

A Negotiation Model for Understanding the Role of International Law in Foreign Policy Crises

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Abstract : Studies that consider the actual impact of international law upon foreign affairs crises are flawed by an unrealistic model of decision making. The common, unexamined assumption is that a nation has a unitary executive or ruler who considers a wide variety of considerations, including international law, in attempting to resolve a crisis. To the extent that negotiation theory is considered, the focus is on negotiations between or among nations. The unsettling result is a shallow focus that concentrates on each country's public posturing about international law. The country-to-country model ignores governments' internal negotiations that lead to their formal position in a crisis. The model for foreign policy crises needs to be supplemented to include a model of internal negotiations. Important foreign policy decisions come from groups within a government committee, advisers, etc. Within these groups, participants may have differing agendas and resort to international law to bolster their positions. To understand the influence of international law in international crises, these internal negotiations must be considered. These negotiations are crucial to creating a foreign policy agenda or recommendations. External negotiations between the two nations are significant, but the internal negotiations provide a better understanding of the actual influence of international law upon international crises. Discovering the details of specific internal negotiations is quite difficult but not necessarily impossible. The present proposal will use a specific crisis to illustrate the role of international law. In 1861 during the American Civil War, a United States navy captain stopped a British mail ship and removed two ambassadors of the rebelling southern states. The result was what is commonly called the Trent Affair. In the wake of the captain's unauthorized and rash action, Great Britain seriously considered going to war against the United States. A detailed analysis of the Trent Affair is possible using the available and extensive internal British correspondence and memoranda to reach an understanding of the effect of international law upon decision making. The extensive trove of internal British documents is particularly valuable because in 1861, the only effective means of communication was face-to-face or through letters. Telephones did not exist, and travel by horse and carriage was tedious. The British documents tell us how individual participants viewed the process. We can approach an accurate understanding of what actually happened as the British government strove to resolve the crisis. For example, British law officers initially concluded that the American captain's rash act was permissible under international law. Later, the law officers revised their opinion. A model of internal negotiation is particularly valuable because it strips away nations' public posturing about disputed international law principles. In internal decision making, there is room for meaningful debate over the relevant principles. This fluid debate tells how international law is used to develop a hard, public bargaining position. The Trent Affair indicates that international law had an actual influence upon the crisis and that law was not mere window dressing for the government's public position.

Keywords : foreign affairs crises, negotiation, international law, Trent affair

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