africa's interests at the time. Herein, the sovereign capacity and influence of these two superpowers outweighed the interests and priorities of South Africa. The latter can be explained by states' typical behavior and conduct when faced with a security dilemma or an economic crisis (Montgomery, 2006). Consequently, such behavior helps establish a hostile international order with a beggar-thy-neighbor effect on weaker states. South Africa was affected by the synchronized effect or pattern of realism, which reverberates to the African proverb that reads that *when two bulls fight, the grass suffers*, which means that the weak get hurt in conflicts between the powerful (Simpson and Speake, 2008).

Operational resilience after a global crisis

The current anarchist international space continues to compel South Africa to strengthen its political and sovereign capacity to trade on equal footing with its state counterparts. This can thwart sanction-driven bilateral relations and partnerships underscored by conditionalized trade agreements and menacing alliances. This research urges South Africa to review its relevance to the Rome Statute. The country must assess if being part of the ICC helps build its operational resilience and strengthens sovereignty, peace and security, and immunity against geopolitical shocks and global rivalries.

The ICC makes South Africa more susceptible to geopolitical risks as it can be modeled as a political tool by states powerful enough to impose sanctions. Armstrong et al. (2012) posit that the element of self-help and the lack of an obligatory character of international law aids it to be used only by the powerful states against emerging ones. Thus, South Africa should seek a window of self-determination not only in response to the current international adversities of the Rome Statute but also in reasserting its position in the whole economic and international arena. The appropriate action should ponder the nexus between operational resilience, a realist attitude towards global cooperation, and foreign policy. As a way of ensuring tenacity against future adversities, we are introduced to the idea of geopolitical resilience, which is enclosed on six elements, namely, reputational, organizational, financial, technology, operational, and governance model; these elements should be revised continuously for states to ensure resilience beyond the current international climate (Grant, Haider, and Mieszala, 2022).

Conclusion

This study has revealed the complex nature of international politics and the growing prominence of multilateralism. These co-existing complexities were highlighted by South Africa's response to the Russia-Ukraine war. This approach has been termed a multilateral one that considers South Africa's international obligation but prioritizes the country's national interest through a realist approach. This study proposes that the country should examine and distinguish between state bilateral and multilateral relations that help accelerate the country's economic and international cooperative development. While also sourcing out memberships that invite inquisitions and risks to the country's development. South Africa reserves the right to shape its political and economic order under the auspice of sovereignty by the Montevideo Convention (Shaw, 2008). South Africa should aggressively use attractive national instruments to pursue and see through its national interests and the country's rise. It is overt that the war has aggressively pushed for a reconfigured world order that has clearly distinguished priorities and disparities of the global North and South, which further calls for the states to clearly define their development objectives and implementation plans under the aegis of building capable states that can strictly eliminate the vulnerability of future global shocks and geopolitical risks.

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