International Law Review, Volume 43, Issue 82, Summer 2026, pp.283-328

The Resonance of Absence: The Binding Effect of States' Silent Conduct

(Original Research)

Anosh Naderi *

(DOI) : 10.22066/CILAMAG.2025.2064210.2748

Date Received: 26 Jun.2025 Date Accepted: 19 Aug.2025

Abstract

While existing scholarship has analyzed State silence through frameworks such as acquiescence, this study advances a distinct perspective by focusing on the normative force of '*legitimate* or *reasonable expectations*' created by passive conduct. It examines how silence binds States under international law by generating such expectations, thereby giving rise to legal obligations. Departing from traditional frameworks treating silence merely as passive behavior without any legal value, this study demonstrates that when circumstances objectively call for a reaction, a State's silent conduct – such as silence or a lack of objection – creates a 'legitimate or reasonable expectation' in other States that the silent State has accepted a particular legal position. Such expectations crystallize into obligations when other States rely on this passivity, through principles of good faith, acquiescence, and estoppel – fostering legal certainty and predictability. Consequently, the silent State is obliged to adhere to the agreements or understandings tacitly shaped by its passiveness. The analysis integrates doctrinal scholarship with international case law to show how silence shapes rights and duties across international law. Crucially, it establishes that silence's binding force arises not from inaction alone, but from the objective reasonableness of the expectations induced in other States. By anchoring acquiescence and estoppel in the bedrock principle of good faith, the article advances a coherent theory of how passive conduct becomes a source of obligation, reinforcing the stability of international legal relations.

Keywords

Acquiescence, Estoppel, Good Faith, Interpretation, Legitimate Expectation, Reasonable Expectations, Silence, Silent Conduct.

* PhD Candidate and Casual Academic, University of Technology Sydney, anosh.naderi@uts.edu.au

Introduction

In the theatre of international legal relations, States communicate not only through declarations and treaties but through deliberate silence – a nuanced dialect where *inaction* transmutes into obligation. The enduring Latin maxim *qui tacet consentire videtur* – he who is silent is taken to agree – captures a foundational truth: silence is never merely passive. Yet international law has struggled to articulate why and when silent conduct binds the silent-State. Traditional frameworks – treating silence as subsidiary to acquiescence risk reducing it to evidentiary flotsam rather than recognizing its generative force. This article contends that silence acquires normative weight when it crystallizes 'reasonable expectations' about a State's legal stance, transforming inertia into a source of obligation through the animating principle of *bona fides*.[1]

The implications are profound. From contested territorial boundaries to the stability of treaty regimes, silence of a State operates as a tectonic force – shifting legal landscapes where protest was expected but withheld. Consider Thailand's half-century failure to challenge French colonial maps in *Temple of Preah Vihear*, or Malaysia's muted response to Singapore's administration of *Pedra Branca*. In both cases, silence functioned as tacit consent, not because international law presumes states *must* object, but because their inaction fostered objectively reasonable reliance in others. Such reliance, once entrenched, becomes the bedrock of legal certainty.

This study diverges from prior scholarship in three pivotal respects: First, it recenters silence as an *active manifestation* of sovereign will, rather than as a passive evidentiary factor. In contexts where a State's failure to respond occurs despite clear opportunities and incentives to do so, prolonged silence can amount to an implied waiver or even an unspoken promise. Such conduct is not the absence of will, but a choice – a communicative act conveyed through omission. Second, it reframes the doctrines of acquiescence and estoppel not as separate, self-contained legal devices, but as complementary expressions of a single imperative: to safeguard legitimate or reasonable expectations that arise from State passivity. Both doctrines share a functional logic: to ensure that States may rely on the apparent stability of another State's legal position, and to prevent opportunistic reversals that would undermine legal certainty. Third, it bridges a theoretical gap between the ICJ case law and other international tribunals on the concept of legitimate or reasonable expectation.

While the ICJ often denied that 'expectation' is an independent source of obligation, their reasoning reveals a tacit acknowledgment that expectation operates as a customary extension of good faith and acquiescence. This is evident in the careful calibration of silence's legal effect – courts are less concerned

1. Robert Kolb, *Good Faith in International Law* (Oxford: Hart Publishing, 2017), 33.

with the psychology of the silent State than with the objective reasonableness of reliance by others.

Methodologically, the article weaves doctrinal analysis with jurisprudential deep dives. Part 1 catalogs forms of silent conduct – from implied consent to failure to protest – showing their legal consequences across ICJ, WTO, and ILC practice; Part 2 theorizes 'reasonable expectation' as the conduit linking silence to bindingness, anchored in VCLT Articles 18 and 26; Parts 3 and 4 dissect how good faith operationalizes silence through *acquiescence* as tacit consent, and *estoppel* as preclusion, using landmark cases to expose the fluid boundary between them.

At the conceptual core of this inquiry lies the recognition that international law is not merely a catalogue of express commitments. It is also a system of implicit understandings, mediated through conduct, context, and expectation. Silence – particularly when it occurs in the face of a clear opportunity to object – can speak volumes about a State's legal position. This is not to romanticize passivity, but to acknowledge that, in the highly interdependent and expectation-sensitive environment of international relations, the absence of a response can recalibrate the legal order as effectively as a formal statement.

This article ultimately argues that, under the rubric of good faith, a State's silence in circumstances where a response is objectively expected can give rise to legal consequences. In such contexts, silent conduct may create a legitimate or reasonable expectation in other States that the silent State has accepted a particular legal position. Interpreted as a manifestation of the silent State's will, such tacit agreement can reshape legal relationships and obligations. Good faith requires States to act consistently and transparently, in line with their expressed or implied intentions. Accordingly, silence is not always neutral; in certain circumstances, it may constitute deliberate acquiescence and reflect the will of the silent State.

The transformation of silent conduct into legal consequence is operationalized through doctrines rooted in good faith, including *pacta sunt servanda*, acquiescence, and estoppel. Acquiescence treats prolonged silence as implied agreement where objection is reasonably expected, while estoppel precludes States from contradicting conduct upon which others have reasonably relied. Together, these doctrines demonstrate that silence, far from being legally inert, can shape the rights and duties of States in profound and enduring ways.

1. Silent Conduct of State

In international law, silence of State is generally interpreted as an absence of a public response to actions suggesting a legal stance or to the formal communication of a legal position.[2] In this context, silence can play a significant role in shaping legal outcomes as it plays a role in the formation of

2. Gabrielle Zoe Marceau, Rebecca Walker, and Niki Koumadoraki, "Silence in WTO," *Journal of World Trade* 56, 2 (2022): 188.

customary international rules,[3] inferring a dispute,[4] interpreting treaties[5] or identifying a normative gap in international legal order.[6] Alongside decisions made by courts and tribunals, legal scholars have identified various situations where silence can be interpreted to have legal effects. These examples of State silence range in different shapes and forms while all are linked to established legal principles like estoppel and acquiescence.[7] Below, some forms of silent conduct will be explored and how they have been understood in international legal discourse.

One of the most well-recognized interpretations of silence is *inferred* or *implied consent*.[8] In cases where a State remains silent in the face of certain actions by another State or international body, this silence can be taken as tacit approval or acceptance.[9] Andrew T. Guzman explained that 'the notion of inferred consent attempts to retain the consensual basis of international law despite the absence of explicit consent.'[10] Closely related to implied consent, the lack of objection[11] or lack of opposition[12] carries legal significance when a State does not contest actions or claims that it might otherwise challenge.[13]

In practice, '[i]t is evident when the objecting State has neglected to voice an objection when such an objection would have been warranted', it may be interpreted as acquiescing to that behavior or accepting those claims, despite

3. Michael Byers, *Custom, Power and the Power of Rules: International Relations and Customary International Law* (Cambridge University Press, 1999), 142.

4. Danae Azaria, "State Silence as Acceptance: A Presumption and an Exception" (Faculty of Laws University College London Law Research Paper No. 15/2023, 2023), 1-2.

5. Report of the Special Rapporteur of the International Law Commission "First Report on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties" (19 March 2013) A/CN.4/660, p. 74, para. 111. https://digitallibrary.un.org/record/749044?ln=en&v=pdf

6. Yilin Wang, "The Origins and Operation of the General Principles of Law as Gap Fillers," *Journal of International Dispute Settlement* 13, 4 (2022): 560-561.

7. Marceau et al., *Silence in WTO*, 188, footnote 5; *see also:* Azaria, *State Silence as Acceptance A Presumption and an Exception*, 1-2.

8. Byers, *Custom, Power and the Power of Rules*, 142; *see also:* John J. Chung, "Customary International Law as Explained by Status Instead of Contract," *North Carolina Journal of International Law and Commercial Regulation* 37 (2012): 625-626.

9. Anthony D'Amato, "Is International Law Really Law?," *Northwestern University Law Review* 79 (1984): 1293.

10. Andrew T. Guzman, "Saving Customary International Law," *Michigan Journal of International Law* 27 (2005): 143; *see also:* Andrew T. Guzman, and Jerome Hsiang, "Some Ways That Theories on Customary International Law Fail: A Reply to Laszlo Blutman," *European Journal of International Law* 25, 2 (2014): 553-576.

11. Molly C. Quinn, "Life Without Parole for Juvenile Offenders: A Violation of Customary International Law," *Saint Louis University Law Journal* 52, 1 (2007): 309.

12. Shelly Aviv Yeini, "The Specially Affecting States Doctrine," *The American Journal of International Law* 112, 2 (2018): 253; *see also:* Isabelle Ley, "Opposition in International Law – Alternativity and Revisibility as Elements of a Legitimacy Concept for Public International Law," *Leiden Journal of International Law* 28, 4 (2015): 717.

13. Marcus Hickleton, "Shaky Foundations: Killer Robots and the Martens Clause," *Perth International Law Journal* 4 (2019): 42.

no express agreement.[14] In the same vein, in the jurisprudence of the ICJ there are examples of resorting to 'inaction' as a form of absence of act or silence of States with significant legal effects.[15] Furthermore, during the ILC's work on 'Unilateral Acts of States', special rapporteur Víctor Rodríguez Cedeño underscores the dual nature of silence within international law, where it may serve both as a tacit acceptance of a situation or as a means of dissent:

"By its inaction, a State may acquire rights and assume obligations. In particular, through silence – which for some writers is not strictly speaking a legal act but rather a form of expression of will – a State may acquire rights and assume obligations in specific cases. A State may accept an offer through silence: *qui tacet consentire videtur*. The mere manner in which a State conduct itself, including in specific circumstances its silence, may indicate the will to recognize as legitimate a particular state of affairs. The State may also express by its silence its opposition to a de facto or de jure situation: *qui tacet negat*."[16]

The ILC also recognizes the legal effect of States' inaction in the realm of international responsibility of States. In its commentary on draft articles on Responsibility of States for Internationally Wrongful Acts, the ILC linked 'inaction' with the notion of 'failed to take appropriate steps' to impute responsibility to a silent conduct of a State:

"For example, in the *Corfu Channel* case, ICJ held that it was a sufficient basis for Albanian responsibility that it knew, or must have known, of the presence of the mines in its territorial waters and did nothing to warn third States of their presence. In the United States Diplomatic and Consular Staff in Tehran case, the Court concluded that the responsibility of the Islamic Republic of Iran was entailed by the 'inaction' of its authorities which 'failed to take appropriate steps', in circumstances where such steps were evidently called for. In other cases, it may be the combination of an action and an omission which is the basis for responsibility."[17]

A *passive* or *negative attitude* is another term which the ICJ used to

14. Shelly Aviv Yeini, "The Persistent Objector Doctrine: Identifying Contradictions," *Chicago Journal of International Law* 22, 2 (2022): 608.

15. *United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*, Judgment, I.C.J. Reports 1980, p. 3 at 64–67; *see also:* Etienne Henry, "Alleged Acquiescence of the International Community to Revisionist Claims of International Customary Law (With Special Reference to the *Jus Contra Bellum* Regime)," *Melbourne Journal of International Law* 18, 2 (2017): 273-274; Gordon A. Christenson, "Attributing Acts of Omission to the State," *Michigan Journal of International Law* 12, 2 (1991): 324; Dustin A. Lewis, Naz K. Modirzadeh, and Gabriella Blum, "Quantum of Silence: Inaction and Jus ad Bellum," *Harvard Law School Program on International Law and Armed Conflict*, 2019; Kristen E. Boon, "Are Control Tests Fit for the Future? The Slippage Problem in Attribution Doctrines," *Melbourne Journal of International Law* 15, 2 (2014): 330.

16. Report of the Special Rapporteur of the International Law Commission "*First Report on Unilateral Acts of States*" (5 March 1998) A/CN.4/486, p. 326, para. 49. https://digitallibrary.un.org/record/252507?v=pdf

17. "ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts" (2001) A/56/10, p. 35, para 4. https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf describe an (in)action of a State.[18] In his separate opinion to the *Temple of Preah Vihear (Cambodia v. Thailand)*, the vice-president Alfaro elaborated more this passiveness in international law:

"State may also be bound by a 'passive' or 'negative attitude' in respect of rights asserted by another State, which the former State later on claims to have. Passiveness in front of given facts is the most general form of acquiescence or tacit consent. Failure of a State to assert its right when that right is openly challenged by another State can only mean abandonment to that right. 'Silence' by a State in the presence of facts contrary or prejudicial to rights later on claimed by it before an international tribunal can only be interpreted as tacit recognition given prior to the litigation."[19]

In another perspective, by highlighting the concept of *acquiescence* and linking it to passive conduct, the ICTY recognized that silence, inaction, or passive attitude by State or public officials can have legal consequences, equating such passivity with tacit approval or acquiescence to wrongful acts. This demonstrates that passive attitude, as a form of silent conduct, carries legal meaning in international law, reinforcing the notion that silence, or inaction can imply complicity or acceptance of certain international criminal violations.[20]

An *absence* or *lack of reaction*, especially in the face of clear legal provocation or violation, can suggest that a State acquiesce to that behavior. A WTO appellate body has argued that 'in specific situations, the 'lack of reaction' or 'silence' by a particular treaty party may, in the light of attendant circumstances, be understood as acceptance of the practice of other treaty parties.'[21] In this regard, the Report of the ILC is highly relevant:

"Lack of protest - that is, silence - can be decisive in legitimizing a given situation or legal claim, although it is clear that silence in itself does not signify any recognition whatsoever; the formulation of a protest is necessary only when, depending on the situation in question, a State may be expected to take a position."[22]

---

18. *Temple of Preah Vihear (Cambodia v. Thailand)*, *Merits,* p. 20: 'Thailand denies this so far as she is concerned, representing herself as having adopted a merely 'passive attitude' in what ensued. She maintains also that a course of conduct, involving at most a failure to object, cannot suffice to render her a consenting party to a departure at Preah Vihear from the watershed line specified by Article I of the Treaty of 1904, so great as to affect the sovereignty over the Temple area.'

19. Ibid, *Separate Opinion of Vice-President Alfaro*, 38; *see also:* Juan Pablo Hugues Arthur, "The Legal Value of Prior Steps to Arbitration in International Law of Foreign Investment: Two (Different?) Approaches, One Outcome," *Anuario Mexicano de Derecho Internacional* 15, 1 (2015): 449.

20. ICTY, *Prosecutor v. Delalić, Mucić, Delić and Landžo*, Case No. IT-96-21-T, Judgment, 16 November 1998, pp. 172–173, paras. 473–474.

21. WTO, *European Communities – Customs Classification of Frozen Boneless Chicken Cuts*, Report of the Appellate Body, WT/DS269/AB/R and WT/DS286/AB/R, 27 September 2005, pp. 105–106, para. 272.

22. Report of the Special Rapporteur of the International Law Commission, "Fourth Report on Unilateral Acts of States" (30 May 2001) A/CN.4/519 (2001), p. 120, para. 30; https://digitallibrary.un.org/record/444203/?v=pdf. "Sixth Report on Unilateral Acts of States" (30 May 2003) A/CN.4/534, p. 58, para. 26;

Failure to respond, particularly in the context of territorial disputes, can be interpreted as acceptance, depending on the expectations in a given situation:

"Under certain circumstances, sovereignty over territory might pass as a result of the failure of the State which has sovereignty to respond to conduct *à titre de souverain* of the other State… . The absence of reaction may well amount to acquiescence."[23]

Such silence can bind the silent-States to certain positions due to their failure to dispute or clarify is taken as acquiescence.[24] Also, it is noteworthy that the 'failure to respond' is the core concept in 'Protection of Persons in the Event of Disasters'.[25] There is no need to explain that in this context, unwillingness or inability of a State to respond adequately to certain catastrophic situation is another reading of the term 'inaction'.[26]

Lack of questioning is another term used in certain forums, including the Inter-American Court of Human Rights[27] and the International Criminal Court (ICC) is used to denote silence through lack of questioning in international (criminal) proceedings.[28] Furthermore, in the jurisprudence of the ICJ a very similar concept of lack of challenge has been used which provides additional context for its legal applications. Judge *ad hoc* Sreenivasa Rao has emphasized on the concept in his separate opinion to the judgment of *Pedra Branca/Pulau Batu Puteh*:

"In the absence of any clear and convincing exercise of Johor's sovereignty over … Pedra Branca/Pulau Batu Puteh, the Court's observation of the 'lack of challenge' to Johor's sovereignty over these maritime features in the Straits of Singapore appears to ring hollow and could not in all the circumstances be seen as satisfying the conditions of continuous and peaceful display of territorial sovereignty ... This conduct or 'lack of action' on the part of Johor, … , gradually over a period of time, sovereignty over Pedra Branca/Pulau Batu

Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment, I.C.J. Reports 2008, p. 12 at p. 42, para. 121. : "The absence of reaction may well amount to acquiescence."

23. ICJ, *Sovereignty Over Pedra Branca/Pulau Batu Puteh*, para. 121. Eirik Bjorge, "Opposability and Non-Opposability in International Law," *British Yearbook of International Law* 1 (2021): 23-24.

24. International Law Commission, "Summary Record of the 21st Meeting" (30 October 2009) A/C. 6/64/SR.21, pp. 10-11, paras. 73-79. https://digitallibrary.un.org/record/679376?v=pdf.

25. Stuart Ford, "Is the Failure to Respond Appropriately to a Natural Disaster a Crime Against Humanity? The Responsibility to Protect and Individual Criminal Responsibility in the Aftermath of Cyclone Nargis," *Denver Journal of International Law and Policy* 38, 2 (2010): 227.

26. Matias Thomsen, "The Obligation Not to Arbitrarily Refuse International Disaster Relief: A Question of Sovereignty," *Melbourne Journal of International Law* 16, 2 (2015): 31: 'The most persuasive arguments note that …, in extreme circumstances, the failure to respond to the needs of disaster victims would constitute a crime against humanity by way of 'omission', thereby triggering the potential application of R2P.'

27. IACtHR, *Serrano Cruz Sisters v. El Salvador*, Preliminary Objections, Judgment, 23 November 2004, Series C No. 118, p. 13.

28. ICC, *Prosecutor v. Laurent Gbagbo*, Pre-Trial Chamber I, Decision, Case No. ICC-02/11-01/11, Observations on Behalf of Victims Regarding the Defence Challenge to the Jurisdiction of the Court, 27 June 2012, p. 30, para 17.

Puteh, is material and leaves Johor without any basis to maintain the claim of original title."[29]

In addressing Palestine's accession to the Rome Statute, the ICC emphasized the legal relevance of silence and lack of challenge by States Parties. Although seven States submitted observations as *amici curiae*, arguing that Palestine does not meet the requirements of statehood, the ICC noted that 'these States remained silent during the accession process' and 'none of them challenged Palestine's accession' before the Assembly of States Parties.[30]

Moreover, the term *failure to react* has been employed by both the ILC and the ICJ as a silent conduct with legal implications. The ILC has stated that 'failure to react over time to a practice may serve as evidence of *opinio juris*, provided that States were in a position to react and the circumstances called for some reaction.'[31] The ICJ has taken a similar approach to consider 'failure to react' appears to have amounted to a tacit recognition by silent-State through a 'failure to react' in any way, on an occasion that called for a reaction in order to affirm or preserve title in the face of an obvious rival claim.[32] In other words, 'abstention is seen by the law as a potentially legally relevant fact although not an operative fact.'[33] As it is obvious for the Court, the failure to deny the existence of a right arising from the practice of a State, which had continued undisturbed and unquestioned over a long period, is particularly significant.[34]

Finally, an *absence of protest* can carry significant legal weight 'in circumstances when protest is necessary according to the general practice of States in order to assert, to preserve or to safeguard a right'.[35] The ICJ asserted in the *Gulf of Maine (Canada v. United States)*, that 'failure to protest in the

29. ICJ, *Sovereignty Over Pedra Branca/Pulau Batu Puteh*, p. 171, para. 38 (Separate opinion of Judge ad hoc Sreenivasa Rao); A similar reference has also made to the term *lack of challenge* in the written statement of Qatar in its processing against United Arab Emirates. *see: Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Preliminary Objections*, pp. 63-64.

30. ICC, Pre-Trial Chamber I, *Situation in the State of Palestine*, Decision on the Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court's Territorial Jurisdiction in Palestine, Case No. ICC-01/18-143, 5 February 2021, p. 45, para. 101.

31. ILC, "Report of the International Law Commission on the Work of its 68th Session" (2 May-10 June and 4 July-12 August 2016), A/71/10, pp. 99-100. https://digitallibrary.un.org/record/848771?v=pdf

32. ICJ, *Temple of Preah Vihear*, pp. 28-29.

33. Henry, *Alleged Acquiescence of the International Community to Revisionist Claims of International Customary Law*, 267.

34. *Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*, *Merits*, pp. 56-57, para. 141.

35. ICJ, *Temple of Preah Vihear*, pp. 38-39 (*Separate Opinion of Vice-President Alfaro*): 'The State concerned must be held barred from claiming before the international tribunal the rights it failed to assert or to preserve when they were openly challenged by word or deed. … The absence of protest – says Lauterpacht – may, in addition, in itself become a source of legal right inasmuch as it is related to – or forms a constituent element of – estoppel or prescription.'

face of that conduct, or assertion of rights, involves a tacit acceptance of the legal position represented by the other Party's conduct or assertion of rights.'[36] Also, 'failure to protest' plays a vital role in the time formation rule of customary international law:

"The State, through its acts or conduct, can participate in or hamper the formation of a customary rule. Recognition express or tacit (that is, silence or lack of protest, which is tantamount to tacit or implied consent), and protest or rejection play a determining role in the formation of custom. What is involved, from the formal standpoint, are unilateral acts, or, in any case, expressions of will which are connected with the belief that a practice is law."[37]

As the preceding discussion demonstrates, silent conduct of States 'can undoubtedly produce legal effects in international law.'[38] Silence may carry significant legal weight in particular contexts where a State's failure to respond – despite circumstances objectively demanding a reaction – gives rise to a *legitimate or reasonable expectation* among other States that the silent-State has accepted or acquiesced to a particular legal position. Whether through prolonged silence, a lack of protest, or other forms of passive conduct, such passiveness can effectively generate legal effects, thereby shaping rights and obligations under international law. Indeed, in these instances, silence may speak volumes.

Building upon this foundation, the following analysis explores the interplay between reasonable expectation and the legal value of silent conduct, examining how international law interprets and gives effect to State silence.

2. Reasonable Expectation and the Legal Value of Silent Conduct

The idea that legitimate or reasonable *expectations* – especially those instilled by good faith dealings – should be protected has deep roots across legal systems. In domestic legal systems or administrative law, for example, a public authority's representations can give rise to a legitimate expectation of continued policy.[39] In international law, however, there is no freestanding rule of 'legitimate or reasonable expectation', as the ICJ has observed:

"References to 'legitimate expectations' may be found in arbitral awards concerning disputes between a foreign investor and the host State that apply

36. *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, *Merits*, p. 62, para. 129.

37. ILC, *First Report on Unilateral Acts of States*, p. 331, para. 102.

38. Alexander Orakhelashvili, *Peremptory Norms in International Law* (Oxford University Press, 2008), 398.

39. To illustrate, consider English administrative law: in *R (Coughlan) v North and East Devon Health Authority*, the domestic court recognized a substantive legitimate expectation in favor of an individual who had been promised a 'home for life.' The tribunal held that the Health Authority's failure to honor that assurance – after the recipient had relied on it to her detriment – constituted an abuse of power arising from bad faith assurances. *See*: Ibrahim Sule, "Substantive Legitimate Expectations: The Journey So Far", *European Journal of Law and Political Science* 1, 5 (2022): 61-62.

treaty clauses providing for fair and equitable treatment. It does not follow from such references that there exists in general international law a principle that would give rise to an obligation on the basis of what could be considered a legitimate expectation."[40]

While the Court's dictum is correct, the notion of 'legitimate' or 'reasonable expectation' permeates through the bedrock principle of *pacta sunt servanda* and the requirement of good faith performance. In this regard, ICSID has found 'legitimate expectations' within customary international law by linking expectations to the customary principle of good faith.[41] In *IC Power v. Peru*, for example, the tribunal held that protecting the legitimate expectations caused by behaviour of States are '*part of their broader customary international law obligation to act in good faith*.'[42] Also, some scholars have recognized that parties' *good faith* must extend to honoring 'legitimate expectations' created by subsequent practice of other States.[43]

In this regard, as a matter of argument, under Article 18 of the 1969 Vienna Convention, States are obliged to refrain from acts that would defeat the object and purpose of a treaty.[44] If the silent practice of certain parties creates 'reasonable expectations' in other States that the silent-State has accepted a particular legal position regarding the interpretation or application of their applicable agreements, the principle of good faith precludes the silent-State from retreating from the situation generated by its own silence.[45] These expectations can manifest in both *procedural* and *substantive* forms across the spectrum of public international law, not merely within treaty relations.[46]

Procedurally, legitimate expectations arise where the conduct of States – whether through positive acts or through silence – signals an anticipated procedural course. For example, in multilateral settings such as the UN General Assembly

40. *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, *Judgment, Merits*, p. 50, para. 162.

41. Jarrod Hepburn, "The Legal Justification for the Doctrine of Legitimate Expectations in International Investment Law", *European Journal of International Law* 36, 1 (2025): 61.

42. ICSID, *IC Power Ltd v. Peru – Award*, 3 October 2023, ICSID Case no. ARB/19/19, para. 306.

43. Guillaume Futhazar, and Anne Peters, "Good Faith". in *The UN Friendly Relations Declaration at 50: An Assessment of the Fundamental Principles of International Law*, Jorge E. Viñuales, ed. (Cambridge: Cambridge University Press, 2020), 203; *see also*: Robert Kolb, *Good Faith in International Law* (Oxford: Hart Publishing, 2017): 100-18.

44. Vienna Convention on the Law of Treaties, (adopted: 23 May 1969, entered into force 27 January 1980) 1155 U.N.T.S. 331, art. 18. https://treaties.un.org/pages/ViewDetailsIII.aspx?Temp=mtdsg3&chapter=23&clang=_en&mtdsg_no=xxiii-1&src=treaty.

45. The requirement of good faith reinforces estoppel by prohibiting States from deriving advantage from their own inconsistent conduct where such conduct has induced legitimate reliance.

46. By argumentum *a contrario*, it can be inferred that in Pulp Mills on the River Uruguay (Argentina v. Uruguay), Argentina unsuccessfully contended that Uruguay's procedural failures automatically amounted to substantive breaches – illustrating the distinction between procedural and substantive obligations under international law. *See*: *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, *Judgment*, Compensation owed by the Republic of Nicaragua to the Republic of Costa Rica, I.C.J Reports 2018, p. 785, para. 9.

or Security Council, the consistent failure of a State to contest procedural arrangements or decision-making rules can reasonably lead other States to expect that the silent-State accepts those modalities. Over time, for example, the Security Council has developed a consistent procedural practice, though not formally codified, that differentiates 'procedural' from substantive matters. Under Article 27 of the UN Charter and Rule 40 of the Provisional Rules of Procedure, vetoes by permanent members do not apply to procedural decisions. In practice, the Council has repeatedly treated certain types of issues, such as adopting the provisional agenda or inviting non-Members to meetings, as procedural, even absent explicit consensus on every occasion. This acquiescence through practice, spanning decades, has effectively rejected the applicability of a veto in those contexts.[47]

Substantively, expectations often concern rights, obligations, or legal status. This can be seen in contexts such as: (i) *customary international law:* When a State remains silent in the face of a widespread and consistent practice by others – especially where the practice affects its rights – its prolonged acquiescence may create a reasonable expectation in the international community that the State accepts the practice as law;[48] (ii) *territorial and boundary matters*: Silence in response to the open and public exercise of sovereignty by another State – such as administering territory or enforcing jurisdiction – can generate expectations that the silent-State accepts the boundary or sovereignty status;[49] (iii) *Recognition of legal status*: Failure to object to the recognition of a new State or government, or to maritime claims deposited with the UN, may give rise to expectations that the silent-State will not later contest the status or claim;[50] (iv) *estoppel and reliance*: The jurisprudence of international court and tribunals have held that a State that has induced reliance – through either active representations or passive acquiescence – cannot later contradict itself when other States have acted on that basis.[51]

International law requires that a State which has, through its behavior, such as prolonged silence, generated legitimate expectations in others, is precluded from later undermining those expectations to the detriment of relying parties

47. For more information on procedural matters in the UNSC, see: Karin Landgren et al., "Security Council Working Methods in Hard Times" (New York: Security Council Report, Research Report No. 2, 2 May 2023). https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/working_methods_2023.pdf.

48. James A Green, *The Persistent Objector Rule in International Law*, 1st ed (Oxford: Oxford University Press, 2016), 75-90.

49. Giovanni Distefano and Aymeric Hêche, "State Silence and Territorial Title and Boundaries", in *State Silence Across International Law: Meaning, Context, and Developments*, Danae Azaria, ed. (Oxford: Oxford University Press, 2025), 243-64.

50. Sophia Kopela, "The Legal Value of Silence as State Conduct in the Jurisprudence of International Tribunals", *Australian Yearbook of International Law* 29, 1 (2010): 91.

51. Alexander Ovchar, "Estoppel in the Jurisprudence of the ICJ: A Principle Promoting Stability Threatens to Undermine It", Bond Law Review 21, 1 (2009): 113; *see also*: Andreas Kulick, "About the Order of Cart and Horse, Among Others – Estoppel in the Jurisprudence of International Investment Arbitration Tribunals", *European Journal of International Law* 27, 1 (2016): 107-128.

– *allegans contraria non audiendus est*.[52] Whether in the formation of custom, the recognition of boundaries, or the acknowledgment of procedural frameworks, the principle of good faith requires that a State which has, through its positive acts or its prolonged silence, generated legitimate or reasonable expectations in others, is precluded from later undermining those expectations to the detriment of those who relied upon them. The contemporary manifestation of these principles is evident in treaty law and jurisprudential developments.

Article 26 of the VCLT codifies *pacta sunt servanda*, requiring States to discharge their treaty obligations in good faith. In *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, the ICJ has underscored that good faith extends beyond literal interpretation, linking it to the standard of '*reasonableness*' in a manner that ensures the fulfillment of a legal obligation's object and purpose:

"Article 26 combines two elements, which are of equal importance. It provides that 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith.' This latter element, in the Court's view, implies that, in this case, it is the purpose of the Treaty, and the intentions of the parties in concluding it, which should prevail over its literal application. The principle of good faith obliges the Parties to apply it in a *reasonable* way and in such a manner that its purpose can be realized."[53]

One might initially confine this understanding of good faith and the concept of reasonableness to treaty law alone. However, in the *Nuclear Tests (Australia v. France)*, the Court unequivocally held that 'one of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith.'[54] In their joint dissenting opinion in *Allegations of Genocide (Ukraine v. Russian Federation)*, Judges Sebutinde and Robinson elaborated this dictum, emphasizing the phrase '*whatever their source*' to demonstrate good faith's expansive application in international law:

"The phrase '*whatever their source*' underscores that good faith applies irrespective of the origin of the legal obligation – whether rooted in treaty, custom, or general principles of law – and is instrumental in both the formation and discharge of such obligations. Although the principle is applicable to all areas of international law, it has a very specific and distinctive function in the law of treaties."[55]

Judges Sebutinde and Robinson underscored that good faith plays a fundamental role extending beyond treaty law and 'irrespective of the origin of

52. Killian O'Brien, "Representation in the Doctrine of Estoppel in International Law", *The Irish Yearbook of International Law* 3, 1 (2008): 69-90.

53. *Gabčíkovo-Nagymaros Project (Hungary/ Slovakia)*, *Judgment*, pp. 78-79, para. 142.

54. *Nuclear Tests (New Zealand v. France)*, *Judgment*, p. 473, para. 49; *see also*: *Nuclear Tests (Australia v. France)*, *Judgment*, p. 268, para. 46.

55. *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, *Judgment*, *Joint dissenting opinion of Judges Sebutinde and Robinson*, p. 463, para. 10.

the legal obligation' – a principle that may now be understood to encompass even States' silent conduct. The key and essential consideration is that interpreting States' legal obligations must account for contextual factors, including passive conduct by States, as well as the reasonable expectations such conduct may generate. In this regard, it should be noted that in the International Law Commission's work on *unilateral acts of States*, Special Rapporteur Víctor Rodríguez Cedeño emphasized the role of silence in international law, noting it may constitute obligations. As he observed:

"By its inaction, a State may acquire rights and assume obligations. In particular, through silence … a State may acquire rights and assume obligations in specific cases. A State may accept an offer through silence: *qui tacet consentire videtur*. The mere manner in which a State conduct itself, including in specific circumstances its silence, may indicate the will to recognize as legitimate a particular state of affairs."[56]

Consequently, since a State's passive conduct may constitute legally significant behavior capable of generating rights and obligations under international law, the principle of good faith requires such conduct to be considered when interpreting the scope of interstate obligations. Thus, this principle finds concrete expression in Article 31(3)(b) of the VCLT, which expressly recognizes *subsequent practice*, whether through action or inaction as a form of silent conduct, as an interpretative tool reflecting the parties' mutual understanding.

The ILC's Draft Conclusions on *Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties* (2018) further clarifies that a party's silence may constitute acceptance of such practice when the circumstances reasonably demand a response.[57] Thus, contemporary treaty law acknowledges that legitimate expectations, including those arising from silence, may crystallize and modify the contours of State consent.

These principles find equal resonance in customary international law, with jurisprudential developments offering crucial interpretive guidance. The seminal 1951 *Anglo-Norwegian Fisheries (United Kingdom v. Norway)* judgment established that prolonged State acquiescence – through what it termed 'general toleration' and 'historical consolidation' – may validate certain legal claims when supported by the reasonable expectations and understanding derived from the conduct of other States.[58]

Likewise, while silence does not create an obligation *per se*, customary rule of good faith imposes an obligation to protest clearly if one objects to a disputed situation. Failure to do so, especially when a State is aware and its interests are at stake, can itself alter legal relations. As Judge Spender noted in his dissenting opinion in the *Temple of Preah Vihear (Cambodia v. Thailand)*, '*the principle of preclusion is a beneficient and powerful instrument*

56. ILC, "*First Report on Unilateral Acts of States"*, 326, para. 49.

57. See section 2.1.2 below.

58. *Fisheries (United Kingdom v. Norway)*, *Judgment*, 139.

of substantive international law … as it is upon the necessity for good faith between States in their relations one with another.'[59] Judge Spender further clarified how a State's passive conduct generates reasonable expectations with legal implications:

"In my opinion the principle operates to prevent a State contesting before the Court a situation contrary to a clear and unequivocal representation previously made by it to another State, either expressly or *impliedly*, on which representation the other State was, in the circumstances, entitled to rely and in fact did rely, and as a result that other State has been prejudiced or the State making it has secured some benefit or advantage for itself."[60]

Judge Spender's articulation underscores that the binding force of a State's silence in international law derives not from inaction alone, but from the legitimate or reasonable expectations produced in another State through *reliance* on that silence or silent conduct. This understanding aligns with the doctrine of estoppel, which precludes a State from contesting a legal or factual situation when its prior conduct – including *omissions* or other forms of silent conduct previously explained – has induced reasonable and detrimental reliance by another State.[61] This formulation highlights that the other State's reliance on the passive conduct of the silent State – which creates expectations – is what gives silence its weight.

While not a free-standing universal rule, the *reasonable expectation* principle sets the stage for examining how such expectations, created by State silence, are enforced through key concepts of international law. The key concepts of good faith, acquiescence, and estoppel serve as primary legal mechanisms through which the silent conduct of a State, when circumstances objectively demand a response, generates binding effects by fostering legitimate expectations in other States. In short, these doctrinal frameworks operationalize the *reasonable expectation* principle central to our analysis, demonstrating how a State's silence or inaction can produce binding legal effects across diverse domains of international law.

Thus, having established how silence and passive behaviour of State can generate binding effects through the lens of 'reasonable expectations', the following sections revisit this framework's interplay with three foundational principles: *good faith* as the normative bedrock, *acquiescence* as the evidentiary manifestation, and *estoppel* as the preclusive consequence. By examining these doctrines through the prism of legitimate expectations, the analysis will demonstrate how international law converts passive conduct into substantive obligations – not as isolated phenomena, but as interconnected elements of a

59. *Temple of Preah Vihear (Cambodia v. Thailand)*, *Judgment*, *Dissenting Opinion of Sir Percy Spender*, p. 143.

60. Ibid., 143-44.

61. O'Brien, "Representation in the Doctrine of Estoppel in International Law", 70-73.

coherent system for protecting reliance interests.

3. Good Faith: Legal Certainty, and Predictability

The duty of good faith is a foundational principle of international law, requiring States to act consistently, honestly, and with fair dealing. Where the silent practice of a State creates reasonable expectations in other States that the silent-State has accepted a particular legal position regarding the interpretation or application of an agreement, or more broadly in its international legal relations, the principle of good faith precludes that State from subsequently disavowing the position implied by its silence.[62] In this section, it will be examined how 'legitimate or reasonable expectations' arising from silence acquire legal force through the framework of good faith. This analysis necessitates an exploration of good faith's role in international law and its relevance to interpreting State conduct, including passive behavior of States.

3-1. Good Faith as a Fundamental Legal Obligation

The principle of good faith occupies a central yet enigmatic position in international law. Recognized across domestic and international legal systems, it defies a singular definition, instead manifesting as a fluid concept shaped by context. Good faith bridges abstract legal theory with pragmatic governance of State conduct.[63] The principle of good faith is often characterized as an abstract and qualitative norm, inherently resistant to precise delineation. Scholars frequently divide it into subjective (emphasizing honesty of intent) and objective (prioritizing fairness and reasonableness) dimensions.[64] Some authors define good faith as a duty to act honestly and fairly, disclose true motives, and avoid exploiting ambiguities for unfair gain – principles highly relevant to the silent conduct of States in international law. According to Anthony D'Amato:

"The principle of good faith requires parties to a transaction to deal honestly and fairly with each other, to represent their motives and purposes truthfully, and to refrain from taking unfair advantage that might result from a literal and unintended interpretation of the agreement between them."[65]

From this perspective, the principle of good faith requires States to maintain consistency between their actions, representations, and omissions. This requirement proves particularly significant when assessing silent conduct in international legal relations. Any act or failure to act that frustrates the legitimate expectations

62. For doctrinal elaboration, see *infra* Section 4.2 (Estoppel).

63. William Tetley, "Good Faith in Contract Particularly in the Contracts of Arbitration and Chartering," *Journal of Maritime Law and Commerce* 35, 4, 566.

64. Mircea Noslacan, "The Good-Faith in the Public International Law and the Community Law", *Union of Scientists- Stara Zagora. International Scientific Conference*, (2008), pp. 1-3.

65. Anthony D'Amato, "Good Faith," in *Encyclopedia of Public International Law*, ed. Bernhardt Rudolf (Amsterdam: North-Holland, 1984), 107.

created by such conduct constitutes a violation of this fundamental principle.[66]

In international trade law, the principle crystallizes into a doctrine requiring parties to align their conduct with mutually expected standards of reasonableness.[67] A comprehensive formulation is offered by O'Connor, who defines good faith as:

"[A] fundamental principle that underlies the rule of *pacta sunt servanda* (the obligation to fulfill treaties) and other legal rules directly related to honesty, fairness, and reasonableness. Its application is determined by standards of honesty, fairness, and reasonableness prevailing in the international community at a given time."[68]

This definition captures its dual role as both a moral imperative and a functional legal tool. Likewise, the application of good faith varies markedly across legal traditions, reflecting broader philosophical divergences between civil and common law systems. In common law jurisdictions, skepticism toward a generalized good faith principle persists. English law, for example, historically rejects its explicit incorporation into contract law, relying instead on doctrines like implied terms and estoppel to approximate fairness.[69] Similarly, U.S. law lacks statutory mandates for good faith in contract interpretation, though courts increasingly emphasize its role in performance, and arbitral tribunals acknowledge its interpretive relevance.[70] By contrast, civil law systems elevate good faith to a supreme governing principle. French law prioritizes its application in the performance of contracts, ensuring obligations are fulfilled with honesty and fairness, while German law integrates it into both contractual interpretation and broader civil code provisions.[71]

As Shabtai Rosenne argues, while domestic applications of good faith may have limited direct connection to international law, they clearly demonstrate

66. In international law, silence by a State in the face of a claim or action by another State can, under certain conditions, be interpreted as acquiescence. If a State remains silent in circumstances where a protest is expected, and the other party reasonably relies on that silence as an acquiescence, then it would be contrary to good faith for the silent State to later challenge that conduct. In subsequent section, I will elaborate more on this. From another perspective, German jurisprudence further complicates the concept by distinguishing three autonomous interpretations: prohibition of an abuse of rights (*Rechtsmissbrauch*), *estoppel* (based on the principle of *venire contra factum proprium*), and *acquiescence* due to lapse of time (*Verwirkung*). *see*: Stephan Reinhold, "Good Faith in International Law," *UCL Journal of Law and Jurisprudence* 2 (2013): 42.

67. Paul J Powers, "Defining the Indefinable: Good Faith and the United Nations Convention on the Contracts for the International Sale of Goods," *Journal of Law and Commerce* 18, 1 (1999): 352.

68. John Francis O'Connor, *Good Faith in International Law* (Aldershot: Dartmouth Publication, 1991), 124.

69. Andrew D. Mitchell, "Good Faith in WTO Dispute Settlement," *Melbourne Journal of International Law* 7, 1 (2006): 341.

70. Andrew McCanse Wright, "Constitutional Good Faith," *New York University Law Review* 93, 1 (2018): 104.

71. Simon Whittaker and Reinhard Zimmermann, "Good Faith in European Contract Law: Surveying the Legal Landscape" in *Good Faith in European Contract Law*, Reinhard Zimmermann and Simon Whittaker, eds. (Cambridge: Cambridge University Press, 2000), 7, 18, 32.

that good faith is an established legal concept.[72] This recognition in national systems reinforces its legitimacy in international legal frameworks, where it plays a broader role in treaty interpretation and State conduct. Good faith is recognized as a fundamental and overarching principle in international law. During the drafting of the Statute of the Permanent Court of International Justice (PCIJ), emphasis was placed on the fact that good faith constitutes a general principle of law. In this regard, some scholars have argued that the principle of good faith is the foundation of all law or a fundamental principle of law.[73]

Good faith is enshrined as a general principle of law under Article 38(1)(c) of the ICJ Statute and as customary international law. Its foundational status was affirmed in *Certain Norwegian Loans (France v. Norway)*, where the judges of the ICJ declared that 'unquestionably, the obligation to act in accordance with good faith, being a general principle of law, is also part of international law.'[74] The Court reiterated this in *Nuclear Tests (Australia v. France)*, emphasizing its role in fostering 'trust and confidence' essential for 'international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential.'[75]

Moreover, the principle of good faith is not limited to treaty law; it has been consistently affirmed across diverse fields of international law, cementing its status as a foundational element of the international legal order. A seminal articulation of this principle emerged from the WTO Dispute Settlement mechanism, where the Appellate Body has described article 3.10 of the 'Understanding on Rules and Procedures Governing the Settlement of Disputes' as a '*specific manifestation of the principle of good faith which … is at once a general principle of law and a principle of general international law*'.[76]

However, despite its prominence, good faith cannot 'independently' create rights or obligations.[77] In *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, the ICJ clarified that 'it is not in itself a source of obligation where none would otherwise exist.'[78] Instead, it operates as a regulative principle, shaping compliance with existing rules and restricting permissible implementations. This limitation was underscored in *Land and Maritime Boundary (Cameroon v. Nigeria)*, where the Court confined good faith 'only

72. Shabtai Rosenne, *Developments in the Law of Treaties 1945-1986* (Cambridge: Cambridge University Press, 1989), 165.
73. Kolb, *Good Faith in International Law*, 33; O'Connor, *Good Faith in International Law*, 2.
74. *Certain Norwegian Loans (France v. Norway)*, *Preliminary Objections*, p. 53 (Judge Hersch Lauterpacht).
75. *Nuclear Tests (Australia v. France)*, *Judgment*, p. 268, para. 46.
76. Mitchell, *Good Faith in WTO Dispute Settlement*, 353.
77. Mark E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Netherlands: Martinus Nijhoff Publishers, 2009), 365.
78. *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, *Judgment*, p. 105, para. 94.

to the fulfilment of existing obligations.'[79] Thus, while it ensures fairness in applying legal norms, it cannot supplant explicit treaty provisions or customary rules.

As demonstrated, good faith is universally recognized as a general principle of law across domestic legal systems and international law. Its pervasive acceptance underscores its critical role in enhancing the effectiveness and enforcement of legal order through diverse mechanisms – from treaty compliance to equitable State interactions. Having established the definition, status, and institutional recognition of good faith, the following sections will examine its practical application, with particular emphasis on its capacity to attribute legal significance to States' silent conduct as part of subsequent practice.

3-2. The Central Role of Good Faith in Interpretation

The principle of good faith is a linchpin of international law on all inter-State agreements, governing every phase of a treaty formation process – from its negotiation and conclusion to its interpretation and implementation. Article 18 of the VCLT codifies the obligation of good faith during treaty formation. Although the article does not explicitly mention the principle of good faith – by stating that 'a State is obliged to refrain from acts which would defeat the object and purpose of a treaty' – implicitly reflects this principle.[80] This implicit grounding in good faith was clarified in the ILC's Third Report on the Law of Treaties (1964), which emphasized that 'even before a treaty comes into force a State which has established its consent to be bound by the treaty is under an obligation of good faith to refrain from acts calculated to frustrate the objects of the treaty.'[81] This principle of good faith is implicitly embedded in article 18:

"Essentially protects the *legitimate expectations* of the other participants in the treaty-making process. … the very essence of good faith would seem to exclude that signatory or contracting States, which have themselves participated in the acts defeating the object and purpose of the treaty, or supported those acts, could invoke a violation of the interim obligation through those very same acts."[82]

The same logic, *mutatis mutandis*, applies to a State's silent conduct. When a State remains silent in situations that objectively call for a response, such silence may give rise to legitimate expectations in other actors regarding the silent-State's legal position. The ICJ acknowledged this effect in its *Genocide*

79. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, *Preliminary Objections*, 304, para. 59.

80. D'Amato, *Good Faith*, 107.

81. International Law Commission "Third Report on the Law of Treaties" 7 July 1964, A/CN.4/167 and Add.1-3, pp. 7-8. https://legal.un.org/ilc/documentation/english/a_cn4_167.pdf.

82. Oliver Dörr and Kirsten Schmalenbach, *Vienna Convention on the Law of Treaties: A Commentary* (Germany: Springer Berlin Heidelberg, 2018), 255.

Convention advisory opinion, describing it as a '*provisional status*' caused by States' behavior.[83] Arguably, the principle of good faith requires States to recognize the potential legal consequences of their acts, including passive conduct.

The principle of good faith assumes a determinative role in legal compliance with international obligations.[84] As the ICJ indicated, 'the very rule of *pacta sunt servanda* … is based on good faith.'[85] In the *North Atlantic Coast Fisheries (United Kingdom v. United States)*, the Permanent Court of Arbitration held that: 'every state must execute its treaty obligations in good faith.'[86] In this regard, Article 26 of the VCLT crystallizes this link, stipulating: '[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.'[87] In *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, the ICJ underscored this duality, ruling that good faith requires parties to implement treaties in a manner realizing their objectives:

"[T]he purpose of the Treaty, and the intentions of the parties in concluding it, which should prevail over its literal application. The principle of good faith obliges the Parties to apply it in a reasonable way and in such a manner that its purpose can be realized."[88]

The Court's interpretation aligns with the drafting history of the VCLT, where the Special Rapporteur stressed that compliance demands adherence to both the letter and spirit of treaties.[89] As Arnold McNair observed, breaches of good faith may arise not only from explicit violations but also from acts or omissions that de facto nullify treaty aims.[90] Article 31(1) of the VCLT entrenches good faith as the cornerstone of treaty interpretation,[91] mandating that treaties be construed 'in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.'[92] This framework rejects literalism in favor of interpretations honoring the treaty's spirit, thereby precluding parties from

83. *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, *Advisory Opinion*, 28.

84. ILC, "*Report of the 16th Session of the International Law Commission*" 20 May 1964, A/CN.4/SER.A/1964, p. 29, para. 34. https://digitallibrary.un.org/record/720309?v=pdf.

85. ICJ, *Nuclear Tests*, 267-268, paras. 43-46.

86. *The North Atlantic Coast Fisheries (Great Britain v. United States)*, *Final Award*, 1910, 186.

87. Vienna Convention on the Law of Treaties, (adopted: 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 () Art. 26. https://treaties.un.org/pages/ViewDetailsIII.aspx?Temp=mtdsg3&chapter=23&clang=_en&mtdsg_no=xxiii-1&src=treaty.

88. *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, *Judgment*, p. 78, para. 142.

89. ILC, "Report of the International Law Commission", 11 May-24 July 1964, A/CN.4/SER.A/1964, p. 279, para. 64. https://legal.un.org/ilc/publications/yearbooks/english/ilc_1964_v1.pdf

90. Arnold D. McNair, *The Law of Treaties* (Oxford: Clarendon Press, 1961), 540.

91. Kenneth J. Vandevelde, "Treaty Interpretation from a Negotiator's Perspective," *Vanderbilt Journal of Transnational Law* 21, 2 (1988): 290.

92. Vienna Convention on the Law of Treaties, Art. 31(1).

exploiting ambiguities for unfair advantage.[93]

While the aforementioned understanding primarily derives from treaty law, the logic of good faith in interpreting silent conduct of States, as an act or conduct, extends beyond this domain. This broader application aligns with good faith's comprehensive scope in international law. The obligation to interpret treaties in good faith permeates all stages of interpretation – including textual analysis, contextual assessment, and evaluation of subsequent practice. As Article 31(3)(b) of the VCLT expressly provides, subsequent practice 'in the application of the treaty' constitutes an interpretive tool. Significantly, this encompasses tacit conduct such as state silence which, when viewed through the prism of good faith, may generate legal effects. Consequently, good faith requires careful examination of passive behavior – including inaction, silence, or failure to object – to ascertain their implicit meaning and potential to create or modify legal obligations.

3-3. Subsequent Practice as a Vehicle for Interpreting Silent Conduct

The ILC has extensively analyzed the role of State silence across diverse domains, including treaty interpretation, unilateral acts, reservations, and customary law. A pivotal contribution emerges from the ILC's work on *Subsequent Agreements and Subsequent Practice*. Here, the Special Rapporteur emphasized that silent-based behavior, such as the absence of objection, may signify implicit acceptance of a treaty's interpretation or implementation; accordingly, silence constitutes a form of subsequent practice under Article 31(3)(b) of the VCLT: '*relevant silence must be considered in the application of the treaty*.'[94]

This framework positions silence as conduct with legal consequences – a tacit endorsement of practices developed through treaty application. For instance, a State's failure to object to another party's interpretation may, over time, crystallize into acquiescence, thereby shaping shared understandings of treaty obligations. Moreover, the ILC has acknowledged that agreements arising from subsequent practice can be influenced by silence or inaction.[95] The Commission has further noted that 'decisions of international courts and tribunals ... confirm that such acceptance can occur through silence or inaction'.[96] The Commission underscores that silence's interpretive weight depends on context-specific analysis. The key consideration includes the expectation of reaction: Silence may imply consent only when circumstances demand a response. The ILC's Draft Conclusion No. 9, provisionally adopted

93. Ibid.

94. ILC, *First Report on Subsequent Agreements*, p. 74, para. 111.

95. ILC, "*Second Report on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties*" 26 March 2014, A/CN.4/671, p. 129, paras. 58-60. https://digitallibrary.un.org/record/769844?v=pdf

96. Ibid.

in 2018, codifies this approach:

"The silence of one or more contracting parties may be deemed to constitute acceptance of subsequent practice when the circumstances call for some form of reaction."[97]

The reports of the ILC reflect a wide range of nuanced and diverse views among States regarding the implications of silence. For example, while Poland has supported the potential role of silence in treaty interpretation, some States have emphasized the need for caution in determining the relevant conditions.[98] The South Korea emphasized that whether silence can be considered subsequent practice for treaty interpretation should be evaluated on a case-by-case basis, noting that silence should not be regarded as subsequent practice in the context of treaties delimiting boundaries.[99]

The ILC's work on *Subsequent Agreements and Subsequent Practice* reveals the legal value of silence in international law – simultaneously a convincing yet vague indicator of state will and consent.[100] However, the juridical weight of State silence extends beyond treaty interpretation, fundamentally impacting the core principles that structure international relations: legal certainty and predictability. This requires interpreters to carefully consider silent behavior when assessing State practice, as such conduct may objectively shape legitimate expectations about a State's legal position.

3-4. Legal Certainty, and Predictability

Closely linked to good faith is the principle of legal certainty. International legal order depends on predictability: States must be able to rely both on established law and on each other's conduct as authentic expressions of sovereign will. As WTO panels consistently affirm, a fundamental purpose of multilateral rules is '*to create the predictability needed to plan future*' interstate relations.[101] International law protects these legitimate expectations of stable legal relations through the doctrine of reasonable expectations – which gives legal effect to patterns of State behavior, encompassing both affirmative acts and deliberate silence, with good faith serving as the governing

97. ILC, "*Fourth Report on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties*" 7 March 2016, A/CN.4/694, p. 167, para. 47. https://digitallibrary.un.org/record/829483?v=pdf

98. ILC, "Fifth Report on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties" 28 February 2018, A/CN.4/715, pp. 25-27. https://digitallibrary.un.org/record/1480701?v=pdf

99. ILC, "Summary Record of the 25th Meeting" 3 November 2014, A/C.6/69/SR.25, p. 5, para. 26. https://digitallibrary.un.org/record/4101751?ln=en&v=pdf

100. Although the ILC, in its recent work, has affirmed that a State's silence is not a 'manifestation of will', it had previously acknowledged – during its deliberations on the draft articles on the Law of Treaties – that '*the will of a State might be manifest, but it might also be veiled or even entirely mute*.' See and compare: "*First Report on Unilateral Acts of States*" 5 March 1998, A/CN.4/486, p. 326, para. 50; "*Report of the International Law Commission*" 11 May-24 July 1964, A/CN.4/SER.A/1964, p. 70, para. 36. https://digitallibrary.un.org/record/3955914.

101. WTO, *United States - Import Prohibition of Certain Shrimp and Shrimp Products*, Report of the Panel, 15 May 1998, WT/DS58/R, p. 286, para. 7(44).

principle of such interactions.[102]

Notably, the Appellate Body has stated in *Report on Japan - Taxes on Beverages* emphasized that acts and behaviour may '*create legitimate expectations among [States], and, therefore, should be taken into account where they are relevant to any dispute*.'[103] These understandings cut against opportunistic or inconsistent State behavior. A State that remains silent when it should have objected effectively gives others reason to believe it acquiesces. That expectation becomes part of the legal context. As one scholar observes, 'the doctrine of estoppel in international law operates to protect *legitimate expectations* of a State induced by the conduct of another State',[104] since States 'cannot blow hot and cold.'[105] Thus, the principle of good faith prohibits a State from adopting a 'wait-and-see' approach - benefiting from others' reliance on its silence while reserving the option to later disavow expectations created by its passive conduct when they prove disadvantageous. Where silence creates a legitimate or reasonable expectation, good faith requires honoring it. Legal certainty demands that a State either speak up within a reasonable period or accept the resulting state of affairs.

A paradigmatic illustration emerges from the *Temple of Preah Vihear* case, where the ICJ affirmed the juridical significance of a State's silence precisely when the circumstances '*called for some reaction, within a reasonable period*' to protect its legal interests.[106] The corollary principle, as demonstrated in *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, requires States to implement mutual obligations in a manner that is both reasonable and consistent with established understandings among them.[107] These paired doctrines establish that: (1) when a State knowingly acquiesces to a developing situation, it creates objectively reasonable expectations of binding acceptance; and (2) subsequent conduct must align with these good faith understandings. Likewise, courts often balance the need for States to have a genuine say against the need for finality: at some point, 'the passage of time' and 'general toleration' of claims turn silence into tacit acceptance.[108] As Schwarzenberger observed: 'with the passing of time, silence tends to be interpreted as acquiescence or

102. In the following section, I will examine how the principle of good faith regulates interstate relations through the doctrines of *acquiescence* and *estoppel* in silent situations involving State silence.

103. WTO, *Appellate Body Report on Japan - Taxes on Alcoholic Beverages*, 1 November 1996, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, p. 14.

104. Dustin A. Lewis, Naz K. Modirzadeh, and Gabriella Blum, "Quantum of Silence: Inaction and *Jus ad Bellum*" (Massachusetts: Harvard University, 2019), 15. *see also:* Irina Buga, *Modification of Treaties by Subsequent Practice*, 1st ed (Oxford: Oxford University Press, 2018), 63-71, 209.

105. Arnold D. McNair, "The Legality of the Occupation of the Ruhr", *British Yearbook of International Law* 5,1 (1924): 25.

106. *Temple of Preah Vihear (Cambodia v. Thailand)*, *Judgment*, *Merits*, p. 23.

107. *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, *Judgments*, *Merits*, pp. 79-80, para. 142.

108. *Territorial Dispute (Libyan Arab Jamahiriya/Chad*), Judgment, Separate Opinion of Judge Ajibola, p. 81, para. 108.

tolerance.'[109]

While no fixed rule governs all circumstances, the principle of reasonable expectation fundamentally informs judicial reasoning: a State's silence regarding a known claim generates an expectation of acquiescence and disregarding this expectation absent compelling justification risks violating both good faith requirements and the stability of international relations – potential violations that estoppel may prevent. These complementary doctrines, acquiescence and estoppel, thus operationalize State silence by attributing legal consequences to passive conduct. Specifically, acquiescence converts silence into implied consent when the circumstances objectively require a response, while estoppel bars States from denying positions that others have reasonably relied upon – both doctrines being grounded in the expectations created by State passivity.

This study will now analyze how good faith interacts with acquiescence and estoppel, revealing its central role in translating passive behavior of States into legally significant acts. The next section examines these interrelated doctrines, demonstrating how State silence can either create binding obligations or result in the forfeiture of rights, thereby shaping the parameters of State legal obligations.

4. Silent Conduct of States: Acquiescence and Estoppel

Silence, as a form of State conduct, carries significant legal weight in international disputes, particularly before the ICJ. Judicial reliance on silence of States manifests in three key contexts: Firstly, silent conduct of States can be used to corroborate factual claims. In *Territorial Dispute (Libya v. Chad)*, the ICJ affirmed Chad's sovereignty over the Aouzou Strip, emphasizing Libya's decades-long failure to protest boundaries established in colonial-era agreements and UN documentation. Judge Ajibola's separate opinion clarified that Libya's silence constituted tacit acceptance, precluding retroactive challenges to the treaty's validity. This precedent illustrates how silence functions as passive validation of established facts, reinforcing the stability of territorial claims.[110] Secondly, the silent conduct of States can be taken into account when interpreting agreements. The *Kasikili/Sedudu Island (Botswana/Namibia)* exemplifies silence's interpretive role. Vice-President Weeramantry endorsed Namibia's argument that subsequent practice under Article 31(3)(b) of the VCLT encompasses 'conduct that takes the form of silence or inaction.'[111] Thirdly, territorial disputes often hinge on tacit acceptance inferred from prolonged silence of States. In *Continental Shelf (Tunisia/ Libyan Arab Jamahiriya)*, the ICJ considered the parties' lack of objection to hydrocarbon exploration

109. Georg Schwarzenberger, "Title to territory: Response to a challenge." *American Journal of International Law* 51, 2, (1957): 321.

110. *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, *Judgment*, p. 83, para. 114 (Judge Ajibola).

111. *Kasikili/Sedudu Island (Botswana/Namibia)*, *Judgment*, p. 1158-1159, para. 19 (Vice-President Weeramantry).

activities as relevant to maritime delimitation.[112] Similarly, in *Gulf of Maine*, Canada argued that US acquiescence to a *de facto* maritime boundary over decades implied legal recognition. While the Court cautiously avoided conflating acquiescence with estoppel, it acknowledged the probative value of prolonged silence in shaping territorial expectations.[113]

The jurisprudence of the ICJ reveals a nuanced interplay between the principle of good faith and State silence, operationalized through the doctrines of acquiescence and estoppel. While distinct in theory, their blurred boundaries pose interpretive challenges.[114] For instance, acquiescence arises when a State's prolonged silence, despite an obligation to react, implies tacit agreement to a legal situation. Estoppel, conversely, precludes States from asserting positions inconsistent with prior conduct or inaction that others have detrimentally relied upon. The doctrinal divergence lies in estoppel's emphasis on detrimental reliance versus acquiescence's focus on implied consent. However, in cases of prolonged silence – such as a State's failure to contest a maritime boundary over decades – it becomes challenging to disentangle whether the silence binds the State through acquiescence (as tacit consent which is a manifestation of the will of silent-State) or estoppel (as preclusion).[115]

This ambiguity is reflected in the ICJ's jurisprudence, which avoids rigid categorization, prioritizing context-dependent analysis over doctrinal purity. Thus, while acquiescence and estoppel derive from differing theoretical foundations, their practical application often overlaps, particularly when silence of States endures unchallenged. This interplay underscores the ICJ's pragmatic approach: rather than imposing artificial distinctions, it evaluates silence through the lens of good faith, ensuring outcomes align with the broader objectives of equity and fairness.[116]

4-1. Acquiescence as a Silent Conduct Involving Consent

In international law, a State's silence is inextricably tied to the doctrine of tacit consent, or acquiescence. In *Gulf of Maine*, the ICJ defined acquiescence as 'tacit recognition manifested by unilateral conduct which the other party may

---

112. *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*, *Judgment*, p. 70, para. 95.

113. ICJ, *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, 304, para. 128.

114. James Crawford, *Brownlie's Principles of Public International Law* (Oxford: Oxford University Press, 2008), 153.

115. Malcolm N. Shaw, "The Heritage of States: The Principle of Uti Possidetis Juris Today," *British Yearbook of International Law* 67, 1 (1996): 85: 'In addition, the roles of *acquiescence* and *estoppel* may clearly be relevant in this context since the *failure to contest* a territorial claim concretized by actual possession could well be decisive in the circumstances.'

116. Thomas Cottier and Jörg Paul Müller, "Acquiescence," in *Encyclopedia of Public International Law*, ed. Rudolf Bernhardt (Amsterdam: North-Holland, 1984), 6; Malcolm N. Shaw, *International Law* (Cambridge University Press, 2008), 515; Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press, 2005), 355-362.

interpret as consent.'[117] This concept rests on the premise that deliberate inaction – when a State refrains from objecting to a situation necessitating protest – can generate legal rights or obligations.[118]

Acquiescence derives its legal force from the 'passive conduct' of a silent State and the reasonable 'expectation' of other States, which, in good faith, interpret the State's failure to object, when circumstances call for an objection, as tacit acceptance.[119] Such silence may constitute implied consent, with profound implications for the evolution of international legal relations. For example, conduct initially deemed legally ambiguous or impermissible may gain legitimacy through consistent repetition and widespread acceptance by States. This dynamic reflects the maxim *qui tacet consentire videtur*[120] where inaction functions as tacit assent, shaping the boundaries of legality.[121]

However, silence does not invariably signify consent. For silence to constitute acquiescence, two conditions must coalesce: (*a*) The situation must be sufficiently clear to necessitate a response;[122] (*b*) The silent-States must have actual or constructive knowledge of the situation and its obligation to act.[123] Thus, rooted in cardinal principles of good faith and predictability of international legal relations, the acquiescence recognizes that a State's failure to object to a claim, assertion, or emerging legal reality, when circumstances demand a response, can be interpreted as tacit acceptance of that new reality by other States.

The *Temple of Preah Vihear* epitomizes this framework.[124] Thailand's decades-long failure to contest a map demarcating the temple as Cambodian territory – despite receiving it formally from French authorities and engaging in bilateral cooperation under a joint commission – proved decisive.[125] The Court dismissed Thailand's argument that the commission lacked authority to delineate borders, noting that its subsequent conduct (utilizing the map without objection) validated the boundary. Accordingly, the Court held that while the map lacked binding legal force at its creation, it acquired such force through Thailand's

117. ICJ, *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, 305, para. 130. In this regard, Canada has defined implied consent as follows: 'One government's knowledge, actual or constructive, of the conduct or assertion of rights of the other party to a dispute, and the failure to protest in the face of that conduct, or assertion of rights, involves a tacit acceptance of the legal position represented by the other Party's conduct or assertion of rights.' Ibid., 304, para. 129.

118. Nathalie Holvik, "*Silence is Consent: Acquiescence and Estoppel in International Law*" (Master's Thesis, University of Orebro, 2018): 9.

119. Ian C. MacGibbon, "The Scope of Acquiescence in International Law," *British Yearbook of International Law* 31, 1 (1954): 143-144.

120. 'Who is silent, when ought to have spoken and was able to, is taken to agree.'

121. Holvik, *Silence is Consent*, 9; ICJ, *Temple of Preah Vihear*, 23.

122. Phil C.W. Chan, "Acquiescence/Estoppel in International Boundaries: Temple of Preah Vihear Revisited," *Chinese Journal of International Law* 3, 2 (2004): 422-423.

123. Holvik, *Silence is Consent*, 9-10.

124. ICJ, *Temple of Preah Vihear*, 23-27.

125. Ibid, 20.

subsequent conduct, including its failure to object.[126]

Thus, the Court concluded that Thailand's prolonged silence, coupled with its full knowledge of the map's implications, amounted to acquiescence, thereby 'precluding' it from later contesting Cambodia's sovereignty over the temple.[127] This reasoning aligns with MacGibbon's assertion that the presumption of consent strengthens with time. Prolonged inaction, particularly in territorial disputes, reinforces the inference of acquiescence. In practical terms, the longer a State delays responding to a circumstance demanding objection, the more compelling the legal presumption that its silence constitutes consent.[128]

While time is central to acquiescence, however, no fixed threshold exists. Instead, tribunals assess whether a State's delay in objecting was reasonable given the circumstances.[129] The interplay between time and acquiescence remains inherently contextual, requiring judicial evaluation to assess whether a State's prolonged inaction reflects tacit acceptance of a disputed situation.

In *Temple of Preah Vihear*, the Court emphasized that the map's status and wide dissemination called for some reaction, within a reasonable period to preserve Thailand's territorial claims.[130] By failing to act when duty-bound to defend its sovereignty, Thailand was deemed to have implicitly accepted the map's demarcation of the temple as Cambodian territory.[131] In *Continental Shelf Arbitration (UK v. France)*, France's decade-long silence regarding the UK's use of Eddystone Rock as a maritime baseline was deemed acquiescence. The Tribunal emphasized France's constructive knowledge of the UK's practice and its duty to protest if it disagreed.[132]

Similarly, in the *Land, Island, and Maritime Frontier Dispute (El Salvador v. Honduras)*, Honduras' century-long failure to challenge a de facto boundary line demonstrated tacit consent, despite the absence of formal agreement.[133] The 1984 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)* further illustrates a pivotal jurisdictional issue affected by silent conduct of States. The ICJ upheld the validity of Nicaragua's unsigned declaration accepting compulsory jurisdiction, citing its 40-year

126. Ibid, 20.

127. Ibid, 20-23.

128. MacGibbon, *The Scope of Acquiescence in International Law*, 143.

129. Ibid.

130. ICJ, *Temple of Preah Vihear*, 23.

131. Ibid.

132. *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (United Kingdom v. France)*, Decision of 14 March 1978, UNRIAA, vol. XVIII, para. 128.

133. *Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras: Nicaragua Intervening), Judgment*, paras. 68-81, paras. 348-355, 401-409, 566-7.

silence while listed in ICJ Yearbooks as a party bound by such jurisdiction.[134] The Court inferred consent from Nicaragua's inaction, coupled with other States' failure to challenge its status.[135]

The interplay between acquiescence and inaction as a form of silent conduct of States is starkly evident in *Pedra Branca/Pulau Batu Puteh (Malaysia/Singapore)*, where the ICJ's decision confirmed and attributed sovereignty to Singapore based on Malaysia's acquiescence to its exercise of 'effective sovereignty'.[136] The Court underscored that Malaysia's prolonged failure to respond to Singapore's open and continuous assertions of sovereignty, despite having both the capacity and obligation to protest, constituted tacit consent. This reasoning reflects a broader principle in international law: in situations where the conduct of other States requires a response, silence assumes legal significance. Under these circumstances, when a State's interests are demonstrably affected by another's conduct, creating a duty to act to preserve its rights.[137]

In *Land, Island, and Maritime Frontier Dispute*, the Court highlighted that formal boundary negotiations between the parties had commenced in 1881. Crucially, it found that Honduras' conduct spanning nearly a century [from 1881 to 1972] – characterized by a persistent failure to challenge the de facto boundary line – amounted to acquiescence through inaction. The Court construed Honduras' unbroken silence over this period as implicit consent to the territorial status quo, noting that its authorities were demonstrably aware of the boundary's existence and implications yet refrained from asserting any counterclaim. This reasoning hinged on the principle that a State's prolonged and unexplained passivity, despite opportunities to act, legally validates the opposing party's position, particularly where vital sovereign interests are at stake.[138] The Court affirmed that the principle of *uti possidetis juris* – though traditionally preserved through formal agreements or judicial decisions – may also be modified through tacit consent or recognition. Crucially, such a departure from the principle requires at least partial acceptance by the affected States, demonstrating their acknowledgment of the new interpretation.[139] While the Court acknowledged that States retain the sovereign right to adjust boundaries through bilateral treaties, it underscored the significance of tacit conduct: 'some forms of activity, or inactivity, might amount to acquiescence' are sufficient to alter territorial rights under *uti possidetis juris*.[140]

134. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Preliminary Objection,* , paras. 32-36.

135. Ibid, 409-10, paras. 38-39.

136. ICJ, *Sovereignty over Pedra Branca/Pulau Batu Puteh*, 52, para. 125.

137. Ibid, 51, para. 121.

138. ICJ, *Land, Island and Maritime Frontier Dispute*, 406-408, paras. 74-80.

139. Ibid, 401, para. 67.

140. Ibid, 408, para. 80. The Court states: 'The situation was susceptible of modification by acquiescence in the lengthy intervening period; and the Chamber finds that the conduct of Honduras from 188 1 until

By linking silence to acquiescence, the Court implicitly recognized that prolonged inaction in the face of a contested territorial claim, when coupled with constructive knowledge, can operate as a form of consent, thereby reshaping the legal framework governing borders. It is worth-noting that the approach adopted by the Court is referenced by Thirlway, who concludes that anything capable of being agreed upon explicitly and clearly can also be agreed upon implicitly. In this context, forms of implied consent include acquiescence or estoppel.[141]

These cases underscore a consistent jurisprudential framework to demonstrate that silent conduct of States can be interpreted, in good faith, as a tacit consent where circumstance called for some reaction, within a reasonable period time. Lack of reaction while the silent-State possesses constructive knowledge of the situation will be interpreted as consent. By interpreting silence of States, under the abovementioned conditions, as acquiescence, international law prioritizes stability and predictability. The principle of *qui tacet consentire videtur* reflects the systemic reliance on States' passive conduct to define legal realities, balancing sovereignty with the collective requirements for legal order and transparency.

In summary, the doctrine of acquiescence derives its normative force not merely from State silence, but from the objectively reasonable expectations such silence generates. When a State remains silent in the face of an act that objectively demands response, other States are entitled to interpret this passivity as acceptance of the *status quo* and may adjust their behavior in reliance thereon. Where this reliance is (a) demonstrably substantial and (b) the silence is unequivocal, international law gives effect to the silent State's implied consent.

This analysis logically progresses to the doctrine of *estoppel*, which provides the complementary mechanism for transforming silence into binding obligations. Whereas acquiescence concerns passive acceptance through inaction, estoppel becomes operative when a State's persistent and knowing silence induces detrimental reliance by another State, thereby creating reasonable expectations about the legal relationship. In such circumstances, international law prohibits the silent-State from asserting inconsistent positions, thereby safeguarding the fundamental principles of legal certainty and the stability of international relations.

4-2. Estoppel

As expressed by the ICJ, '*the concepts of acquiescence and estoppel, irrespective*

1972 may be regarded as amounting to such acquiescence in a boundary corresponding to the boundary between [two States].'

141. Hugh Thirlway, "The Law and Procedure of the International Court of Justice: 1960-1989," *British Yearbook of International Law* 76, 1 (2005): 20-45.

of the status accorded to them by international law, both follow from the fundamental principles of good faith and equity.'[142] The legal value of acquiescence lies in its capacity to transform silent conduct of States into binding tacit consent under international law. In this context, acquiescence derives its force from the reasonable *expectations* generated by a state's failure to object when circumstances demand a response. But, in relation to silent conduct, *estoppel* precludes States from contradicting prior affirmative representations that induced detrimental reliance. However, some scholars and practitioners contend that States treat acquiescence as having the same legal effect as estoppel. For example, during oral proceedings in the *Gulf of Maine*, Canada framed estoppel as a manifestation of implied consent – a perspective echoed by certain jurists.[143] Notably, Judges Sir Gerald Fitzmaurice and Bola Ajibola have drawn parallels between the two concepts, reinforcing the idea of their functional equivalence.[144] Under this interpretation, a State's silence – when interpreted as acquiescence – may produce legal effects comparable to those of estoppel. This alignment in outcomes suggests a practical convergence between the doctrines, reflecting how States often apply them interchangeably in practice.

In certain international cases, the concept of estoppel was frequently conflated with acquiescence to the extent that distinguishing between the two doctrines became difficult.[145] This conceptual blurring explains their interchangeable application in jurisprudence, often to advance principles like good faith, equity and fairness in judicial decisions.[146] This reasoning is illustrated in the *Territorial Dispute*, where the ICJ examined whether a 1955 Franco-Libyan treaty had conclusively settled territorial boundaries. While the Court's majority focused on treaty interpretation, Judge Ajibola, in a separate opinion, emphasized Libya's prolonged silence as grounds for estoppel. He argued:

"There are many awards of international tribunals … supporting the principles of estoppel or acquiescence in the sense of silence or absence of protest."[147]

Concluding that Libya's failure to protest from 1955 onward undermined its claim, Ajibola asserted:

"Based on the principle of estoppel, that the silence or acquiescence of Libya from the date of signing the 1955 Treaty to the present time, without any protest whatsoever, clearly militates against its claim."[148]

142. ICJ, *Delimitation of the Maritime Boundary in the Gulf of Maine* Area, 305, para. 130.

143. Ibid, 304, para. 129.

144. *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, *Judgment*, 77-83 (Judge Ajibola).

145. Piotr Sitnik, "*Estoppel in International Investment Law*" (PhD. Dissertation, Maria Curie-Skłodowska University in Lublin, Department of Law and Administration, 2021): 75.

146. Jack Wass, "Jurisdiction by Estoppel and Acquiescence in International Courts and Tribunals," *British Yearbook of International Law* 86, 1 (2016): 155.

147. *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, *Judgment*, p. 81, para. 108 (Judge Ajibola).

148. Ibid, para. 109.

However, this functional convergence between estoppel and acquiescence is only apparent when estoppel is interpreted broadly.[149] The ICJ's decision in the *Gulf of Maine* clarifies a critical distinction: estoppel requires a demonstrable 'detriment' to another party, a condition absent in acquiescence.[150] This nuance highlights the Court's careful balancing act between doctrinal flexibility and analytical rigor, preserving unique roles for each concept despite their historical overlap.

Nonetheless, from another perspective, Judge James Crawford underscores a fundamental distinction between estoppel and unilateral acts, arguing that estoppel is defined by its requirement of detrimental reliance on another party. As he asserts, 'an estoppel is precisely not a unilateral act.'[151] This divergence sharpens when estoppel is narrowly construed as a restrictive doctrine. Unlike unilateral acts – which derive legal force from the act itself (e.g., a declaration or promise) – estoppel prohibits States from contradicting prior conduct or representations if doing so would harm another party that relied on those actions.[152]

To understand how estoppel complements acquiescence, it is essential to identify the specific functions and constituent elements that are inherent to the doctrine of estoppel.[153] For instance, in the *Temple of Preah Vihear*, the ICJ did not base estoppel solely on Thailand's passive receipt of disputed maps. Instead, it emphasized Thailand's *prolonged failure to object* to the maps' use in boundary delimitation, coupled with its prior acknowledgment of their validity. This pattern of conduct – rather than mere silence – enabled the Court to invoke estoppel against Thailand's later reversal of position.[154]

Ian Sinclair, however, critiques this reasoning. Analyzing France's delivery of border maps to Thailand, drafted by the Joint Commission, he argued that the scenario better aligns with acquiescence. Sinclair maintained that estoppel would require Thailand to have *reacted to the demarcation within a reasonable timeframe*, thereby inducing detrimental reliance by Cambodia. Since Cambodia did not demonstrate that Thailand's silence had influenced its own actions or

149. Robert Yewdall Jennings, *The Acquisition of Territory in International Law* (United Kingdom: Manchester University Press, 1963), 44-45.

150. ICJ, *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, 305, para. 130: 'The Chamber merely notes that, since the same facts are relevant to both acquiescence and estoppel, except as regards the existence of detriment, it is able to take the two concepts into consideration as different aspects of one and the same institution.'

151. James Crawford, *Brownlie's Principles of Public International Law* (Oxford: Oxford University Press, 2019), 408.

152. Ibid.

153. Sitnik, *Estoppel in International Investment Law*, 76.

154. Thirlway, *The Law and Procedure of the International Court of Justice*, 30.

legal position, Sinclair concluded that estoppel was improperly applied.[155]

4-2-1. Same Legal Effect as to Acquiescence

The doctrines of acquiescence and estoppel, while rooted in distinct legal rationales, produce analogous legal effects when applied to the silent conduct of States. Both doctrines reinforce the principles of legal certainty, good faith, and stability in international law, though their conceptual foundations differ. Acquiescence operates as a form of tacit consent, arising from a State's failure to object when circumstances demand a response.[156] Estoppel, conversely, functions as a prohibitive mechanism, barring a State from contradicting prior conduct that has induced detrimental reliance by another party. Despite this distinction, international jurisprudence reveals a practical convergence in their application to State silence, where inaction generates binding legal consequences.

Acquiescence reflects the affirmative dimension of silence, constituting a unilateral expression of consent when a State refrains from objecting to a situation requiring protest.[157] As Judge Fitzmaurice observed in *Temple of Preah Vihear*, acquiescence may produce effects akin to estoppel when silence implies waiver or agreement: in a situation where a State is obligated to make a statement or take action but remains silent, this silence may signify a waiver of a right or consent. As a result, this interpretation can be inferred from the broader factual and legal context.[158]

Early arbitral decisions, such as the *Venezuelan Preferential Claims* and *Grisbådarna* awards, treated estoppel as synonymous with implied consent and non-objection, blurring doctrinal lines.[159] Similarly, in the *Anglo-Norwegian Fisheries*, the ICJ interpreted Britain's prolonged silence toward Norway's maritime claims as acquiescence,[160] emphasizing that 'the passage of time' and 'the general toleration of the international community' could transform silence of State through failure to object into tacit acceptance.[161] The Court noted that the mere passage of time, a prolonged silence, could lead to interpreting silence as an indication of tacit acceptance.[162]

155. Ian Sinclair, "Estoppel and Acquiescence" in *Fifty Years of the International Court of Justice: Essays in Honour of Sir Robert Jennings*, eds. Vaughan Lowe and Malgosia Fitzmaurice (Oxford: Oxford University Press, 1996), 105.

156. ICJ, *Sovereignty over Pedra Branca/Pulau Batu Puteh*, 51, para. 121.

157. Ibid.

158. ICJ, *Temple of Preah Vihear*, 62 (Judge Gerald Fitzmaurice).

159. Herch Lauterpacht, *Private Law Sources and Analogies of International Law* (London: Longmans, 1927), 205-206, 253-255; Nuno Sérgio Marques Antunes, "Estoppel, Acquiescence and Recognition in Territorial and Boundary Dispute Settlement," *Boundary & Territory Briefings* 2, 8 (2000), 8.

160. Clive Ralph Symmons, *Historic Waters and Historic Rights in the Law of the Sea* (Leiden: Brill, 2019), 359.

161. *Fisheries (United Kingdom v. Norway)*, *Judgment*, 139.

162. Antunes, *Estoppel, Acquiescence and Recognition in Territorial and Boundary Dispute Settlement*, 25.

Estoppel, in this context, binds States to prior conduct irrespective of intent, prioritizing the protection of legitimate expectations over explicit consent.[163] Its prohibitive force arises from the inequity of allowing a State to resile from positions that others have reasonably relied upon.[164] For instance, in *Arbitral Award of the King of Spain (Honduras v. Nicaragua)*, the ICJ barred Nicaragua from contesting the validity of an award it had tacitly endorsed through participation in proceedings. While Nicaragua argued the arguing that the Gámez-Bonilla Treaty of 1894, which authorized the arbitration, had expired before the King accepted the role, the Court highlighted its failure to object during arbitration as decisive:

"[T]he Court considers that, having regard to the fact that the designation of the King of Spain as arbitrator was freely agreed to by Nicaragua, that no objection was taken by Nicaragua to the jurisdiction of the King of Spain as arbitrator either on the ground of irregularity in his designation as arbitrator or on the ground that the Gamez-Bonilla Treaty had lapsed even before the King of Spain had signified his acceptance of the office of arbitrator. and that Nicaragua fully participated in the arbitral proceedings before the King, it is no longer open to Nicaragua to rely on either of these contentions as furnishing a ground for the nullity of the Award."[165]

Notably, in his dissenting opinion, Judge Urrutia Holguín dissented, stressing that estoppel requires clear detrimental reliance – a critique underscoring the tension between estoppel's strict requirements and its broader application in practice.[166] In this case, the silent-State was prevented from changing its position.

In *Temple of Preah Vihear*, Thailand's decades-long silence regarding a disputed boundary map was treated as acquiescence, effectively preventing it from later challenging territorial sovereignty. In this case, Judge Fitzmaurice states that:

"Acquiescence can operate as a preclusion or estoppel in certain cases, for instance where silence, on an occasion where there was a duty or need to speak or act, implies agreement, or a waiver of rights, and can be regarded as a representation to that effect."[167]

In the same vein, in *Elettronica Sicula S.A. (United States of America v. Italy)*, the Court points out that:

---

163. *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Final Award, 18 March 2015, PCA Case No. 2011-03, para. 446.

164. Sitnik, *Estoppel and Acquiescence*, 77.

165. *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*, Judgment, 208.

166. Ibid, 222, 236 (*Dissenting Opinion of Judge Urrutia Holguin*).

167. ICJ, *Temple of Preah Vihear*, 62 (Judge Judge Fitzmaurice).

"It cannot be excluded that an estoppel could in certain circumstances arise from a silence when something ought to have been said."[168]

However, the ICJ has repeatedly emphasized that for the actualization of estoppel, the harm suffered by the State invoking estoppel, or the benefits gained by the silent-State must be objectively proven. In this assumption, estoppel occurs through the silence of the State.[169] Indeed, estoppel, which prevents the denial of a fact or legal status, can, under certain circumstances, also be used to prove implied consent.[170] In *Gulf of Maine*, the Court clarified:

"[T]he concepts of acquiescence and estoppel … both follow from the fundamental principles of good faith and equity. They are, however, based on different legal reasoning, since acquiescence is equivalent to tacit recognition manifested by unilateral conduct which the other party may interpret as consent, while estoppel is linked to the idea of preclusion."[171]

While the Court acknowledged that the prohibitive element distinguishes estoppel from acquiescence, it also recognized that these concepts can be viewed as different facets of a single legal institution.[172] This interplay is evident in *Temple of Preah Vihear*, where Thailand's silence and conduct, in absence of reliance on the prohibitive element, precluded it from rejecting a map that placed the temple in French territory.[173] Although estoppel was not explicitly invoked, the Court's reasoning aligned with its principles. Dissenting Judge Spencer and Judge Wellington-Koo, however, argued that the elements required for estoppel were absent, highlighting the necessity of the prohibitive element.[174] Similarly, in the *Arbitral Award of the King of Spain*, Nicaragua's failure to object to the King's jurisdiction and the validity of his award played a decisive role in the ICJ's decision.[175] Notably, there was no evidence of Honduras's detrimental reliance on Nicaragua's conduct, underscoring the Court's reliance on acquiescence rather than estoppel.[176]

168. *Elettronica Sicula S.A. (ELSI) (United States of America v. Italy)*, *Judgment*, 44, para. 54.

169. ICJ, *Land, Island and Maritime Frontier Dispute*, 118, para. 63; *North Sea Continental Sea (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands)*, p. 26, para. 30.

170. Derek William Bowett, "Estoppel Before International Tribunals and Its Relation to Acquiescence," *British Yearbook of International Law* 33, 1 (1957), 176-177.

171. ICJ, *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, 305, para. 130.

172. Ibid.

173. ICJ, *Temple of Preah Vihear*, 32.

174. ICJ, *Temple of Preah Vihear*, 144 (Judge Spender); 97 (Judge Wellington Koo); *see also*: Phil C.W. Chan, "Acquiescence/Estoppel in International Boundaries: Temple of Preah Vihear Revisited," *Chinese Journal of International Law* 3, 2(2004): 434. Also, Thirlway states that initially, there was no clear meaning regarding the concept of estoppel. The Court did not conclude that Cambodia (or France) had acted based on the explicit acceptance of maps by Siam [Thailand] in the early years in order to change its position: Thirlway, *The Law and Procedure of the International Court of Justice*, 31-32. In fact, the Court's conclusion regarding the advantage gained by Thailand - namely, the possession of stable and secure borders for several years - has not been particularly convincing.

175. ICJ, *Arbitral Award Made by the King of Spain*, 209.

176. Ibid, 222, 236 (Judge Urrutia Holguin).

Acquiescence, in such contexts, creates quasi-contractual links between States, evolving gradually and informally to crystallize legal obligations.[177] Legal concepts such as acquiescence serve as tools to attribute legal value to State' silent conduct, such as inaction. As demonstrated by the jurisprudence of the ICJ, what is important is the recognition of the legal effects that international law attributes to the occurrence of silence within the context of a given situation – regardless of the specific legal concept employed.

This principle was further illustrated in the *Pedra Branca/Pulau Batu Puteh*, where the ICJ found that Malaysia's silence and Singapore's exercise of sovereignty established a tacit agreement transferring territorial sovereignty.[178] In their joint dissenting opinion, Judge Simma and Judge Abraham criticized the Court for not invoking the concept of acquisitive prescription, which they argued inherently encompasses 'tacit agreement' or 'acquiescence'.[179] However, the core issue remains the legal consequences of State actions, rather than the choice between legal doctrines. In light of the facts in the dispute between Singapore and Malaysia, what was important was the legal consequences of Malaysia's silence regarding a disputed area, which resulted in the transfer of sovereignty over that area to another State.

The ICJ's jurisprudence demonstrates that the legal consequences of silent conduct of States depend less on rigid doctrinal categorization than on the factual and normative context. Whether framed as acquiescence or estoppel, the central inquiry remains whether silence, in light of surrounding circumstances, has generated legitimate expectations for interpreting other States. This pragmatic approach prioritizes the stabilization of interstate relations over theoretical distinctions, ensuring that silence, when objectively meaningful, cannot serve as a shield against accountability. The doctrines ultimately converge in safeguarding the integrity of international legal order by penalizing the attribution a legal value to silent conduct of State.

4-2-2. Distinction and Overlap Between Acquiescence and Estoppel

The practical application of acquiescence and estoppel in international law hinges on nuanced distinctions between tacit consent and prohibitive reliance, raising intricate interpretive challenges. While both doctrines address the legal consequences of silence and silent conduct of States, their operational criteria diverge, reflecting differing legal philosophies and objectives. In practice, the application of acquiescence and estoppel raises several complex issues. When

177. *Thirlway* and *Brownlie* refer to these cases as examples of the judicial application of the principle of estoppel: Brownlie, *Principles of Public International Law*, 644; *see also:* Thirlway, *The Law and Procedure of the International Court of Justice*, 25, 31–32; Sinclair, *Estoppel and Acquiescence*, 109-110.

178. *Sedudu Island (Botswana/Namibia)*, *Judgment*, p. 1105, para. 96; ICJ, *Sovereignty over Pedra Branca/Pulau Batu Puteh*, p. 122, para. 17 (Judges Simma and Abraham).

179. ICJ, *Sovereignty over Pedra Branca/Pulau Batu Puteh*, 119-120, para. 11; 121, para. 15 (Judges Simma and Abraham).

acquiescence is invoked, the central question is whether the State's conduct is sufficiently clear to justify the inference of consent. In contrast, when estoppel is cited, the primary issue is whether the claimant can establish the prohibitive element of estoppel against the other party.[180] As the ICJ noted in *Gulf of Maine*, estoppel and implicit consent are closely related, sharing the same factual basis except for the 'requirement of detriment' in estoppel. The Court, as discussed previously, acknowledged that these concepts represent 'different aspects of the same legal institution'.[181]

Acquiescence requires genuine consent from a State to a position it has previously taken; therefore, the State cannot escape from the obligation merely by denying its existence.[182] It operates to bar the denial of facts that have been established as true. Estoppel, on the other hand, prevents a State from relying on facts that it previously asserted based on an erroneous understanding.[183]

Despite their distinct legal reasoning, the line between acquiescence and estoppel can be fine. A single set of facts may be interpreted as either indicating a State's agreement with a specific situation or creating the impression of such agreement, thereby precluding the State from later denial.[184] The choice between these interpretations often reflects the traditions of domestic legal systems. Scholars from common law jurisdictions tend to favor conclusions based on estoppel, while those from civil law systems are more inclined to frame the issue in terms of acquiescence. This divergence underscores the flexibility and context-dependent nature of these doctrines in international law.[185] The arbitral tribunal in *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)* echoed Judge Fitzmaurice's reasoning in the *Temple of Preah Vihear*, stating:

"The real field of operation, therefore, of the rule of preclusion or estoppel, *stricto sensu*, … is where it is possible that the party concerned did not give the undertaking or accept the obligation in question … but where that party's subsequent conduct has been such, and has had such consequences, that it cannot be allowed to deny the existence of an undertaking, or that it is bound."[186]

This principle applies to various issues, including the jurisdiction of international courts. The tribunal further clarified that, for estoppel to apply,

180. Wass, *Jurisdiction by Estoppel and Acquiescence in International Courts and Tribunals*, 157.

181. ICJ, *Delimitation of the Maritime Boundary in the Gulf of Maine Area*, p. 305, para. 130.

182. This is the purpose of footnote 42 above, where I explain the relevance of good faith to the silent conduct of States. Good faith requires consistency in actions and representations of the will of State. When a prolonged silence creates a reasonable expectation in another State that certain conduct is accepted or uncontested, it would be contrary to good faith for the silent State to later act inconsistently with that expectation. Under these circumstances, due to governing principle of *good faith*, both *acquiescence* and *estoppel* may preclude the silent-State from altering its legal position.

183. Wass, *Jurisdiction by Estoppel and Acquiescence in International Courts and Tribunals*, 163.

184. Thirlway, *The Law and Procedure of the International Court of Justice*, 27.

185. Christian J. Tams, "Waiver, Acquiescence and Extinctive Prescription" in *The Law of State Responsibility*, eds. James Crawford and Alain Pellet (Oxford: Oxford University Press, 2010), 1045.

186. PCA, *Chagos Marine Protected Area Arbitration*, para. 437.

the State's statement or conduct must not constitute a binding unilateral declaration. Otherwise, the distinction between estoppel and the doctrine of legally binding unilateral acts would be blurred.[187]

Some judges and scholars, such as Bowett argue that a change in a State's declared position is sufficient to invoke estoppel, provided it alters the relative positions of the parties to the detriment of one.[188] Fitzmaurice emphasized that there should be no presumption against a party's ability to change its position unless there is 'a change in the relative positions of the parties, worsening that of the one, or improving that of the other, or both'.[189]

The representation of legal positions plays a critical role in estoppel; thus, estoppel does not merely prevent one party from engaging in inconsistent conduct.[190] As the tribunal in *Duke v. Peru* explained, estoppel is rooted in the reliance on a belief arising from the conduct of the other party, leading the claimant to assume that the situation would remain unchanged.[191]

Estoppel is not easily justified if the respondent's change of position does not cause harm to the other party. In investment arbitration, while practice is not entirely uniform, the element of detrimental reliance is generally considered essential.[192] For example, in *East Kalimantan v. PT Kaltim Prima Coal*, the arbitral tribunal rejected the claimant's estoppel argument, finding that the claimant had not demonstrated harm resulting from its reliance on the respondent's acceptance of ICSID jurisdiction. Moreover, the claimant had access to an alternative arbitration clause.[193] This decision underscores that 'induced reliance' and existence of a 'detrimental reliance' are indispensable elements of estoppel, distinguishing it from other legal doctrines, including acquiescence.[194]

In this context, it is necessary to assess, based on the facts of each specific case, what constitutes harm arising from the creation of a belief by one of the disputing parties. With regard to the silent conduct of States, however, the very element that forms the basis for inferring acquiescence is the fact which constitutes detrimental reliance itself: namely, the legitimate or reasonable expectation generated by a State's silence. Such an expectation, arising in

187. Ibid, para. 446.

188. Bowett, *Estoppel Before International Tribunals and Its Relation to Acquiescence*, 184.

189. ICJ, *Temple of Preah Vihear*, 63 (Judge Gerald Fitzmaurice).

190. Robert Kolb, "General Principles of Procedural Law" in *The Statute of the International Court of Justice: A Commentary*, eds. Andreas Zimmermann et al. (Oxford: Oxford University Press, 2012), 871-907.

191. ICSID, *Duke Energy International Peru Investments No. 1 Ltd. v. Republic of Peru*, Award, 18 August 2008, ICSID Case No. ARB/03/28, para. 246.

192. ICSID, *Pan American Energy LLC and BP Argentina Exploration Company v. Argentine Republic*, Decision on Preliminary Objections, 27 June 2006, ICSID Case No. ARB/03/13 & ARB/04/8, para. 159.

193. ICSID, *Province of East Kalimantan v. PT Kaltim Prima Coal and Others*, Award on Jurisdiction, 28 December 2009, ICSID Case No. ARB/07/3, para. 215.

194. ICSID, *Duke Energy International Peru Investments No. 1 Ltd. v. Republic of Peru*, para. 246.

situations that reasonably call for a response, serves a dual function: it both constitutes a tacit consent by the silent State – satisfying the requirement for acquiescence – and demonstrates the kind of detriment required of the relying party to meet the threshold for estoppel.

Conclusion

Analyzing these doctrines highlights some key points. First, *reasonable expectation* is the underlying thread. Silent conduct binds a State only insofar as it has *reasonably* led others to believe the conduct would continue. This prevents States from benefiting by misleading others through inactivity. As one can note, silence yields legitimate expectations which good faith protects. The law aims to prevent a State from creating expectations, through acquiescence or by representing its tacit will, and then reneging to the detriment of others.

Second, while acquiescence and estoppel, which draw their normative force in international law from the overarching principle of good faith, have different technical elements, both serve equity and stability. Acquiescence safeguards predictability by turning passive recognition into consent; estoppel enforces responsibility by penalizing opportunistic reversals. In effect, both doctrines express *pacta sunt servanda* in contexts where promise is unspoken. The legal system thus privileges substance or the expectation created over form.

Finally, anchoring these doctrines in 'legitimate or reasonable expectation' has broader value. It ties them into the core commitment of international law: fostering cooperative, orderly relations. Legitimate expectation invokes the trust necessary for treaties and agreements to function. It underscores that international legal order is not merely a matter of force or unilateral will, but of reciprocal reliance.

In sum, the legal force of *silence* in international law rests on the concept of legitimate or reasonable expectation. A State's tacit conduct creates expectations in others; good faith and legal certainty require that those expectations be honored. Through acquiescence and estoppel, silence – when viewed objectively – can amount to binding consent or preclude a State from denying prior behavior. This doctrine has deep foundations in customary international law and enjoys robust recognition in international jurisprudence. Cases like *Temple of Preah Vihear*, *Pedra Branca*, and *Gulf of Maine* exemplify how prolonged non-objection, when coupled with knowledge and interest, leads to legal consequences.

Thus, *reasonable expectation* emerges as the central doctrinal theme: it is the rationale why silent conduct carries weight. Silence is not emptiness; it communicates. When a State stands silent and others rely, that silence assumes a meaning in international law. By anchoring the doctrines of acquiescence and estoppel in legitimate expectations, international law reconciles the autonomy of States with the need for an equitable and stable legal order. In a system where formal consent is the norm, it is perhaps inevitable – and equitable – that even passive consent be treated as genuine consent when it is justifiably anticipated by others.

Bibliography

- Books

1. Bowett, Derek William. *The Law of Treaties*. 1st ed. Oxford: Clarendon Press, 1961.
2. Buga, Irina. *Modification of Treaties by Subsequent Practice*. 1st ed. Oxford: Oxford University Press, 2018.
3. Byers, Michael. *Custom, Power and the Power of Rules: International Relations and Customary International Law*. 1st ed. Cambridge: Cambridge University Press, 1999.
4. Crawford, James. *Brownlie's Principles of Public International Law*. 9th ed. Oxford: Oxford University Press, 2019.
5. D'Amato, Anthony. "Good Faith." In *Encyclopedia of Public International Law*, edited by Rudolf Bernhardt, 107–144. Amsterdam: North-Holland, 1984.
6. Distefano, Giovanni, and Aymeric Hêche. "State Silence and Territorial Title and Boundaries." In *State Silence Across International Law: Meaning, Context, and Developments*, edited by Danae Azaria, 243–264. Oxford: Oxford University Press, 2025.
7. Dörr, Oliver, and Kirsten Schmalenbach. *Vienna Convention on the Law of Treaties: A Commentary*. 2nd ed. Heidelberg: Springer, 2018.
8. Futhazar, Guillaume, and Anne Peters. "Good Faith." In *The UN Friendly Relations Declaration at 50: An Assessment of the Fundamental Principles of International Law*, edited by Jorge E. Viñuales, 189–228. Cambridge: Cambridge University Press, 2020.
9. Green, James A. *The Persistent Objector Rule in International Law*. 1st ed. Oxford: Oxford University Press, 2016.
10. Jennings, Robert Yewdall. *The Acquisition of Territory in International Law*. 1st ed. Manchester: Manchester University Press, 1963.
11. Kolb, Robert. "General Principles of Procedural Law." In *The Statute of the International Court of Justice: A Commentary*, edited by Andreas Zimmermann et al., 871–907. Oxford: Oxford University Press, 2012.
12. Kolb, Robert. *Good Faith in International Law*. 1st ed. Oxford: Hart Publishing, 2017.
13. Koskenniemi, Martti. *From Apology to Utopia: The Structure of International Legal Argument*. Cambridge: Cambridge University Press, 2005.
14. Lauterpacht, Hersch. *Private Law Sources and Analogies of International Law*. 1st ed. London: Longmans, 1927.
15. McNair, Arnold D. *The Law of Treaties*. 1st ed. Oxford: Clarendon Press, 1961.
16. O'Connor, John Francis. *Good Faith in International Law*. 1st ed. Aldershot: Dartmouth, 1991.
17. Orakhelashvili, Alexander. *Peremptory Norms in International Law*. 1st ed. Oxford: Oxford University Press, 2008.

18. Rosenne, Shabtai. *Developments in the Law of Treaties 1945–1986*. 1st ed. Cambridge: Cambridge University Press, 1989.
19. Shaw, Malcolm N. *International Law*. 6th ed. Cambridge: Cambridge University Press, 2008.
20. Symmons, Clive Ralph. *Historic Waters and Historic Rights in the Law of the Sea*. 1st ed. Leiden: Brill, 2019.
21. Tams, Christian J. “Waiver, Acquiescence and Extinctive Prescription.” In *The Law of State Responsibility*, edited by James Crawford and Alain Pellet, 1045–1076. Oxford: Oxford University Press, 2010.
22. Villiger, Mark E. *Commentary on the 1969 Vienna Convention on the Law of Treaties*. 1st ed. Leiden: Martinus Nijhoff Publishers, 2009.
23. Whittaker, Simon, and Reinhard Zimmermann. “Good Faith in European Contract Law: Surveying the Legal Landscape.” In *Good Faith in European Contract Law*, edited by Reinhard Zimmermann and Simon Whittaker, 7–62. Cambridge: Cambridge University Press, 2000.

- Articles
1. Antunes, Nuno Sérgio Marques. “Estoppel, Acquiescence and Recognition in Territorial and Boundary Dispute Settlement.” *Boundary & Territory Briefings* 2, no. 8 (2000): 1–35.
2. Arthur, Juan Pablo Hugues. “The Legal Value of Prior Steps to Arbitration in International Law of Foreign Investment: Two (Different?) Approaches, One Outcome.” *Anuario Mexicano de Derecho Internacional* 15, no. 1 (2015): 449–488. https://doi.org/10.1016/j.amdi.2015.06.004.
3. Bjorge, Eirik. “Opposability and Non-Opposability in International Law.” *British Yearbook of International Law* 91, no. 1 (2021). https://doi.org/10.1093/bybil/brab006.
4. Boon, Kristen E. “Are Control Tests Fit for the Future? The Slippage Problem in Attribution Doctrines.” *Melbourne Journal of International Law* 15, no. 2 (2014): 430–475.
5. Bowett, Derek William. “Estoppel Before International Tribunals and Its Relation to Acquiescence.” *British Yearbook of International Law* 33, no. 1 (1957): 176–202.
6. Chan, Phil C.W. “Acquiescence/Estoppel in International Boundaries: Temple of Preah Vihear Revisited.” *Chinese Journal of International Law* 3, no. 2 (2004): 421–439. https://doi.org/10.1093/oxfordjournals.cjilaw.a000527.
7. Christenson, Gordon A. “Attributing Acts of Omission to the State.” *Michigan Journal of International Law* 12, no. 2 (1991): 312–370.
8. Chung, John J. “Customary International Law as Explained by Status Instead of Contract.” *North Carolina Journal of International Law and Commercial Regulation* 37 (2012): 910–954.

9. D'Amato, Anthony. "Is International Law Really Law?" *Northwestern University Law Review* 79 (1984): 1293–1312.
10. Ford, Stuart. "Is the Failure to Respond Appropriately to a Natural Disaster a Crime Against Humanity? The Responsibility to Protect and Individual Criminal Responsibility in the Aftermath of Cyclone Nargis." *Denver Journal of International Law and Policy* 38, no. 2 (2010): 225–287. https://dx.doi.org/10.2139/ssrn.1437785.
11. Guzman, Andrew T. "Saving Customary International Law." *Michigan Journal of International Law* 27 (2005): 115–176. https://dx.doi.org/10.2139/ssrn.708721.
12. Guzman, Andrew T., and Jerome Hsiang. "Some Ways That Theories on Customary International Law Fail: A Reply to Laszlo Blutman." *European Journal of International Law* 25, no. 2 (2014): 553–559. https://doi.org/10.1093/ejil/chu036.
13. Henry, Etienne. "Alleged Acquiescence of the International Community to Revisionist Claims of International Customary Law (With Special Reference to the *Jus Contra Bellum* Regime)." *Melbourne Journal of International Law* 18, no. 2 (2017): 260–297.
14. Hepburn, Jarrod. "The Legal Justification for the Doctrine of Legitimate Expectations in International Investment Law." *European Journal of International Law* 36, no. 1 (2025): 112–135. https://doi.org/10.1093/ejil/chaf017.
15. Hickleton, Marcus. "Shaky Foundations: Killer Robots and the Martens Clause." *Perth International Law Journal* 4 (2019): 45–60.
16. Kopela, Sophia. "The Legal Value of Silence as State Conduct in the Jurisprudence of International Tribunals." *Australian Yearbook of International Law* 29 (2010): 87–134. https://doi.org/10.1163/26660229-029-01-900000005.
17. Kulick, Andreas. "About the Order of Cart and Horse, Among Others – Estoppel in the Jurisprudence of International Investment Arbitration Tribunals." *European Journal of International Law* 27, no. 1 (2016): 191–217. https://doi.org/10.1093/ejil/chw003.
18. Ley, Isabelle. "Opposition in International Law – Alternativity and Revisibility as Elements of a Legitimacy Concept for Public International Law." *Leiden Journal of International Law* 28, no. 4 (2015): 767–787. https://doi.org/10.1017/S0922156515000400.
19. Marceau, Gabrielle Zoe, Rebecca Walker, and Niki Koumadoraki. "Silence in WTO." *Journal of World Trade* 56, no. 2 (2022): 215–242. https://doi.org/10.54648/trad2022008.
20. McGibbon, Ian C. "The Scope of Acquiescence in International Law." *British Yearbook of International Law* 31, no. 1 (1954): 143–186.
21. McNair, Arnold D. "The Legality of the Occupation of the Ruhr." *British Yearbook of International Law* 5 (1924): 17–37.

22. Mitchell, Andrew D. "Good Faith in WTO Dispute Settlement." *Melbourne Journal of International Law* 7, no. 1 (2006): 339–371. https://dx.doi.org/10.2139/ssrn.3157444.

23. O'Brien, Killian. "Representation in the Doctrine of Estoppel in International Law." *Irish Yearbook of International Law* 3 (2008): 95–118. https://doi.org/10.5040/9781472565389.ch-004.

24. Ovchar, Alexander. "Estoppel in the Jurisprudence of the ICJ: A Principle Promoting Stability Threatens to Undermine It." *Bond Law Review* 21, no. 1 (2009): 135–162. https://doi.org/10.53300/001c.5527.

25. Powers, Paul J. "Defining the Indefinable: Good Faith and the United Nations Convention on the Contracts for the International Sale of Goods." *Journal of Law and Commerce* 18, no. 1 (1999): 333–359.

26. Quinn, Molly C. "Life Without Parole for Juvenile Offenders: A Violation of Customary International Law." *Saint Louis University Law Journal* 52, no. 1 (2007): 139–165.

27. Reinhold, Stephan. "Good Faith in International Law." *UCL Journal of Law and Jurisprudence* 2 (2013): 40–63. https://dx.doi.org/10.2139/ssrn.2269746.

28. Schwarzenberger, Georg. "Title to Territory: Response to a Challenge." *American Journal of International Law* 51, no. 2 (1957): 308–324.

29. Shaw, Malcolm N. "The Heritage of States: The Principle of Uti Possidetis Juris Today." *British Yearbook of International Law* 67, no. 1 (1996): 75–154.

30. Sule, Ibrahim. "Substantive Legitimate Expectations: The Journey So Far." *European Journal of Law and Political Science* 1, no. 5 (2022): 12–25. https://doi.org/10.24018/ejpolitics.2022.1.5.42.

31. Tetley, William. "Good Faith in Contract Particularly in the Contracts of Arbitration and Chartering." *Journal of Maritime Law and Commerce* 35, no. 4 (2004): 561–616.

32. Thirlway, Hugh. "The Law and Procedure of the International Court of Justice: 1960-1989." *British Yearbook of International Law* 76, no. 1 (2005): 1–121.

33. Thomsen, Matias. "The Obligation Not to Arbitrarily Refuse International Disaster Relief: A Question of Sovereignty." *Melbourne Journal of International Law* 16, no. 2 (2015): 421–453.

34. Vandevelde, Kenneth J. "Treaty Interpretation from a Negotiator's Perspective." *Vanderbilt Journal of Transnational Law* 21, no. 2 (1988): 281–311.

35. Wang, Yilin. "The Origins and Operation of the General Principles of Law as Gap Fillers." *Journal of International Dispute Settlement* 13, no. 4 (2022): 521–544. https://doi.org/10.1093/jnlids/idac018.

36. Wass, Jack. "Jurisdiction by Estoppel and Acquiescence in International Courts and Tribunals." *British Yearbook of International Law* 86, no. 1 (2016): 155–194. https://doi.org/10.1093/bybil/brx005.

37. Wright, Andrew McCanse. "Constitutional Good Faith." *New York University Law Review* 93, no. 1 (2018): 145–201.

38. Yeini, Shelly Aviv. "The Persistent Objector Doctrine: Identifying Contradictions." *Chicago Journal of International Law* 22, no. 2 (2022): 561–589.

39. Yeini, Shelly Aviv. "The Specially Affecting States Doctrine." *The American Journal of International Law* 112, no. 2 (2018): 244–268. https://doi.org/10.1017/ajil.2018.50.

- Cases

- ICJ Cases

1. ICJ. *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*. Judgment, I.C.J. Reports 2024.

2. ICJ. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*. Preliminary Objections, I.C.J. Reports 2019.

3. ICJ. *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua)*. Judgment, I.C.J. Reports 1960, p. 192.

4. ICJ. *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*. Judgment (Compensation), I.C.J. Reports 2018, p. 15.

5. ICJ. *Continental Shelf (Tunisia/Libyan Arab Jamahiriya)*. Judgment, I.C.J. Reports 1982, p. 18.

6. ICJ. *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*. Judgment, I.C.J. Reports 1984, p. 246.

7. ICJ. *Dispute Regarding Navigational and Related Rights (Costa Rica v. Nicaragua)*. Judgment, I.C.J. Reports 2009, p. 213.

8. ICJ. *Elettronica Sicula S.A. (ELSI) (United States of America v. Italy)*. Judgment, I.C.J. Reports 1989, p. 15.

9. ICJ. *Fisheries (United Kingdom v. Norway)*. Judgment, I.C.J. Reports 1951, p. 116.

10. ICJ. *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*. Judgment, I.C.J. Reports 1997, p. 7.

11. ICJ. *Kasikili/Sedudu Island (Botswana/Namibia)*. Judgment, I.C.J. Reports 1999, p. 1045.

12. ICJ. *Land, Island and Maritime Frontier Dispute (El Salvador v. Honduras: Nicaragua Intervening)*. Judgment, I.C.J. Reports 1992, p. 351.

13. ICJ. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984, p. 392.

14. ICJ. *Nuclear Tests (Australia v. France)*. Judgment, I.C.J. Reports 1974, p. 253.

15. ICJ. *Nuclear Tests (New Zealand v. France)*. Judgment, I.C.J. Reports 1974, p. 457.

16. ICJ. *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*. Judgment (Merits), I.C.J. Reports 2018, p. 507.

17. ICJ. *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*. Judgment, I.C.J. Reports 2008, p. 12.

18. ICJ. *Temple of Preah Vihear (Cambodia v. Thailand)*. Merits, Judgment, I.C.J. Reports 1962, p. 6.

19. ICJ. *Territorial Dispute (Libyan Arab Jamahiriya v. Chad)*. Judgment, I.C.J. Reports 1994, p. 6.

- Arbitration cases

1. *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*. Final Award, 18 March 2015. Permanent Court of Arbitration (PCA) Case No. 2011-03.

2. *Delimitation of the Continental Shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic (United Kingdom v. France)*. Decision of 14 March 1978. UNRIAA, vol. XVIII, pp. 3–129 (Ad-hoc Arbitral Tribunal).

3. ICSID. *Duke Energy International Peru Investments No. 1 Ltd. v. Republic of Peru*. Award, 18 August 2008. ICSID Case No. ARB/03/28.

4. ICSID. *Province of East Kalimantan v. PT Kaltim Prima Coal and Others*. Award on Jurisdiction, 28 December 2009. ICSID Case No. ARB/07/3.

5. ICSID. *IC Power Asia Development Ltd. v. Republic of Peru*. Award, 3 October 2023. ICSID Case No. ARB/19/19.

6. ICSID. *Pan American Energy LLC and BP Argentina Exploration Company v. Argentine Republic*. Decision on Preliminary Objections, 27 June 2006. ICSID Case No. ARB/03/13 & ARB/04/8.

- WTO cases

1. WTO. *European Communities - Customs Classification of Frozen Boneless Chicken Cuts*. Report of the Appellate Body, 27 September 2005. WT/DS269/AB/R & WT/DS286/AB/R.

2. WTO. *Japan - Taxes on Alcoholic Beverages*. Report of the Appellate Body, 1 November 1996. WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R.

3. WTO. *United States - Import Prohibition of Certain Shrimp and Shrimp Products*. Report of the Panel, 15 May 1998. WT/DS58/R.

- Other cases

1. IACtHR. *Serrano Cruz Sisters v. El Salvador*. Preliminary Objections, Judgment of 23 November 2004. Series C No. 118.
2. ICC (Pre-Trial Chamber I). *Decision on the Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court's Territorial Jurisdiction in Palestine*. ICC-01/18-143, 5 February 2021.
3. ICC (Pre-Trial Chamber I). *Prosecutor v. Laurent Gbagbo, Observations on Behalf of Victims Regarding the Defence Challenge to the Jurisdiction of the Court*. ICC-02/11-01/11-165, 27 June 2012.
4. ICTY (Trial Chamber I). *Prosecutor v. Delalić, Mucić, Delić and Landžo (Čelebići Case)*. Judgment, Case No. IT-96-21-T, 16 November 1998.

- Instruments and UN Documents

1. International Law Commission. "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries." UN Doc. A/56/10. New York: United Nations, 2001. https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.
2. International Law Commission. "Report of the International Law Commission on the Work of Its Sixteenth Session", 11 May–24 July 1964. UN Doc. A/CN.4/SER.A/1964. https://legal.un.org/ilc/publications/yearbooks/english/ilc_1964_v1.pdf.
3. International Law Commission. "Summary Record of the 25th Meeting." UN Doc. A/C.6/69/SR.25. November 3, 2014. https://digitallibrary.un.org/record/4101751?ln=en&v=pdf.
4. International Law Commission. Nolte, Georg. "Fifth Report on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties." UN Doc. A/CN.4/715. February 28, 2018. https://digitallibrary.un.org/record/1480701?v=pdf.
5. International Law Commission. Nolte, Georg. "First Report on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties." UN Doc. A/CN.4/660. New York: United Nations, 19 March 2013. https://digitallibrary.un.org/record/749044?ln=en&v=pdf.
6. International Law Commission. Nolte, Georg. "Second Report on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties." UN Doc. A/CN.4/671. March 26, 2014. https://digitallibrary.un.org/record/769844?v=pdf.
7. International Law Commission. Rodríguez Cedeño, Víctor. "First Report on Unilateral Acts of States." UN Doc. A/CN.4/486. New York: United Nations, 5 March 1998. https://digitallibrary.un.org/record/252507?v=pdf.

8. International Law Commission. Rodríguez Cedeño, Víctor. "Fourth Report on Unilateral Acts of States." UN Doc. A/CN.4/519. New York: United Nations, 2001. https://digitallibrary.un.org/record/444203/?v=pdf.
9. Noslacan, Mircea. "The Good Faith in the Public International Law and the Community Law." Paper presented at the Union of Scientists-Stara Zagora International Scientific Conference, June 5–6, 2008.
10. Security Council Report. Landgren, Karin, et al. "Security Council Working Methods in Hard Times." Research Report No. 2. New York, May 2, 2023.
11. United Nations General Assembly (Sixth Committee). "Summary Record of the 21st Meeting." UN Doc. A/C.6/64/SR.21. New York: United Nations, 30 October 2009. https://digitallibrary.un.org/record/679376?v=pdf.
12. United Nations General Assembly. "Report of the International Law Commission on the Work of Its Sixty-Eighth Session" (2 May–10 June and 4 July–12 August 2016). UN Doc. A/71/10. New York: United Nations, 2016.
13. *Vienna Convention on the Law of Treaties*. May 23, 1969. 1155 U.N.T.S. 331.

- Dissertations & Theses

1. Holvik, Nathalie. "Silence is Consent: Acquiescence and Estoppel in International Law." Master's Thesis, University of Örebro, 2018.
2. Sitnik, Piotr. "Estoppel in International Investment Law." PhD Diss., Maria Curie-Skłodowska University in Lublin, Department of Law and Administration, 2021.

- Online Sources

1. Azaria, Danae. "State Silence as Acceptance: A Presumption and an Exception." *British Yearbook of International Law* (2023). https://doi.org/10.1093/bybil/brae002.
2. Harvard Law School Program on International Law and Armed Conflict. Lewis, Dustin A., Naz K. Modirzadeh, and Gabriella Blum. *Quantum of Silence: Inaction and Jus ad Bellum*. Cambridge, MA: Harvard University, 2019.