THE PHENOMENON OF POWER IN INTERNATIONAL LAW

Sun Jiyao
Independent researcher

ABSTRACT

This article elucidates the conceptual disparities between classical and contemporary international law regarding the use of force, asserting that international law serves as an instrument to ensure the purposive utilization of power. Furthermore, it explores how the international use of force is legitimized by international law, while simultaneously acting as a mechanism to maintain the validity of legal norms. Thus, the inherent and inextricable link between law and the exercise of power is revealed.

Keywords: *International Law, Phenomenon of Power, Right of the Strong, Rule of Law, Sovereign Equality, Geopolitical Transformation, Sanctions and Embargo, Use of Force, UN Charter, Legitimacyunequal treaties,*

ФЕНОМЕН СИЛЫ В МЕЖДУНАРОДНОМ ПРАВЕ

АННОТАЦИЯ

В данной статье разъясняются концептуальные различия между классическим и современным международным правом в отношении применения силы, при этом утверждается, что международное право служит инструментом, обеспечивающим целевое использование власти. Кроме того, исследуется, как международное применение силы легитимизируется международным правом, одновременно выступая в качестве механизма поддержания действительности (валидности) правовых норм. Таким образом, раскрывается неразрывная внутренняя связь между правом и осуществлением силы.

Ключевые слова: *международное право, феномен силы, право сильного, верховенство права, суверенное равенство, геополитическая трансформация, санкции и эмбарго, применение силы, Устав ООН, легитимность, неравноправные договоры.*

INTRODUCTION

The question of whether the primary role in international law is played by a legal order or a power-based order has been a subject of debate for centuries. Criticisms leveled against international law are as ancient as the field itself. International law is not a legal system regulating relations of subordination

(hierarchy); rather, it possesses a character of coordination. States are sovereign equals in international law. In an order based on equality, however, doubts may arise regarding the very existence or absence of law. Law is a tool that ensures the purposive use of power. While the international use of force is legitimized by international law, on the other hand, the exercise of power serves as a means for the practical application and validity of the law. Even in international law, which is perceived as a power order, a crucial aspect that must not be overlooked is the form in which power is exercised [1].

Since ancient times, the problem of the balance between power and law has not lost its relevance. When describing the Gallic attack on the Roman Empire, the ancient historian Plutarch cites the famous words of the Gallic chieftain Brennus: *"Our right is carried on the points of our swords; all things belong to the brave!"* Later, he added the phrase "Vae victis" (Woe to the vanquished), expressing ruthlessness toward the defeated [2]. For millennia, the "right of the strong" predominated over legal norms. In fact, legal norms often emerged under the influence of power, relied upon it, and held no significance where real power was absent.

It was only in the Middle Ages, following the 1648 Treaty of Westphalia, that international law began to develop as nation-states and the system of international relations took shape. The principle of defining state borders based on linguistic and geographical features, as well as the principle of their inviolability, was established. However, this *"sanctity"* applied only to European states and did not prevent them from conquering other peoples and building vast colonial empires. Although the development of capitalism and the market economy refined legal systems, they simultaneously gave rise to socio-economic inequality. States striving for global hegemony began to disregard existing international legal norms in pursuit of their objectives. Consequently, precedents were set where power was prioritized over law [3].

The criticisms directed at international law are as old as the law itself. Hugo Grotius (1583–1645), in his work *"On the Law of War and Peace"* (De Jure Belli ac Pacis), criticized the denial of international law. Thomas Hobbes (1588–1679) and Niccolò Machiavelli (1469–1527), who lived during the same era, left an indelible mark on the history of international relations with their critical views on international law. According to Hobbes, international law is destined to remain impossible as a valid law between sovereign states. This is because the absolute sovereignty of states leaves no room for another sovereign, or even for a superior sovereign above them. Even if individuals use their strategic reason to create a powerful sovereign (the state)

to escape the state of lawlessness and the “state of nature” the order established does not eliminate the possibility of states remaining in a *“war of all against all”* (bellum omnium contra omnes) in their mutual relations. Between states, there is no international law, but rather an “environment of power” where any means are considered permissible.

According to Hans Morgenthau, one of the most prominent representatives of the Realist doctrine, international law possesses no normative value. International law functions solely to facilitate the balancing of interests and the maintenance of the balance of power. In Morgenthau's view, international law can be accepted as a binding law only through a consensus emerging between states. However, this occurs very rarely and under specific conditions-namely, when the individual decentralized interests of states coincide and when a balance exists between the powers of states. International law acquires a binding existence only under these conditions. According to the Realist doctrine, international law does not possess a normative guiding function in foreign policy independent of the real balance of power.

There are also postmodern interpretations of international law. Most of these interpretations do not deny the legal character of international law; instead, they focus on understanding and improving the mechanisms of international law's influence from specific perspectives - cultural, political, economic, or theoretical. In the 1940s, the New Haven School attempted to replace positive international law with comprehensive policy-oriented decision analysis. Presenting itself as an approach opposed to legal positivism, this school emphasized the reciprocal interaction and interdependence between politics and law. In this approach, international law is viewed as one of many political factors in making foreign policy decisions [4].

Anne-Marie Slaughter evaluates international law from a liberal perspective. According to her thesis, compliance with international law depends largely on the domestic political structure. Liberal states–characterized by democracy, the rule of law, and the guarantee of civil and political rights–primarily adhere to international law in their mutual relations. Conversely, states not considered liberal tend to disregard international law. Depending on the circumstances, this hypothesis may be accepted: liberal states may utilize force against non-liberal states to eliminate threats to their world order or to prevent humanitarian catastrophes.

Another study that has recently resonated significantly and arrived at conclusions similar to realism in foreign policy is *"The Limits of International Law"* by Jack Goldsmith and Eric Posner. Their conclusion posits that international law is a "by-product" resulting from states pursuing their own self-interests. International law merely reflects the behavior of states but does not constrain their interests. Neither

international customary law nor the law of international treaties possesses the function of independently guiding international relations. The most crucial aspect of international law is the interests and power of states, or the maintenance of a balance of interests with other states. State interests are defined by government leaders, who describe these interests in accordance with international law. While Goldsmith and Posner do not deny international law, they do not accept its inherent binding nature. Consequently, they are classified not only as postmodern commentators but also as "international law deniers" [5].

The phenomenon of power has existed at every stage of international law's history. From the 1930s, the world entered a new, conflict-ridden phase. On the eve of and during the Second World War, leading powers relied more on military force than on legal agreements. Germany, Italy, and Japan flagrantly violated international norms. After the war, a bipolar world emerged, personified by the USA and the USSR. With the establishment of the UN, humanity attempted to place law at the center, yet each bloc interpreted legal norms based on its own ideological interests.

Subsequently, against the backdrop of world wars, power became a "universal instrument" resolving all matters. States began to resort to force with increasing frequency, giving rise to a new precedent known as the power phenomenon. Over time, the divergence in approaches intensified. While the Soviet Union emphasized compliance with international treaties, the USA increasingly opted for a strategy of utilizing military force. The Korean and Vietnam Wars, threats of nuclear weapons, and the use of military force in other states' territories without Congressional approval serve as examples. Furthermore, it became evident that the USA's maintenance of secret prisons not provided for by law and the use of torture against detainees were contrary to international human rights norms [6].

The beginning of the 21st century commenced with new acts of military violence, as seen in Iraq, Yugoslavia, Afghanistan, and Libya. The instruments of pressure used by powerful states are not limited to war: blockades, sanctions, and embargo practices have become widespread. For instance, although the economic embargo imposed on Cuba for decades has been condemned by the UN 23 times, the USA continues to maintain it [7]. Today, sanctions have become a tool for weakening rival states or punishing *"disliked"* regimes. The sanctions imposed against Iran, Syria, Belarus, and Russia - even restrictions applied to minors (for example, the son of A. Lukashenko) - demonstrate the extent to which legal foundations have weakened [8].

Over the last 20 years, the replacement of law by power in the foreign policy of the USA and the European Union has become a stable trend. The causes and

consequences of this remain the most pressing geopolitical issue of our time. Meanwhile, the issue of the international legal personality (subjectivity) of international organizations has ceased to be a controversial topic. Individuals are also accepted today as subjects of international law within certain parameters. In this regard, through numerous human rights treaties and international criminal law regulations, individuals can acquire rights and incur obligations under international law. In other words, they are emerging from being mere objects of international law or being "mediatized" by states (existing only through state mediation) and are consequently recognized as subjects of international law.

In response, debates regarding the international legal subjectivity of non-governmental organizations and, above all, multinational corporations are intensifying; the majority of jurists do not recognize the subjectivity of these actors. This view is more prevalent regarding multinational corporations than non-governmental organizations. International law addresses non-governmental organizations as exceptions and grants them certain rights. In this sense, some international jurists accept that international law addresses non-governmental organizations in a reflexive manner, viewing their subjectivity positively. They point to the consultative status held by non-governmental organizations before the UN Economic and Social Council, particularly under Article 71 of the UN Charter. Multinational corporations are also being recognized as direct addressees of international rights and obligations in numerous bilateral investment protection treaties.

In particular, the arbitration arrangements contained in investment protection agreements provide a clear example of this. Furthermore, it is indisputably accepted that granting international legal subjectivity to all participants in international relations would be an extreme measure. Rather than creating a general category for international legal subjects, it is a healthier approach to examine the extent to which rights are provided and obligations are imposed on these actors in concrete situations. Whether non-state actors are more important today than states is one of the contemporary debates. States, as the primary subjects of international law, will continue to maintain their special place in the future. Nevertheless, it is an evident truth that the international order can no longer be an order determined solely by states. Indeed, it is observed that states, as the primary subjects of international law, are becoming dependent on other actors in various ways. The international order is increasingly becoming a web (knot) of relations between states and non-state actors. Within the conditions of unipolarity, bipolarity, and multipolarity, the balance and hegemony in mutual relations are seen as recurring formations throughout the history

of international relations. In any case, states and non-state actors will continue to shape international relations together as part of the world order.

Recalling the U.S. invasion of Iraq and the preceding assaults, the frailty of international law enforcement manifests itself in all its magnitude and clarity. International legal arguments presented during diplomatic negotiations regarding the Iraq conflict failed to influence the United States. On March 20, 2003, American military forces, with the participation of Great Britain and the symbolic involvement of Poland and Australia, initiated hostilities against Iraq. In the occupation of Iraq, there was no mandate from the Security Council, nor did a situation of lawful self-defense occur under Article 51 of the UN Charter. The authority granted to the international coalition by Security Council Resolution 678 on November 21, 1990, for the liberation of Kuwait, had terminated no later than the ceasefire of April 11, 1991. It was impossible to revive this mandate. The lack of authorization for the use of force in Resolution 1441 (2002) was subsequently confirmed by statements from permanent members – China, France, and Russia [9].

At the end of the 20th and the beginning of the 21st centuries, a stable trend emerged in resolving intra-state and international problems through the component of force rather than legal means. This phenomenon was linked to a number of fundamental factors, the most significant of which were:

1. Transformation of the world's geopolitical architecture. The dissolution of the Soviet Union led to the formation of a unipolar world. The existence of a single superpower the USA created conditions for the unimpeded use of force, pressure, and military intervention in international processes.

2. Global economic crisis. Economic instability intensifies competition between states. The necessity of weakening rivals drives countries to employ any means, including illegal ones. In this struggle, impunity for violating international law itself becomes a factor of power, as clearly demonstrated by the fates of Iraq, Libya, and the current crisis in Ukraine.

3. Acceleration of globalization processes. The pursuit of global dominance by leading world powers is impossible without reliance on military might. In this context, the Balkan Peninsula became a "testing ground" where NATO tested the possibility of using military force without UN authorization, effectively prioritizing Alliance decisions over those of the OSCE and the UN, and gauging the reaction of the international community (specifically Russia) to the legalization of aggression.

4. Unevenness of world development. The emergence of new centers of economic and political power inevitably leads to conflicts with "outdated" centers of influence striving to maintain their dominance.

5. Activity of supranational management centers. In the current stage of capitalism, alliances (European Union, G7, G20) have formed for which classical norms of international law have become a restrictive and disadvantageous factor. Possessing immense collective power, these associations often disregard legal norms without fear of resistance. Targeted efforts to minimize the role of the UN are being observed.

6. Increase in global threats. The rise of international terrorism, social movements, and struggles for independence leads to an escalation of military conflicts, where priority is given to rapid use of force rather than legal procedures.

Similar processes are observed at the domestic level. Economic crises, elite struggles, and social explosions (as seen in North Africa, Syria, or Ukraine) show that when the “power of law” is insufficient to protect national interests, governments resort to the “right of power”. In the economic sphere, this is manifested through raiding and artificial bankruptcies. In the social sphere, it is seen through the de facto inequality of citizens before the law. In modern Russia and several other countries, power and property are becoming the primary hallmarks of strength: a resource owner often holds an advantage over an ordinary citizen, turning constitutional equality into a mere declaration. Law and legislation possess real power only when they rely on the might of a capable state. Only strong state power can ensure the enforcement of legal norms; a weak state is unable to guarantee the rule of law.

CONCLUSION AND RESULTS.

In conditions of a market economy and ruthless competition (not only in business but also in the spheres of power and labor), the importance of the power factor will continue to grow. Recurrent economic crises stimulate scenarios for the use of force both domestically and internationally. Thus, the 21st century remains a battlefield where the "right of the strong" exerts a serious influence on the legal order. To prevent growing conflicts and wars, it is necessary for politicians, jurists, and governments of most countries to unite in order to collectively influence subjects that violate international agreements. Without such unity, the risk of global upheavals will grow incessantly. We can present the results and conclusions taken from our research in the following table format.

Aspect	Key Points
Ancient Period	Power dominates law (“Might is Right”, *Vae Victis*).
Westphalian System (1648)	Sovereign equality of states; emergence of international law.
Colonial Era (19th c.)	Legal norms exist but are applied selectively by great powers.
Cold War Period	Bipolar order; law interpreted through ideological blocs.

Aspect	Key Points
Post-2000 Era	Military interventions and sanctions often override legal norms.
Law–Power Relationship	Law legitimizes power; power enforces or undermines law.
Use of Force	Legal: self-defense and UN authorization; Illegal: unilateral interventions.
Main Actors	States (primary), international organizations, limited non-state actors.
Core Tension	Rule of law vs. right of the strong.
Overall Trend	Growing reliance on power weakens international legal order.

REFERENCES

1. Баскин Ю.Я., Фельдман Д.И. История международного права. – М.: Международные отношения, 1990. - С. 94.
2. Encyclopedic dictionary of winged words and expressions. – M.: «Lokid-Press» Vadim Serov, 2005. – 303 p.
3. Брикмон Ж. Гуманитарный империализм. Права человека, или право сильного? URL: http://scepsis.net/library/id_465.html
4. Erdem Denk Uluslararasi antlaşmalar hukukunda jus cogens kurallar // Ankara Üniversitesi SBF Dergisi. – S.48
5. Хомский Н. Несостоятельные Штаты: злоупотребление властью и атака на демократию. –М.: Столица-Принт, 2007. – 482 с.
6. Andrew J. Bacevich. American Empire. Cambridge, MA: Harvard, 2003. – 244 p.
7. Блокада экономическая // Советская воен. энцикл.: в 8 т. / под ред. Н.В. Огаркова. – М.: Воениздат, 1976. Т. 1. – С. 219.
8. М.Г. Суслов, Т.М. Жукова сила права и право силы в истории и современности // Вестник пермского университета, 2014. – Выпуск 4(26). – С.23.
9. Marshall G. Van Dyke V. (ed.) Human Rights, The United States and World Community. – P. 155.