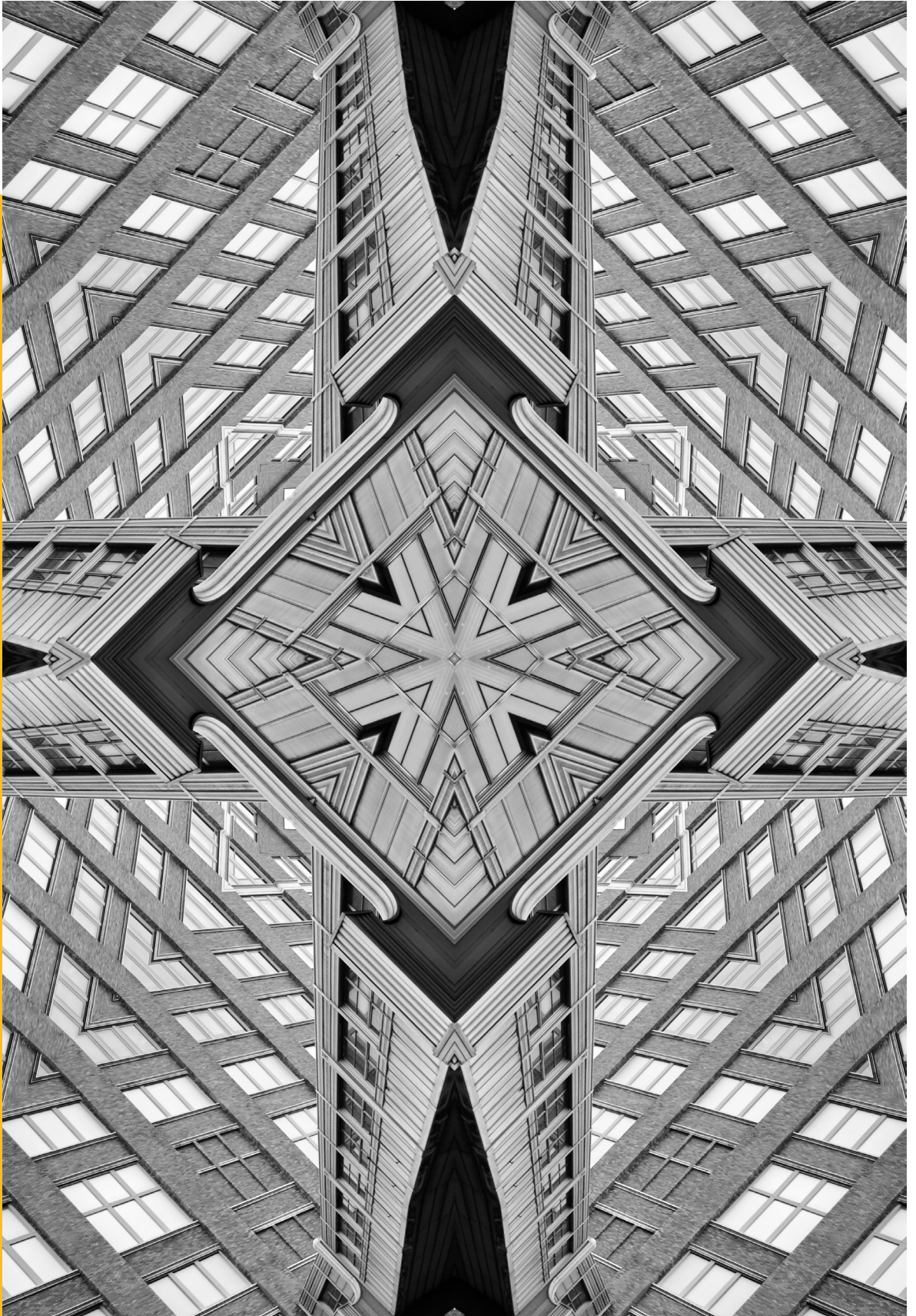


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Respect for International Law in an Unlevelled Playing Field: The Case of Namibia

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Abstract

The principle of respect for international law is characterised by inequalities, selectivity, inconsistencies, and double-standards within the international political system. Large states have violated international law, as illustrated by the United States's and Russia's failure to comply with the Chemical Weapons Convention by 2012, Russia's occupation of Crimea, and China's continued trade of luxury goods to North Korea, despite the ban imposed by the UN Security Council. There are also small states, closely allied with large states, that have chosen to not comply with international law. This paper focuses on Namibia, whose Constitution places upon the state an obligation to pursue foreign policy with due regard for respect of international law and treaty obligations. In recent years, hard law in the form of binding Security Council Resolutions 1929 of 2010 and 2094 of 2013 has had an impact on Namibia's foreign relations with Iran and North Korea (officially the Democratic Republic of Korea), respectively. As a small state, Namibia made efforts to comply with the resolutions, mindful of the consequences of non-compliance with hard law.

Introduction

Article 96 of the Namibian Constitution states that, in pursuing international relations, Namibia shall endeavour to, *inter alia*, foster international law and treaty obligations.¹ The main problem being investigated in this paper is whether Namibia as a small state has lived up to the aforementioned foreign policy principle, with respect to the United Nations Security Council (UNSC) resolutions on nuclear proliferation by Iran and the Democratic People's Republic of Korea (DPRK). The resolutions affect Namibia's relations with these countries and it was expected to comply with them.

Thus the paper further looks at how large states and small states conduct themselves with respect to international law. The UNSC required Namibia to put in place measures that ensure compliance with the relevant UN resolutions.

“This paper investigates how large states and small states conduct themselves with respect to international law.”

International Law: An Overview

International law is classified into hard and soft laws. Abbot and Snidal² explain that three factors—namely, obligation, precision, and delegation of authority—are the essentials of determining soft laws and hard laws. Soft laws are guidelines and standards regulating conducts, which are generally non-binding norms of law.³ Soft laws create obligations that are eventually not implemented because they lack specificity. Respect of soft laws is not an obligation, as there are no sanctions applied when such laws are not complied with.⁴ Sometimes, soft laws vacillate between law and politics.⁵ Soft laws are further distinguished by vagueness: parties have discretion on whether or not to implement them. Meanwhile, when there is clarity on the obligation created by an agreement, and when such obligations are formally binding, it manifests hard law. Hard laws include binding treaties and customs, which attract sanctions when they are violated. States make binding commitments under hard law and these are effectively implemented. Further, hard laws embody legally binding obligations that delegate authority for interpretation, implementation, monitoring and enforcement to a third party. For example, the interpretation of war crimes is delegated to the International Criminal Court (ICC).⁶

Most of the UNSC Resolutions fall under the category of ‘hard laws’, whereas most of the General Assembly resolutions fall under ‘soft laws’. Security Council resolutions are clearly detailed and mechanisms are put in place to explain these to member-states in order to ensure full compliance.

The UN Charter Article 24 (i) states that the primary responsibility of the Security Council is the maintenance of peace and security.⁷ The Security Council plays an important role in international relations, creating rights and obligations of member-states, and it has widely used its power to interpret the UN Charter and implement it according to its interpretation.⁸ When the UNSC passed resolutions 1929 of 2010 and 2094 of 2013 on Iran and DPRK nuclear programmes, it created obligations for Namibia. The resolutions had an impact on the relations between Namibia and these two countries, as trade interests of these countries in Namibia are affected by the resolutions. Namibia was expected to comply with the resolutions, as non-compliance would attract adverse consequences in the form of sanctions.

Consequences of Violating International Law

Had Namibia resolved to disregard international law with respect to the UNSC resolutions on Iran and Korea nuclear proliferation, it would have attracted enforcement of international laws through sanctions. The UNSC lists five types of targeted sanctions—namely, diplomatic, travel ban, asset freeze, arms embargo, and commodity intervention.⁹ These measures primarily serve to ensure that the targeted entity is brought within the parameters of international law in an effective manner.¹⁰

With respect to terrorism, a list of persons and institutions affected by the sanctions is compiled, and the affected parties could be de-listed upon approaching their states to request the de-listing committee, known as '1267'. The US has maintained a list of suspected terrorists and sits in the de-listing committee, where it exerts influence on de-listing. Other countries including Australia, Canada and the UK maintain terrorist lists. These are unilateral lists and not necessarily part of the UN approved list, though there are similarities in the entities listed in these lists and in the UN terrorists list.¹¹ When a person is de-listed from the US list, it puts them in good stead to be de-listed from the UN list as well. This happened when the Swedish government applied for the delisting of its two nationals, Abdirisak Aden and Abdi Abdulaziz Ali, who were listed because of their implication with the Somali banking network company, Al-Barakaat, which the US suspected of facilitating the transfer of funds to terrorist groups. Following the application by the Swedish government, the two individuals gave their undertakings not to be involved in peace-threatening activities, resulting in the US treasury de-listing them and a subsequent de-listing from the UN list.¹²

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UNSC Resolution 1929 of 2010 on Iran and Namibia's compliance

The Republic of Iran pursued a nuclear programme for a period of more than 50 years.¹³ The United States (US) was in support of this programme until the overthrow of the Shah in 1979, replaced by the Ayatollah Khomeini Islamic regime. In 2002, the exiled Iranian group divulged the existence of two nuclear sites in Iran, which prompted the International Atomic Energy Agency (IAEA) to conduct an investigation which in 2003 concluded that Iran has not complied with its obligations under the Nuclear Non-Proliferation Treaty (NPT).^a Under the terms of the treaty, state parties bind themselves to achieving the earliest possible date of ending the nuclear race and adopting measures promoting nuclear disarmament.¹⁴ Iran failed to report its nuclear programme, maintaining that it kept it secret because there was pressure from the US, which resulted in the cancellation of Iranian contracts with foreign governments. Iran asserted that its nuclear programme was for peaceful use as provided for in the NPT. On 1 August 2005, Iran resolved to resume uranium conversion activities and related research activities. On 12 January 2006, Iran announced plans to resume the country's atomic nuclear programme. The IAEA Board of governors reported to the UN Security Council on 4 February 2006.¹⁵

a The NPT entered into force on 5 March 1970. Iran signed the NPT on 01 July 1968 and deposited instruments of ratification on 02 February 1970.

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On 31 July 2006, the UN Security Council adopted Resolution 1096, which *inter alia*:

- *Calls* upon Iran without further delay to take the steps required by the IAEA Board of Governors in its resolution GOV/2006/14, which are essential to build confidence in the exclusively peaceful purpose of its nuclear programme and to resolve outstanding questions;
- *Demands*, in this context, that Iran shall suspend all enrichment-related and reprocessing activities, including research and development, to be verified by the IAEA;
- *Expresses* its intention, in the event that Iran has not by that date complied with this resolution, then to adopt appropriate measures under Article 41 of Chapter VII of the Charter of the United Nations to persuade Iran to comply with this resolution and the requirements of the IAEA, and underlines that further decisions will be required should such additional measures be necessary.¹⁶

The above-mentioned efforts and steps by the international community did not stop Iran from pursuing its nuclear programme. This culminated in the UN Security Council adopting Resolution 1929 on 9 June 2010, stating that Iran has failed to comply with previous UNSC resolutions to abide by the provisions of the NPT.¹⁷ The resolution, among others, affirms that Iran has failed to meet the requirements of the Board of Governors of the International Atomic Energy agency (IAEA) and to comply with previous resolutions prohibiting nuclear non-proliferation and further:

- *Decides* that Iran shall, without delay, comply fully and without qualification with the IAEA Safeguards Agreement.
- *Reaffirms* that, in accordance with Iran's obligations under previous resolutions to suspend all reprocessing, heavy water-related and enrichment-related activities, Iran shall not begin construction on any new uranium-enrichment, reprocessing, or heavy water-

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related facility and shall discontinue any ongoing construction of any uranium-enrichment, reprocessing, or heavy water-related.

- *Decides* that Iran shall not acquire an interest in any commercial activity in another State involving uranium mining...and *further decides* that all States shall prohibit such investment in territories under their jurisdiction by Iran, its nationals, and entities incorporated in Iran or subject to its jurisdiction, or by persons or entities acting on their behalf or at their direction, or by entities owned or controlled by them.
- *[D]ecides* further that all states shall prevent the provision to Iran of any financial resources or services related to the supply, sale, transfer, provision, maintenance, manufacture, and use of arms.¹⁸

The aforementioned Resolution has a bearing on Namibia. Since 1975, Iran has owned shares in the Rössing Uranium Mine through the Iranian Foreign Investment Company (IFIC). At the time when Resolution 1029 of 2010 was passed, Iran held 15 percent shares in Rössing Uranium Mine. Other shareholders were the Namibian Government (3 percent), Rio Tinto (69 percent), South Africa's Industrial Development Corporation (IDC) (10 percent), and certain individuals (3 percent). Namibia was the fourth largest producer of uranium in the world, after Kazakhstan, Canada, and Australia, during the time the Resolution was passed.¹⁹

Paragraph 31 of the Resolution placed an obligation on Namibia to report to the UN Security Council Committee on Iranian nuclear programme (established by Resolution 1737 of 2006), by calling on all states to report on the measures that they have taken to comply with paragraphs 7 to 19 and 21 to 24 of the Resolution, within 90 days.²⁰ The Namibian government reported to the UN Security Council Committee by 21 October 2010 among others, that subsequent to the adoption of UN Security Council Resolution 1929 of 2010, Namibia and Iran agreed that Iran will not acquire further shares in the Rössing Uranium Mine, to comply with the Resolution. Further,

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Namibia will only use uranium for peaceful purposes.²¹ Meetings were also held between Rössing Uranium Mine's management and the Namibian government, where Rössing informed the government that in further complying with provisions of the UN Resolution 1929, IFIC's representative would no longer be attending Board meetings of Rössing Uranium Mine.²²

Namibia's uranium is a milled uranium oxide, called 'yellow cake', which involves a cumbersome process, when it is to be used in manufacturing explosives. Charbonneau states that the mineral should first be processed into uranium hexafluoride and then fed into centrifuges for high-speed purification to transform it into weapon fuel.²³ Nevertheless, the Resolution had placed an obligation upon Namibia to withhold the transfer dividends from the Rössing Uranium Mine to Iran; because the proceeds could possibly be used in the procurement of nuclear arms.

The UN set up a Committee of Experts to visit member-states to assess compliance with the Resolution. Namibia took all necessary measures and reported compliance with the Resolution in a transparent manner to the Committee, demonstrating the country's commitment to the foreign policy principle of respecting international law and treaty obligations.²⁴ In further compliance with the Resolution, the Namibian Parliament enacted the *Prevention and Combatting of Terrorist and Proliferation Activities Act*, No. 4 of 2014.²⁵ Under the terms of this law, the Financial Intelligence Centre situated at the Bank of Namibia issued circulars regarding compliance with UNSC resolutions on Iran and the DPRK to the relevant institutions. Circular No. 4 of 2015 contains, among others, information on the consolidated list of entities and individuals subject to assets freeze and/or travel ban as decided by the Security Council and its Sanctions Committee established pursuant to the relevant UNSC Resolutions.²⁶

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Following diplomatic efforts by China, France, Germany, the Russian Federation, the United Kingdom, the United States, and the High Representative of the European Union for Foreign Affairs and Security Policy, with Iran, a comprehensive, long-term and proper solution to the Iranian nuclear programme was reached. This resulted in the conclusion of the Joint Comprehensive Plan of Action (JCPOA) on 14 July 2015. Subsequently, the UNSC adopted Resolution 2331 of 2015, providing that once the IAEA has verified that Iran has taken steps to comply with the JCPOA, provisions of the previous resolutions imposing sanctions on Iran will be terminated.²⁷

UNSC Resolution 2094 of 2013 on the Democratic People's Republic of Korea (DPRK) and Namibia's compliance

Resolution 2094 has its origin in Resolutions 1718 of 2006 and 1874 of 2009, which was the result of the nuclear test conducted by the DPRK on 9 October 2006. The DPRK further announced its intention to withdraw from the NPT. The following week, on 14 October 2006, the UNSC adopted Resolution 1718 of 2006, demanding the DPRK to retract its announcement of withdrawing from the NPT and comply with the provisions of the Treaty. The Resolution further designated a list of items that are deemed to advance the nuclear programmes of DPRK and urged member states to prevent, *inter alia*, the direct and indirect supply, sale and transfer to the DPRK of those items.²⁸

On 25 May 2009, the DPRK tested nuclear weapons, which prompted the UNSC to adopt Resolution 1874 of 2009 on 12 June 2009, condemning the DPRK's nuclear test and further demanding that the DPRK should comply with Resolution 1718 of 2006. The Resolution further extended the application of paragraph 8 of Resolution 1718 of 2006 to include all arms and related materials, financial transactions, technical training, advice and any assistance or service related to the production, maintenance or use of such arms. The arms do not include small and light weapons.²⁹

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On 12 February 2013, the DPRK conducted a nuclear test, prompting the UNSC to adopt Resolution 2094 on 7 March 2013. In the Resolution, the UNSC:

- [*Reaffirms*] that proliferation of nuclear, chemical, and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security;
- *Decides* that the DPRK shall not conduct any further launches that use ballistic missile technology, nuclear tests or any other provocation;
- *Demands further* that the DPRK return at an early date to the NPT and IAEA safeguards, bearing in mind the rights and obligations of States parties to the NPT, and underlines the need for all States parties to the NPT to continue to comply with their Treaty obligations;
- *Condemns* all the DPRK's ongoing nuclear activities, including its uranium enrichment, *notes* that all such activities are in violation of [previous UN Security Council] resolutions ... *reaffirms* its decision that the DPRK shall abandon all nuclear weapons and existing nuclear programmes, in a complete verifiable and irreversible manner and immediately cease all related activities and shall act strictly in accordance with the obligations applicable to parties under the NPT and the terms and conditions of the IAEA Safeguards Agreement;
- *Reaffirms* its decision that the DPRK shall abandon all other existing weapons of mass destruction and ballistic missile programmes in a complete, verifiable and irreversible manner.

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Namibia requested for an extension of the period required to comply with international law (in this case, the UN Security Council resolution). This illustrates Namibia's willingness. However, the inability to comply with international law is applicable not only to small states, but also large ones. For example, by the year 2012, the US and Russia had not complied with the requirements to destroy all their chemical weapons under the Chemical Weapon Convention, with the US indicating that it will only be able to complete destruction by 2023.³⁰

Among the officials specified in the annexure of the Resolution are executives of Korea Mining Development Trading Corporation (KOMID), because the company was identified to be the principal dealer for arms and equipment related to conventional weapons and ballistic missiles. The DPRK had two diplomats based in Windhoek who are linked to KOMID and in December 2014, the Namibian government summoned to Windhoek the DPRK's Ambassador to Namibia, to explain Namibia's measures to comply with the UN Resolution 2094. Subsequently, the DPRK withdrew its diplomats from Namibia. Earlier in 2013, Ambassador Martin Uden, Coordinator of the UN Experts on the DPRK sanctions, visited Namibia to explain the UN sanctions and their implications.³¹

The British High Commission in Namibia alleged that there were activities by DPRK nationals sanctioned by the UN Resolutions. Upon request to provide evidence, the High Commission sent a note to the Ministry of International Relations and Cooperation, providing information on KOMID offices in Namibia. The letter maintained that the office was used to support its sales to other regions and called on the Namibian government to cease relations with KOMID and its officials, and to monitor closely the DPRK officials in Namibia to ensure that their actions do not violate the provisions of the relevant UNSC Resolutions.³² To avoid possible sanctions, a consultative meeting was held between the Ministry of Foreign Affairs, Office of the Attorney General, and security sector ministries, to assess Namibia's compliance with the UNSC Resolution.

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Despite assertions by some critics that Namibia was in violation of international law as a small state, the country was aware of the consequences that it could face as a result of violating a UN Security Council Resolution. Accordingly, it could not afford to be found wanting and it therefore maintained that it upholds international law pertaining to the UN sanctions on the DPRK. All activities between Namibia and the DPRK that involve military cooperation commenced prior to the UN Resolution and were not activities in violation of the Resolution.³³

As a small state, Namibia was not at liberty to disregard the UNSC resolutions, in a manner that large states that are allies of the Permanent Members of the UN Security Council, or Permanent Members themselves do. Such behaviour would have led to sanctions that could cripple its small economy. Typical of a small state that does not want to be found violating international law, Namibia sought clarification from the UN on the status of its relations with the DPRK. In a Note Verbale dated 31 March 2015, Namibia reported to the UN Sanctions Committee on measures that it has taken to implement all relevant resolutions on DPRK nuclear programme—namely, Resolutions 1718 (2006), 1874 (2009), 2087 (2013) and 2094 (2013)—and pledged to abide by international law, demonstrating a sense of obligation.³⁴

“As a small state, Namibia was not at liberty to disregard the UNSC resolutions.”

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International law is implemented by way of both, *universal* and *selective* application. Under universal application, international law is applied equally to all states; whereas under selective application, it applies selectively to states as there is a difference in approach towards the rights and obligations of states to international law. The trends of selective application of international law have become more prevalent in the past years.³⁵

Given the selective application, compliance with hard international law by large states differs from that of small states. For example, Bates states, although China supported the UNSC resolutions on the DPRK, it did not strongly react to the DPRK's 2009 nuclear test.³⁶ This could arguably be attributed to the strong economic and political ties that exist between the two countries. China adopted a calculated foreign policy stance, mindful that the collapse of North Korea would result in the influx of refugees into China and could consequently lead to a unified Korea, aligned to the United States (Gates, 2011: 2).

While trade between China and the DPRK experienced a slowdown following the UNSC Resolution 1874 of 2009, it increased again from 2010. When Kim Jong-un succeeded his father Kim Jong Il in December 2011 as the Supreme Leader of the DPRK, relations between China and the DPRK were negatively affected as Kim Jong-un was not listening to the advice given by China on the nuclear weapon programme. Later, the relationship picked up, when Kim Jong-in and Chinese President Xi Jinping held a summit in Beijing in March 2018.³⁷

While Namibia maintained sound relations with the DPRK, the level of personal diplomacy differed from that of China. For example, the Namibian government was invited to the 60th anniversary of the Korean War armistice in July 2013. The then Prime Minister, Hage Geingob, and Defence Minister, Nahas Angula, had received special invitations, but instead the Deputy Minister of Justice, Tommy Nambahu, represented Namibia. China, meanwhile, was represented by its Vice President Li Yuanhao. China had thereby registered its strong support for the DPRK amidst UN sanctions. While Namibia

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wanted to reassure the DPRK of its continued friendship, at the same time it was cognisant of the implications of the UN sanctions on the DPRK. Initially, Namibia was sending its Ambassador in China, Ringo Abed, to the celebration in Pyongyang but it eventually decided to send a Deputy Minister. The respective level of representations of China and Namibia at the 60th anniversary of the Korean War armistice illustrates different implications of international law on large and small states.

Further, China has not complied with the provisions of the aforesaid Resolution on the ban of luxury goods to the DPRK. A UN expert team for monitoring compliance with the UNSC resolutions stated that there is a neighbouring country – which analysts believed to be China – that serves as transshipment point for ballistic missiles between North Korea and Iran.³⁸ Further, the US's Central Intelligence Agency (CIA) reported in 2007 that Chinese private enterprises export materials and manufacturing equipment to the DPRK that could be used in ballistic missiles, notwithstanding resolution 1718 of 2006.^b

Inconsistencies in the application of international law to large and small states is further illustrated by Bates when he states that Chinese regions of Hong Kong and Macau possibly serve as transit points for goods and financial flows to the DPRK, in direct non-compliance with the UNSC resolutions.³⁹ He recommended the engagement of China by the US with regard to compliance with the UNSC resolutions. This scenario differs from Namibia, where the US Ambassador has on several occasions delivered demarches to the Ministry of Foreign Affairs, about the country's list of suspected terrorists from Iran and the DPRK, reminding the Namibian government about the relevant UNSC Resolution. Had Namibia disregarded the issues raised in the US's demarches, it could have given the US an opportunity to influence the Security Council's Committee on Sanctions to apply international law to Namibia harshly, such as refusing to delist its

b *ibid.*

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nationals and institutions, once they are put on the sanctions list. Birkhäuser states that Switzerland has been unsuccessfully trying to apply for the delisting of two of its nationals, Mohamed and Zeinab Mansour, who were listed because they were members of the executive board of Al-Taqwa, which the US suspected of being involved in the funding of terrorism, *albeit* there was no evidence to that effect.⁴⁰ It could be argued that Switzerland's violation of the UNSC Resolution 1390 of 2002 may have had some indirect influence in the refusal of the US to delist the Mansours.

The International Crisis Group states that although subsequent to the passing of UN Resolution 2094 of 2013, China took some measures, like the closing of the DPRK's foreign trade bank account, compliance with the Resolutions remained far-fetched, with China dragging its feet on establishing the list of luxury goods *albeit* agreeing to ban their export to the DPRK.⁴¹ Furthermore, China did not reduce the supply of fuel to the DPRK which represent that country's 90 percent of fuel imports. China took a stance that the sanctions should not be used to weaken the DPRK's state institutions and should, therefore, be moderate to encourage the DPRK to come to the talks with the international community about its nuclear programme. China further stated that it will not cut ties with the DPRK, even if the latter conducts further nuclear tests. It appears that even the closing of the foreign trade bank account was effected largely because the Bank of China operates in the US. The issue was more to avoid negative financial consequences to the bank and not because the Chinese government has adopted a policy to cut off financial ties with the DPRK.

Another example of inequalities in the application of international law was the oil embargo against Haiti following a coup *d'état* in 1990. The UNSC passed Resolution 841 of 1993 preventing the sale or supply of petroleum and petroleum products to any person or institution in Haiti.⁴² However, when Russia became involved in the protests in Crimea and annexed it from Ukraine in 2014, the EU and US could only apply sanctions on their own and they could not push

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them through the UN. In March 2014, the UNSC sought to pass a resolution affirming Ukraine's sovereignty, independence, unity and territorial integrity, and invalidating the referendum held in Crimea to break away from Ukraine. However, Russia vetoed the resolution,⁴³ illustrating that the application of the UN-enacted international law to large states is different from its application to small states. Binding UNSC resolutions applicable to the permanent members can only be adopted when an affected member agrees.

But even the sanctions against Russia by the EU and US with respect to the occupation of Crimea were not effective because EU member-states were divided on the issue and, further, Russia had leverage. Given that Russia is a large state with a large economy, some EU members did not implement the sanctions because they needed Russia. Some EU members like Hungary and Slovakia had strong economic ties with Russia that are illustrated by the construction of reactors at the Paks nuclear plant and supply of fuel, respectively.⁴⁴ Furthermore, the Czech Republic, Finland, Serbia, Poland and Turkey had interests in Russia in the respective fields of trade and tourism. As a large state, Russia retaliated with counter-sanction measures on agricultural imports from the EU, and in the wake of sanctions and counter-sanctions, new exporters of agricultural products to Russia emerged from the countries stated above. The application of sanctions to a large state with a large economy like Russia, therefore, could not be similar to the application of sanctions to small states like when the EU imposed sanctions in Zimbabwe from the year 2000. Namibia, as a small state does not have the same leverage as Russia and had, thus, endeavoured to comply with the UNSC Resolutions, consequently bearing the impacts.

Inequality in compliance with international law is not only applicable to the scenario of large states versus small states, but also within the context of the application of international law to some other small states. This is illustrated by the passing of the UNSC Resolution 1390 of 2002, calling for member-states to, *inter alia*, freeze assets, economic resources, and funds belonging to specified members of the

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Al Qaeda or persons controlled by them or prevent entry or transit throughout their territories of the said individuals.⁴⁵ Birkhäuser states that Switzerland has violated this resolution by granting exemption to persons under sanctions to access their funds and enter or transit through its territory, arguing that it is in the interest of Switzerland.⁴⁶ Despite the UNSC recognising terrorism as a threat to international peace in the Resolution, it has not set up a Committee to oversee the implementation of the Resolution or imposing of sanctions in the event of non-compliance, as it happened with the case of the UNSC Resolution 2094 of 2013. Nor has any action been taken against Switzerland.

Respect for international law by large states is based on their foreign policy interests. There has been a juxtaposition of politics and law in international law legislation at the UNSC, as illustrated by its failure to pass a resolution calling for the total withdrawal of Israel from the occupied territory.⁴⁷ At the 7354th meeting of the UNSC held on 30 December 2014, Jordan presented a draft resolution calling for Israel to withdraw from Palestinian territory occupied since 1967, within a period of three years, and for the parties to the conflict to find a solution to the conflict within a period of one year. Out of the 15 members, eight countries supported the resolution; Argentina, Chad, Chile, China, France, Jordan, Luxembourg, and the Russian Federation. The resolution could not be adopted as that required nine votes. Five countries abstained from voting on the resolution, namely Lithuania, Republic of Korea, Nigeria, Rwanda, and the United Kingdom. Meanwhile, Australia and the United States opposed the Resolution. This encouraged Israel's lack of compliance with international law with respect to previous UNSC Resolutions.

The opposition and abstentions to the draft resolution raises a question as to whether there is commitment towards compliance with international law and promotion of international peace and security, in view of the previous resolutions that have been passed by the UNSC on the question of Palestine. Further, international law provides for the right to self-determination and denying them such rights constitutes non-compliance. The ICJ avers that the right

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to self-determination “is one of the *essential principles* of international law.”⁴⁸ Defeating resolutions aimed at achieving the right to self-determination further raises questions about whether it was a question of principle or international politics dynamics which overrode the interests of international law. From 1972 to 2021, the US vetoed more than 50 UNSC resolutions on the situation in the Middle East, in order to protect the interests of Israel.⁴⁹ Israel has been an ally of the United States for many years, receiving a cumulative foreign aid totalling US\$ 146.2 billion by 2014, of which US\$ 104.5 billion is in military assistance. In 2020, the assistance was of US\$ 3.8 billion.⁵⁰ This is in clear disregard of the UNSC Resolutions that prohibit any state from providing assistance to Israel that will be used in connection with the occupied territories.⁵¹ No pressure was put either on the US or Israel to comply with the terms of the UNSC Resolutions as it happened in the case of Namibia with respect to Resolution 2094 of 2013. This, arguably, illustrates inconsistency in the application of international law to states, with small states scrutinised microscopically, where political interests of large states matter. The treatment of Israel before the UN illustrates Stephan’s proposition⁵² that where there are interests of large states competing,

“[A] great power would prefer to see an issue unresolved rather than have it go in an adversary great power’s favour, [and] it would block any mechanism that might lead to resolution by a body in which its adversary has a voice.”

In 2011, the UNSC passed a Resolution requesting member-states to take due diligence and refrain from doing business and financial transactions involving funds from Eritrea’s mining interests that fund activities of armed groups. The resolution further called on states to deny provisions of financial services including insurance and re-insurance and further, prevent entry and transit through their territories by specified Eritrean nationals and institutions, for destabilising the horn of Africa by providing assistance to armed groups.⁵³ Israel’s actions in the Middle East too, have destabilised the

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region, yet its alliance with the US prevents the Security Council from enacting appropriate international law legislation. This illustrates the application of double standards in the international political system.

It is advanced that lack of compliance with UN Security Council resolutions have been observed, when a particular international legislation is perceived to be not in the interest of major powers.⁵⁴ When the interests of major powers are at stake, like in the case of the DPRK and Iran's nuclear programme, international law will be applied with enforcement. This renders the application of international law selective.

Selectivity and inconsistencies are further illustrated by the position of China towards the UN resolutions on the sanctions against the DPRK. Although China voted in favour of the resolution, it stated that it possibly acted so on the basis of its own disapproval of the nuclear programme, rather than as concurrence with the views of the US.⁵⁵ Bates too, avers that China is interested in the denuclearisation of the Asian region, but at the same time does not want any military role of the US in the region.⁵⁶

China and the DPRK maintained cordial diplomatic relations and ideologically, both belonged to the East bloc of the Cold War divide. Bates adds that China and the DPRK's shared cohesion include their coalition in the Korean War, common background as communist states, and shared commonalities as postcolonial countries in the developing world.⁵⁷ Furthermore, the Communist Party of China (CPC) and the Workers' Revolutionary Party (WRP) of the DPRK maintain inter-party strong ties. Accordingly, the Chinese Ambassador to the UN, Zhang Zesui, fought to ensure that there is no provision for the use of force during the adoption of the UNSC Resolution 1874 of 2009 and cautioned that sanctions should not undermine the development and humanitarian assistance to the DPRK and the sanctions should be reviewed, should the DPRK comply with the provisions of the Resolution.

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Similarly, with respect to Iran, Russia and China have undertaken to veto any proposal to use force against Iran as measures to force it to comply with the relevant UNSC Resolution. Russia has also been vocal against the imposition of sanctions, maintaining that the Iranian nuclear programme issue should be addressed within the framework of IAEA regulations, rather than through UN sanctions.⁵⁸ This is arguably attributed to the fact that Russia is a crucial investor in the Iranian nuclear programme.

Meanwhile, the DPRK and the US as well as Iran and the US are historically ideological opponents as they belonged to the Cold War East and West blocs, respectively. Namibia, for its part, has strong historical links with Iran and the DPRK, as they supplied the South West Africa People's Organisation (SWAPO), Namibia's liberation movement, with financial and material support in furthering the cause of Namibia's independence. SWAPO further had opened a diplomatic mission in Tehran, Iran. While the Iranian shares in *Rössing* Mine were acquired before independence, Namibia and Iranian economic relations were consolidated by the cordial relations anchored in the histories of the two countries. Furthermore, the DPRK's economic relations with Namibia are rooted in the historical ties between the two countries as discussed earlier in this paper.

The application of international law differently to entities within the international legal order system erodes the essence of sovereign equality. This reflects what Kingsbury referred to as special treatment of large powers, who advocate special responsibility in international legal order and are thus not inclined to a balance between sovereign equality, the primacy of great powers, and organisational efficiency.⁵⁹ He concludes that issues related to the NTP are among those that reflect inequalities in international law, as they become exceptions to accommodate great powers.

Powerful states tend to formulate hard laws that work in the interests of their political dispensation and ensure that their provisions clearly spell out obligations and sanctions.⁶⁰ It is further

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contended that in the application of hard international law to states, large states have great influence over compliance with the law by small states, but ensure that there is relaxation in the application of law to themselves.⁶¹

Stephan surmises that the application of international law is largely influenced by the structural dimensions in international relations, with a clearly observable selective application of international law.⁶² Stephan further posits that the selective application of international law by large states to small states has two-edged implications.⁶³ It demonstrates the capacity of a great power to address their interests and it invites small states to demand a similar treatment by the great power. This happened with regard to Israel, to whom international law has been applied selectively in a protective manner, such that other states want a similar application of international law to them.

Seker cautions that international law should not be applied selectively, or used as a propagating tool for ideologies.⁶⁴ In multilateralism, it is required that respect for international law reflect consistency and impartiality. He further maintains that the world order which governs the relations of states and institutions should be based on international law. This paper argues that the proposition is not observable in the application of UNSC resolutions insofar as large states are primarily occupied with pursuing their interests.

Stephan states that because of differences in economic and military capacity among others, large states can impose international law obligations upon small states, including seizing their resources.⁶⁵ This is illustrated by the imposition of sanctions when states contravene the UNSC resolutions. Spearheading the drives for such sanctions are large and powerful states, like the US. These resolutions are typical of the post-Cold War period, of which Stephan remarks witness regulations of armed conflict, unlike during the Cold War period when powerful states did not adopt concrete international law applicable to specific armed conflict.⁶⁶ Since the adoption of the NPT in 1968, the UNSC has not adopted a resolution of the same magnitude as the

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resolutions 1929 of 2010 and 2094 of 2013. By then, Cold War rivals were building up their nuclear capacities, and adopting a resolution banning nuclear weapons was not in their interests.

Stephan states that recurrent problems in different parts of the world result from the relations of large states with small states, which prompt large states to adopt measures that are adopted as obligations under international law.⁶⁷ This results in the rest of small states submitting to the standards of international law and the rules of international organisations because of the position that large states take, thereby making submitting to international law a result of the great power factor.

“Powerful states tend to formulate hard laws that work in the interests of their political dispensation.”

The United Nations makes a significant contribution to international law, through soft and hard laws legislated by its General Assembly and Security Council, respectively. The Security Council laws focus on international politics and the very political structure of the Security Council creates a problem of bias in international law. Large powers use the Security Council for leverage in international politics and further create a nexus between international politics and international law. They use international law to preserve their own interests and they could violate international law, knowing that they can veto any sanctions proposed by UN Security Council. Respect of international law by large states has, therefore, been characterised by inequalities, selectivity, inconsistencies, and double-standards.

International law has implications for Namibia, a member of the international political and legal systems. Namibia's relations with countries that are directly affected by UNSC Resolutions, like Iran and the DPRK, subject it to microscopic scrutiny by large players in international relations. Accordingly, at numerous inter-ministerial meetings on the UN resolutions on the DPRK,^c it was underscored that Namibia should strictly comply with embargoes provided by the UNSC resolutions in order to avoid becoming a target of sanctions. Namibia enacted domestic legislations that are aligned to international law in order to show its standing as an international law-abiding state. In the end, the country was certified compliant by the UN Committee on Sanctions.^{ORF}

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c The author of this paper attends these inter-ministerial meetings.

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