INTERNATIONAL LAW, AN INSTRUMENT OF POWER POLITICS?

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Abstract: *We have always viewed international law as a cultural and historic product of the European doctrines that have been extended to the rest of the world. Nowadays international law constitutes a legal order subject to strong changes that decompartmentalize the classical categories on which it was built, which go as far as to doubt its existence as an order and make it go through a true identity crisis. It remains therefore to consider it through its purposes, instruments and its main areas of application. International law, ordered around certain generous and general scopes, explains its* ***raison d'être****. International law in the current milieu is meant to fulfill its ends by exercising more and more diverse functions and by assimilating power instruments characteristic to politics that go beyond its primary and traditional function of regulating conduct and managing conflicts. While it is impossible to analyze all these functions within the framework of a single article, we set out to demonstrate, above all, that international law has become, through its norms, regulation, instruments and intervention, a dual purpose* ***Deus ex machina*** *defined by its social environment and its current developments.*

Keywords: *international law, norm, international politics, instruments, instruments of power, power, power politics, balance of power, security, peace, development, human rights.*

INTRODUCTION

Law and power are generally regarded as notions in an antithetical balance of *Odyssean* dimensions. Generally, we tend to deify the law, to see it not as a mode of exercising power but, much more, as an instrument of restraint of said power. Pure law, however, does not exist and any reflection on the law implies that we reflect on its context, its objectives, its instruments and its effects. In other words, *legal norms*[1] are the result of power relations.

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[1] Legal norms are binding rules, or norms, of conduct that organizations of sovereign power promulgate and enforce in order to regulate social relations. Legal norms determine the

The real issue in this case is whether or not the creation and development of legal norms can be classified as power instruments used in the process of exercising power in the international arena. Indeed, it can be considered that the creation of norms constitutes a *modus operandi* of the powerful actors in imposing their position on the weak actors and, thus, represents a way of exercising power. At the same time, the law and the issuance of norms are also mechanisms of the powerful to perpetuate and maintain their power, further strengthening the statement by which the law is, in fact, an instrument of power.

The thesis of international law as an instrument of power has important consequences with regard to the role played by law in international society. It ensures that it is no longer perceived as being first and foremost a set of fixed and definitive norms whose enunciation aims to establish constraints on the behavior of its subjects, but rather as a language enabling the various international actors involved in political, economic, social and other power struggles, to articulate them in a common instrument of communication and to legitimize their political preferences and particular interests. Thus, it becomes possible to generalize, in a legitimate politico-juridical language, the individual interests of state-actors.

International law becomes an instrument, allowing the dominant actors to defend their positions and legitimize their actions, presented as being emancipating and in compliance with the law, especially when in concern to human rights, thus, allowing the dominated actors to legally articulate positions that they also deem emancipative and that allow them to resist the assaults of the dominant ones.[2] In other words, it becomes "a mark of legitimacy"[3] for international actors, whether state or non-state actors, who use it to formulate their point of view, to defend their interests or to justify their actions. This characteristic of international law is regularly used by states as *legal language*, rather than moral or ethical, or strictly political, based on their so-called national interests, in order to defend their positions in diplomatic spheres.

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rights and duties of individuals who are the subjects of legal relations within the governing jurisdiction at a given point in time.

[2] David Kennedy, *Of War and Law*, Princeton, Princeton University Press, 2006, p. 45.

[3] *Ibidem.*

In fact, even the most skeptical about the role of law in international relations are forced to admit that, more and more, interstate discourse is articulated on the language of international law. International law, as the new language of power also has the potential to allow state-actors to put in place measures that are fundamentally favorable to the interests of the elites and the dominant actors and unfavorable to those that are dominated, while at the same time succeeding in eluding political responsibility for such measures.

Building a language capital of power

International law aids society's struggles for ideological hegemony and will indirectly determine the reach of an officially recognized consensus on certain issues. This in term creates a space of ideological legitimacy, with clearly defined boundaries that no international actor can disregard or situate outwardly his argumentative discourse without sanction. In other words, boundaries will be established that will determine what can be said and what cannot be said by the actors on the international arena.[4] Making an analogy with the market economy, the idea of the existence of a legitimate international language would be imposed by the distribution of a *linguistic capital*, of which a minimum quota is necessary for the advancement in the international social hierarchy. From the moment when state-actors understand that they have to obtain a linguistic competence, that is to say a capital, necessary for this ascent, the linguistic exchange becomes a balance of power based on the possession of these instruments, a balance of power whose terms are defined by "the holder of the competence closest to the legitimate competence"[5]. Thus, since the linguistic capital represents a reflection the instrument's power origin, the actors involved understand that their interest is to conform to a certain structure of language and to possess certain linguistic qualifications in order to successfully ascend the international social architecture.

[4] *See* Herbert Marcuse, *L'homme unidimensionnel*, Paris, Éditions de Minuit, 1968.

[5] Pierre Bourdieu, *What language means: the economy of linguistic exchanges*, Paris, Fayard, 1982, p. 77; *see also* Pierre Bourdieu, *Language and Symbolic Power*, Paris, Fayard, 2001.

To understand how international law can be an instrument of the power for state-actors, one has to understand that the law constitutes a complex structure compiled from a set of institutions in the service of a rather particular power: the power of the state. Law is the brain-child of politics, fact demonstrable in any legal system. By over-simplifying, in pluralist democracies, the law represents the result of a vote in parliament, where a majority imposes its way of seeing things on a minority. Of course, political struggle does not necessarily lead to the enactment of legal norms.

Modern societies, and this is particularly true for societies whose philosophical foundations are based on political liberalism, generally consider that the *juridification*[6] of social relations constitutes the best means to protect oneself against the aggression of others. From a philosophical point of view, certain difficulties derive from identifying the norms that will be used to constrain the subjects and protect them from each other and, of course, to offer them the same protection against the arbitrariness of other state-actors' actions. In this respect, it is surely no exaggeration to say that from Locke to Montesquieu, the rule of law and the power to legislate represent the cornerstone of the political order that liberal thinkers suggest. In *national law*[7], we will generally consider that democracy constitutes the guarantor of this legitimacy because the norms will necessarily represent what the majority considers to be fair, unfair, or, at least, necessary. At an international level, the nationalist illusion will generally make it possible to legitimize the legal order because the state, traditionally viewed as the main creator of law at an international level, will be perceived as the representative of the nation. What is important to consider is that, in both

[6] Juridification is an ambiguous concept with regard to both its descriptive and normative content. In descriptive terms some see juridification as "the proliferation of law" or as "the tendency towards an increase in formal (or positive, written) law"; others as "the monopolization of the legal field by legal professionals" , the "construction of judicial power", "the expansion of judicial power" and some, quite generally, link juridification to the spread of rule guided action or the expectation of lawful conduct, in any setting, private or public; *See* Alec Stone Sweet, "*Judicialization and the Construction of Governance*", *in* Martin Shapiro and Alec Stone Sweet, *On Law, Politics and Judicialization*, Oxford, Oxford University Press, 2002, p. 7.

[7] **National laws** are created at the ***national*** or federal level by sovereign nations, which rule its own territories, protect its borders, and have a ***national*** government that creates ***laws*** and governs the people.

cases, the law, if its normative foundation is legitimate, will constitute a standard of measurement, the best standard of measurement conceptualized by the liberal doctrine, for the identification of the *just* and the *unjust*, the *normal* and the *abnormal*.[8]

While state actors will attempt to legitimize and maximize their own political agendas by adhering and perfecting their *language capital* as an instrument of power, it must be highlighted that *this language capital*, understood as a key contributor to the development of international law, cannot be constructed completely outside the autonomous normative mechanisms of legal thinking. Even if sometimes, in the formation of legal norms, political considerations predominate, legal considerations can never totally be excluded. First, the law itself generally regulates the process of norm creation, this being one of the main objectives of constitutional law. In international law, this same function is ensured by the main sources of international law[9] and the law of treaties, codified by the 1969 Vienna Convention. The Vienna Convention is generally applied and respected, making it possible to regulate the creation of international law norms.

The legitimacy granted to the general principles of international law will allow it to influence the behavior of its legal subjects and of the various international actors, who are, directly or indirectly, affected by its legal norms, in ways other than by imposing sanction or further obligations. Thus, a legal norm which, at the time of its entry into force, could have been challenged by a more or less important part of the actors affected, who otherwise, may have respected it for fear of sanction or repercussions, may eventually be gradually complied with by those who contested it and who will eventually abide by it, not for fear of punishment, but out of *habit or custom*[10], because they have ultimately internalized the social norm that the

[8] *See* Friedrich V. Kratochwil, Rules, Norms and Decisions, Cambridge, Cambridge University Press, 1989, *especially* chapter 7.

[9] The main sources of international law, cited in Article 38(1) of the Statute of the International Court of Justice (ICJ), are treaty law, international customary law and general principles of law recognized by civilized nations.

[10] Customary international law is made up of rules that derive from "a general practice accepted as law". Customary international law is comprised of all the written or unwritten rules that form part of the general international concept of justice. Unlike treaty law, which

respective law institutionalizes.[11] The law, in other words, will eventually be considered as representing and reinforcing the "normal" social behavior, generally adopted in certain situation.

If one tries to draw a definite line between law and politics, a process that is extremely tenuous, the result is demonstrably paradoxical: in spite of blatant differences there is no threshold to overcome, no border to pass, no clear line to delimitate the two domains. This leads to a debate which constitutes a favorite subject of internationalists, the so-called dispute pertaining to *relative normativity*, which consists in questioning whether there is a precise moment when one can say "this constitutes a right recognized by law (a *legal right*[12])", and a precise moment when one can say: "this is not a legal right".[13] Proponents of *absolute normativity* say that such a moment exists, whilst the proponents of *relative normativity* say that is impossible to pinpoint exactly[14]; and, in general, we are gradually moving from purely political situations to an indisputably legal norm, but we move from one situation to another, not as overcoming a threshold, but rather as walking through an ever changing landscape: where do politics stop, where does international law begin? To answer this *Delphic* question represents rather a matter of appreciation than one of science. International law becomes gradually formalized and one needs to be very astute to be able to determine the precise point in which we are in the presence of a controlled (*n.n.* governed by norms) international order.

International law as an instrument of power politics

Politics, which constitutes the root of the law, also represents a method of changing the rules that have ceased to fulfill the social functions which are expected of them. Essentially, it is not the law that brings social

is only applicable to those states that are parties to the particular agreement, customary law is binding upon all states, regardless of whether they have ratified a treaty.

[11] Oscar Schachter, *International Law in Theory and Practice*, Dordecht, Martinus Nijhoff, 1991, p. 19.

[12] Legal rights refers to rights according to law and exist under the rules of a particular legal system.

[13] Nguyen Quoc, Dinh, Patrick Daillier, and Alain Pellet, *Droit international public*. Paris: Librairie générale de droit et de jurisprudence, 1999, *see especially* chapter 13.

[14] *Ibidem.*

change, but, on the contrary, the political changes lead to legal amendments, so that the law only adapts to the changing requirements of political life. An overly simplistic view of the relations between law and politics is not recommended, although, indisputably, the law serves political objectives, in particular by camouflaging them and, in turn, influencing the behavior of the international actors that constitute the political and social global infrastructure.

The fundamental stratum in which international law influences international society as a power instrument is that of juridical ontology in the evolution of the contemporary legal framework. The current international legal order, as the fundamental and structural stratum of international society, concerns rather organizational criteria, and in particular the legal dimension of it; basically, it determines three things, namely: the identity and conceptualization of legal subjects, which has a great impact on the identification of its actors and the relations between them; secondly, the elaboration of norms; and, thirdly, how these can be implemented and imposed in cases of infringement. The role of international law at this level is immense in that it directly participates in the very structuring of the international society as we know it.

The most important element of the international legal order concerns its primary legal subject, namely the state. Before understanding the implications of this characteristic of the legal order, let us first be reminded to what extent this dimension represents an important key in the organization of international society.[15] Indeed, one should remember that the highly sensitive definition, from a political point of view, of a state and the notion of statehood is first and foremost juridical in form and nature.[16]

The fact that the state represents the primary and principal subject of international law has several direct implications for the relationship between the dominant and dominated groups of international actors in global society. In the first place, to say that the state is the primary legal subject of international law is to draw equivalence between state behavior and the concept or normative order. Understandably, one can observe that this

[15] Louis Henkin, *How Nations Behave: Law and Foreign Policy*, New York, Praeger Publishers, 1968, p. 16.
[16] *Ibid.*, p. 22.

characteristic of the international legal order entails a *personification*, even a *deification* of the state, endowed with will, both contractual will and the willingness to act.

Let us recall the words of Ludwig Ehrlich, who stated, as early as 1928, the same ideas: "From a strictly theoretical point of view, it will be the state whose will we seek. But the state represents, from a positive point of view, a fiction. On behalf of the state, it is the organs that decide. What is called the will of a state represents either the will of an individual, or the result of acts performed by a certain number of individuals acting sometimes in a body, sometimes in more or less complicated alliances of groups and individuals. In speaking of the will of a state, we are therefore talking about what represents the result, evaluated according to the constitution of that state, of a certain number of acts accomplished by individuals or groups of individuals. Therefore, who will seize the will of the State? Is it true that it cannot be found outside the acts of its organs? Which organs? Those who signed them? Those who ratified them? Those who consented to their ratification? Or is it the will or, better still, the opinion of those who, without formally representing the states, were called upon to write the text, or its draft?"[17]

The origin of this *deification* can be traced back to the Westphalian epoch, characterized by absolutist political regimes.[18] The assertion of Louis XIV, "l'État, c'est moi"[19] (*n.n.* I am the state) represents the understanding the society had of the state at the time. Obviously, the reality was more complex and, whatever one might think, the monarch had to constantly take into account the interests of the aristocracy on whom his legitimacy and ability to exercise his authority over the country were based.[20] At the time, the *will of the state*, if not that of the ruling classes, was at least a desire to promote and defend the interests of the latter. As we know, this *privatization* of the will of the state was eventually the object of an attempt

[17] Ludwik Ehrlich, *"L'interprétation des traités",* Recueil des Cours no. 24, 1928, pp. 65-66; (*n.n.* the translation was realized by the article's author).
[18] Wilhelm G. Grewe, *The Epochs of International Law*, Berlin, Walter de Gruyter, 2000, pp. 317- 321.
[19] Jean-Mamert Cayla, *Pape et Empereur*, Paris, E. Dentu, 1860, p. 16.
[20] Benno Teschke, *The Myth of 1648: Class, Geopolitics, and the Making of Modern International Relations*, Londres, Verso, 2003, pp. 151-196.

to camouflage itself when the *nationalist turn* of international law pursued, from the middle of the XVIII century, to convey this desire of the state to be defined as a *nation*.[21] At that time, and taking up the ideas of liberals such as Locke and Rousseau, important authors as Emer de Vattel felt that since the nation has surrendered part of its sovereignty to a superior authority able to control all its members, this authority must be able to represent it completely, particularly with regard to international affairs.[22]

The doctrinal fiction of the *will of the state* which is in the service of *national interests* has a plethora of important implications that stem from the fact that their interests are usually representative instruments of the power in play. In truth, when we talk about the will of the state or national interests, what we are actually referencing represents the will of powerful actors and their interests, and not those of the weak actors, as they are often in opposition.

Another important characteristic of the international legal order is that states are not only the primary subjects, but they are also endowed with the ability to further advance the process of normative creation, alongside international organizations.[23] This characteristic represents an essential part of the political-legal organization of international society, which is founded on the fact that the latter seeks to manage relations between *legally equal states*[24], characteristic that allows us to qualify the legal order as being horizontal rather than vertical, as are the national legal orders where a supreme power (*n.n.* the national constitutions) has a formal and legal authority. This characteristic has the effect of transforming the process of normative creation into a direct and frontal representation of the balance of power between states.

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[21] *See* Benedict Anderson, *L'imaginaire national: Réflexions sur l'origine et l'essor du nationalisme*, Paris, La Découverte, 2002.

[22] *See* Emer de Vattel, *The* **Law of Nations** *or the Principles of Natural Law (1758)*, Cambridge, Cambridge University Press, 2015.

[23] *See* Benedict Kingsbury, Nico Krisch & Richard B. Stewart, "*The Emergence of Global Administrative Law "*, Law & Contemporary Problems, no. 15, 2005; *see also* Sabino Cassese, *"Administrative Law Without the State? The Challenge of Global Regulation",* New York University Journal of International Law & Politics, 2006.

[24] Lassa Oppenhein, *International Law: A Treatise*, Londres, Longmans, Green & Co., 1905, vol. 1, p. 19.

Having established that the law constitutes the result of political struggle, we have to tackle the problem of the influence that the law has over *power* and *the balance of power*, although the complex relationship between the two cannot be more obvious. It appears that the law represents a particular manner of the exercise of power and, furthermore, an instrument of power in the service of the state-actors' exercise of power.

One has to admit that the law represents a superstructure and the reflection of the power struggle, in a given society, at a given moment. If this is indeed true, then the law fundamentally represents a phenomenon of power or, more exactly, a phenomenon that is not detachable from the game of power.

In other words, the *shape of* the international legal order ensures that the norms of international law constitute first and foremost a reflection of the balance of power and power relations between state-actors in the pursuit to defend their interests; these interests are said to be *national*, however, in reality they actually reflect the power relations existing within the states themselves. In this context, not only the power relations between state-actors, international organizations and non-state actors will have a major impact on the definition of the *will of the state* and the characterization of its actions, but there will be no doubt that the political, diplomatic, economic and military power of the Western states endows them with an undeniable advantage over Third World states.

As a result, international law can easily become an instrument with immense potential for the proliferation and perpetuation of the power relations existing between the different categories of international actors. But even before having an impact on the way the normative order is outlined, the different relations of power directly influence the subjects of the norms and the invested institutional resources.

This constitutes the hegemony and the power possessed by *strong* international actors, that are part of various national and international decision-making bodies, which explains the profusion and the precision of the norms favorable to global expansion of international relations based on a power balance, a situation which contrasts sharply with the quantitative weakness of the norms trying to impose constraints on international actors, mainly in regard to human rights infringements and violations. But even

when such international norms exist, the institutional resources necessary for their effective implementation are often missing.

The relevance of this criticism obviously stems from the fact that even when international law becomes interested in the issues of the dominated actors and seeks, at least in rhetoric, to defend them and to promote their emancipation, the final form of specific legal instruments is influenced by the existing power relations. The influence of Western and liberal hegemony in the process of normative formation is visible in the content of human rights, as much as, in the structure of the institutions whose function is to implement them. "While the concept of human rights is not unique to European societies, (...) the particular philosophy on which the 'universal' and 'official' corpus of human rights is based is essentially European."[25]

Criticism of the *universalization* of human rights concerns the very content of the rights that contributes to the *instrumentalization* of power relations, with emphasis on civil and political rights and, in particular, the right to property and social and cultural rights. The crucial function of human rights, as well as the structure of the institutions responsible for implementing these rights also reflects the balance of power existing in international society.

It should be noted that human rights have become the most legitimate form of emancipation, protest and political resistance throughout the international society,[26] having the effect of removing legitimacy from other forms of resistance,[27] especially, when confronted with an aggressive approach. In this respect we have another paradoxical situation, because if international law often allows the powerful to legitimize violent acts of aggression on the basis of international law provisions, those who resist these acts by responding to violence with violence automatically losing their place as legitimate interlocutors in the international *fora*.

In relation to the evolution of human rights we must observe that the law must respond to an effective social need. A norm in total opposition to a social need does not constitute a legal norm. This poses the problem of

[25] Makau Mutua, *"The Ideology of Human Rights",* Virginia Journal of International Law, no. 36, 1996, pp. 592-593.
[26] Bonny Ibhawoh, "*Imperialism and Human Rights: Colonial Discourses of Right and Liberties in African History"*, Albany, Suny Press, 2007, pp. 23-24.
[27] *Ibidem.*

knowing how to define a social need; the social need is typically defined according to the respective power of the social actors involved.[28] Certainly there are dominant powers on the international scene, as well as in national societies, but their domination is neither exclusive nor absolute.[29] The dominant power(s) can only impose their views if they are realistic, that is to say if they take into account the balance of power relations.[30]

The crux of the analysis developed by Martti Koskenniemi[31] and David Kennedy[32] consists in the fact that each norm, principle or argument raised by one party can always be opposed by a counter-norm, a counter-principle or a counter-argument by the other party.

Ergo, whenever a party evokes *pacta sunt servanda* to show that another party has breached an obligation to which they had previously voluntarily committed, the other party may, technically, evoke *rebus sic stantibus* or another defense based on the state of necessity, the state of distress, or *force majeure*, etc., in order to disengage from said obligation. It may also refer to an obligation under another regime of international law, for example, an obligation under human rights law, humanitarian law or environmental law or even another obligation of the same regime, namely the right to equality between men and women, the obligation to guarantee the right to religious practice, etc. In other words, this thesis argues that the law almost always offers various protagonists power instruments to defend their interests or their political position.

Specifically, they argue by giving content to concepts such as "legitimate" (as in "self-defense") or "equity" (as in the "fair and equitable treatment" that a state must grant to all international actors), that there exists a privileged status between two dichotomous positions that can theoretically be adopted on any legal issue; for example, is military intervention on the

[28] Quoc, Dinh, Nguyen Daillier, Patrick, and Pellet, Alain, *op. cit*., *see especially* chapter 13.
[29] *Ibidem.*
[30] *Ibidem.*
[31] *See* Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument*, Cambridge, Cambridge University Press, 2005.
[32]*See* David Kennedy, "*Theses about International Law Discourse",* German Yearbook of International Law, 1980; *see also* David Kennedy, "The Sources of International Law ", American University International Law Review, 1987, no. 1.

territory of a neighboring state illegal, will it be considered as a *use of force* or will it be interpreted as the *exercise of the right to self-defense*? All these questions are in fact disciplinary prejudices, for which Koskenniemi and Kennedy sometimes use the terms "structural prejudice" or "structural or institutional tendencies"[33], existing within the *legal consciousness*[34] of those who will be legitimized to give interpretations of the law. This community is known as the "invisible college of internationalists"[35].

From the moment we accept the fact that the meaning of the international norms and the articulation between them is fundamentally determined by power instruments and factors and that we filter the understanding of the role of international law through the connection between social relations determined by said instruments and political ideology we can finally acknowledge that all influenced by the balance of power. Since proficiency in the language of international law and international affairs will inevitably have a great influence in determining the accurate legal interpretations, it is important to understand the interrelationship between power instruments and the balance of power, especially within the international society.

Both on a national level and within the international society, power can only be *relative*. Any serious attempt to understand the present international context, international law, and more particularly, the creation of norms, can be interpreted as the construct of the exercise of power. As long as the world was bipolar, the United Nations represented the battlefield of the two power blocks, on the one hand, and, on the other hand, the place of confrontational dialogue between the antithetic ideologies; in this context, the creation of legal norms reflected quite well the *status* of the balance of power and the mutual neutralization of the powers. The

[33] Martti Koskenniemi, *From Apology to Utopia (...),* pp. 606-607.

[34] "*The notion behind the concept of legal consciousness is that people can have in common something more influential than a checklist of facts, techniques and opinions. They can share premises about salient aspects of the legal order that are so basic that actors rarely if ever bring them consciously to mind"*: Duncan Kennedy, *"Toward an Historical Understanding of Legal Consciousness: The Case of Classical Legal Thought in America. 1850-1940",* Research in Law and Sociology no. 3, 1980, p. 6.

[35] Oscar Schachter, "*The Invisible College of International Lawyers*", Northwestern University Law Review, 1977.

confrontation took place in different *fora*: the discrepancies between the two power blocks were discussed in the Security Council while the ideological debate unfolded in the General Assembly.

One has to understand what a formidable amplifier of any international actor's demands the General Assembly constitutes, this claim falling within the exclusively political domain. The General Assembly cannot turn a claim into a legal norm by virtue of Article 10 of the Charter[36], which provides that it can only make recommendations, however, member states have been known to act as if the guidelines contained in these recommendations were veritable legal standards, that is, they chose to interpret them not as recommendations but as mandatory standards.

Although the not so powerful states were powerful enough to vote or support recommendations, or participate in the conclusion of treaties in specific areas, they did not yield enough power to create a total disruption of international relations, acceptable international standards or to impose a new legal order.

When it came to peacekeeping things were different. According to Article 12 of the Charter[37] the Security Council has the primary responsibility for the maintenance of peace and security. The functioning of the Security Council was permeated from the outset with realistic empiricism.

The salient points are the following: firstly, the power of decision, basically the power of creating legally binding norms, is reserved

[36] Article 10 of the UN Charter: "The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters."

[37] Article 12 of the UN Charter: "1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests. 2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters."

exclusively to the Security Council; and, secondly, no power block can impose its decision on the other. The result has been for a long time the relative paralysis of the Security Council, at least from 1947 to the end of the 1980s.[38] In such a situation, the elaboration of legal norms was not really an instrument of exercising power because the real or supposed balance of power between the different groups of state-actors simply did not allow the adoption and creation of legal norms. Everything changed radically with the collapse of communism in Eastern Europe; an unshackled Security Council from the paralysis of the Cold War and the reduction to a *unipolar system of power* made the Council one the first power instrument in international politics.

Legitimization through international law constitutes precious support for power, as the law can also be a hindrance on the exercise of power, in the sense that it maintains detailed "records" on the balance of power. Power in any society, even the most totalitarian, remains a relative notion and, moreover, this constitutes an incontestable truth for the international society.

Finally, the law constitutes an instrument of power in its own rights, and we must admit that is rather an effective instrument. State-actors strive to put pressure on the law to create what they consider as being favorable norms, in the pursuit of their own interests. This process becomes very clear in the light of the zeal that state-actors deploy to achieve the creation of favorable norms within the United Nations, for example.

The international order or existing structure of relations between state-actors thus reflects the values, interests and relative power of states as well as the context in which they are placed by a set of imperative norms, the *jus cogens* norms. A fundamental political fact is that the anarchic competition that takes place on the international arena, stemming from the anarchical character of the international system, represents the paradigm of power relations between states.

[38] Quoc, Dinh, Nguyen Daillier, Patrick, and Pellet, Alain, *op. cit.*, *see especially* chapter 13.

CONCLUSIONS

As a conclusion, this article briefly drew attention on important issues that have already been the subject of lengthy developments and dispute.

Firstly, regardless of some positivist jurists' thoughts on international law, which strive to argue the apolitical structure of the law as a mechanism independent of external influence once the *Kelsian mechanism* is put into place, we must accept that international law plays an extremely important role in the international society mainly because it is *infused with power interests*. Certain central features of international relations - such as the international society envisioned into formally equal states that enjoy exclusive jurisdiction over their territory – are constructed around concepts that are *fundamentally legal in nature*, i.e. sovereignty, non-interventionism, equality. The liberal-oriented legitimization of state interests is dressed in international law.

Secondly, international law provides diplomats and state officials with a language from which they can articulate their political positions and preferences; thus, international law provides the instruments of power that influence the balance of power. Finally, international law has an important ideological effect insofar as its legitimacy *in itself* shapes the development of political doctrines.

This article also aimed to reflect on the emancipating characteristics of international law as means employed to reproduce and legitimize power relations in the international arena. Indeed, as long as the norms and institutions of the international society will be the product of power relations, between and within states, international law has a *moral obligation* to meet their aspirations and interests. That being said, it should also not be forgotten that some of these norms (*e.g.* human rights norms) may, in some circumstances, be used in order to blur the harsh delineations between power as a political instrument and power as a force for good.

In addition, this article has also sought to show that we have the opportunity to use the inherent indeterminacy and ambiguities of international law in order to transform norms into truly effective power instruments and to endow them with a well-deserved emancipator potential.

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