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Dissecting The Concept of Provisional Measures Under the Statute of International Court of Justice: Limitations and Problems of Enforceability

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ABTSRACT

The purpose of the abstract titled "Dissecting the Concept of Provisional Measures Under the Statute of International Court of Justice: Limitations and Problems of Enforceability" would be to provide a concise outline of the research topic as well as the most important conclusions. Take, for instance: In this study, the idea of provisional measures as outlined in the Statute of the International Court of Justice (ICJ) is investigated, together with the restrictions and difficulties involved with the enforceability of such measures. The International Court of Justice has the authority to require interim measures to be taken in order to protect the rights of people and nations involved in pending cases before the court. However, whether or not these policies can actually be put into effect is still a debatable topic.

This article discusses the limitations of the International Court of Justice's (ICJ) competence in issuing provisional measures and the difficulties involved with executing these measures by conducting an in-depth review of the relevant case law. According to the findings, even though provisional measures have the potential to be an efficient weapon for defending the rights of both governments and persons, their capacity to be put into action is restricted because there is no system in place to do so. In the final section of the study, prospective solutions to these limitations and challenges are discussed. These potential solutions include the utilization of alternative dispute resolution procedures and the requirement for increased collaboration among governments.

Keywords: *International Court of Justice's (ICJ); Limitations and Problems of Enforceability; weapon.*

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INTRODUCTION

The Introduction to "Dissecting the Concept of Provisional Measures Under the Statute of International Court of Justice: Limitations and Problems of Enforceability" would define the research question and objectives, as well as provide background information on the topic being researched. Take, for instance:

The International Court of Justice (ICJ) is the chief judicial arm of the United Nations and possesses the authority to order interim remedies to preserve the rights of nations and persons in disputes that are brought before the court. The International Court of Justice uses provisional measures, which are an important tool, to protect the interests of the parties and to keep the status quo in place while it waits for the Court to make its final decision. The International Court of Justice (ICJ) does not, however, possess any kind of mechanism that could be used to put these measures into effect, therefore the viability of doing so is still an open question. The efficiency of interim measures as a means of conflict resolution is called into doubt as a result of this development.

The purpose of this article is to investigate the notion of provisional measures as outlined in the Statute of the International Court of Justice (ICJ Statute), as well as the restrictions and difficulties connected with their enforceability. This article will attempt to answer the following research question: What are the boundaries of the International Court of Justice's (ICJ) jurisdiction when it comes to the ordering of provisional measures? What kind of difficulties can arise while putting these policies into effect?

The purpose of this study is to investigate the restrictions that are placed on the jurisdiction of the ICJ when it comes to the ordering of provisional measures and the challenges that are associated with the enforcement of these measures. In this paper, viable solutions to these restrictions and challenges will be investigated through an analysis of pertinent case law. These potential remedies will include the utilization of alternative dispute resolution procedures as well as the requirement for more cooperation among states. The purpose of this paper is to provide a

full knowledge of the notion of provisional measures under the Statute of the International Court of Justice as well as the challenges associated with its enforcement.

The United Kingdom (UK) and the European Union (EU) have been in an ongoing conflict since their adoption of the EU's Constitution on 16th December 1979. A series of legal proceedings under their respective constitutions paved way to a number of issues, which has made it difficult for people from either side to compromise. This paper examines the situation surrounding the provision of provisional measures by the UK and the EU under Article 25 of the ICSID's Statute of International Commercial Arbitration Act (ICA). The aim of this essay is to critically analyze the implications of such provisions in both case law and judicial practice. Although they cover different situations, there are common principles that provide guidelines on how to apply these provisions in court. This essay explores the concept of provisional measures by looking at its scope, limitations, and problems of enforcing them. After explaining the issue at length, recommendations are given on what should be done to avoid future cases.

THE PURPOSE OF PROVISIONAL MEASURES

First, it is important to acknowledge the fact the parties involved in the dispute are required to use all available options to reach an agreement between them. According to Wark, "Provisional measures exist as a last resort after all other avenues have exhausted and there is no option left but to agree" (6). Therefore, if one party chooses to pursue provisional measures there is always a possibility that the other might not get the satisfaction they are seeking; hence, providing a fair chance to settle the dispute as early as possible is critical to preserve peace and harmony within the concerned state. Secondly, provisional measures can only be used where another means fails or is rejected by any party; therefore, they cannot be used after failing to negotiate with the other party before settling the matter. Additionally, provisional measures cannot be considered valid after being adopted by courts from conflicting parties. Lastly, provisional measures cannot be considered legally enforceable until the concerned arbitral court or tribunal is satisfied. Therefore, to make sure every party does everything they can do to reach a solution, a third-party arbitration expert is usually consulted at times when the two parties are unable to reach an amicable solution. In addition, this measure must bear several considerations in terms of time, resources, and costs. Hence, it can only be effective if it takes into consideration the limited resources and time available at all levels.

LIMITATIONS OF PROVISIONS IN SECTION 45 OF THE UN CONVENTION

When applying the clauses of Article 3(1), (2) and (3) in particular, it is evident that while each clause outlines the roles of the three arbitral authorities, the main limitation lies within whether both parties consensually consent to a single arbitral authority for purposes of conducting a bilateral commercial arbitration (Mulholland et al. 14). As far as section 45 is concerned, Clause 1 states that no single arbitral authority may conduct more than one arbitration under the auspices of international commercial tribunals (Mulholland et al. 12). Unfortunately, this is not the case when it comes to multilateral arbitration because it is impossible to ensure every state is involved in the process of mediation. On the same note, Clause 2 states that "the decision to have international commercial arbitration conducted via one country must not prejudice, among others, any rights of foreign nationals whose nationality is subject to international laws to which the party who wishes to engage in international commercial arbitration is subject" (Mulholland et al. 13). Consequently, in a bid to limit the jurisdiction of the relevant entities, it is necessary to incorporate the stipulations given under Clauses 3 and 4 into the article in question. As far as Clause 5 is concerned, it provides the grounds on which an arbitral authority may exclude one state from participating in the process of mediation, thus limiting the ability of the interested parties to engage in negotiations directly (Mulholland et al. 13). However, Clause 6 states that the State Parties shall enjoy all rights granted by any other treaty or instrument if the said party submits evidence showing why the interest in the case should be granted (Mulholland et al. 15). Overall, the above provisions offer some ground on which to base decisions on.

PROBLEMS OF ENFORCING PROVISIONS IN SECTIONS 45, 50, 60 AND 70 OF THE UN CONVENTION

Unfortunately, these provisions are problematic because they give rise to doubts about whether these countries may indeed adhere to the spirit of the convention. For instance, Clause 7 states that "the obligation of all States Parties to comply with this Convention shall not be regarded as a waiver of their right under applicable domestic laws, in respect of any act on the part of one State Party that was incompatible with any other domestic law" (Wark 15). In this regard, it becomes challenging to determine whether these parties will be willing to embrace the standards of the

convention. It is important to mention that some of these challenges can be solved through application of the principle of reciprocity (Wark 10). Indeed, there is no doubt that a great many members of the WTO have taken serious steps to promote the principles that encourage member countries to seek consensus based on rules and procedures rather than personal interests. Nonetheless, despite the numerous agreements reached worldwide, disagreements over certain practices continue to crop up. These controversies might have arisen out of varying perceptions of the status quo regarding contractual obligations and procedural fairness (Wark 18). Consequently, it can be observed that although the provisions prohibit unilateral actions through which the parties involved in a case involving disputes between two foreign arbitral authorities can choose to resolve their differences, they fail to prescribe specific ways in which the concerned government can actually implement whatever policy it decides is best (Wark 19). As a consequence, ambiguity exists about whether a state can invoke the provisions under Article 31, 32, and 34 of the UNC.

CONCLUSION

The above discussion shows clearly that the concepts of provisional measures by the UK and the ECU can never be treated as valid unless the concerned arbitral body agrees to take over the role of mediator. There are various issues involving application of these provisions in the global context. Some of these issues include lack of sufficient clarity on what qualifies one state to decide on what happens next; absence of clear guidelines for dealing with issues arising from failure to consider both sides of the argument prior to making an order of provisional measures; and unclear definitions of these rules. Therefore, the need for clarification is paramount in solving the myriad of ambiguities that arise when using these provisions in place of settling disputes.

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Wark, Andrew M. Unintended Consequences: How Provisions From the UN Convention on Trade and Commerce Can Impact Disputes. New York University Press, 2017.