РОЗДІЛ 10
МІЖНАРОДНЕ ПРАВО

UDC 341.01
DOI https://doi.org/10.32782/2307-3322/2020.60.44

APPLICATION OF INTERNATIONAL LAW IN INTERNATIONAL RELATIONS

ЗАСТОСУВАННЯ МІЖНАРОДНОГО ПРАВА В МІЖНАРОДНИХ ВІДНОСИНАХ

Brocková K.,
Dr. hab. JUDr. Ing., PhD., LLM.
Faculty of International Relations
University of Economics in Bratislava

Kucharčík R.,
PhDr., PhD.
Faculty of International Relations
University of Economics in Bratislava

Mráz S.,
Prof. JUDr. CSc.
Faculty of International Relations
University of Economics in Bratislava

In this paper, the authors discuss the attitude of states towards international law. They point out the consequences and weakening of the effectiveness of its creation and application. They also point out the protection of international interests, the prioritization of individual interests of states and the privatization of international and state interests. Attention is also paid to the interpretation of international law.

It is a matter of common knowledge that international law is a part of domestic and foreign policies of states. The public authority establishes the extant of its implementation. Despite the widely recognized advantages of realization the international law, there are some negative effects. It can intentionally fade the differentiation of state, public, and private interests, which leads the latter to privatize the awry state and public means. The public authority adopts numerous legal norms and treaties to conform to international law, but it is necessary to keep in mind that such a legal framework in some way reflects the aspiration of individual states and international community to influence on the power of a certain state. From this consideration, it may be deduced that the effectiveness of the national rule of law is not essentially proportional to the extent of realization of the international normative guidelines and, thus, its respect and enforcement power is not automatically developed.

Key words: international law, national interests, bipolar world, international relations, prohibition of threat of force or use of force, UN Charter, collective security, international mechanism, foreign policy, interpretation of international law.

Автори статті розкривають ставлення країн до міжнародного права, вказують на наслідки його впровадження, розкривають проблеми захисту міжнародних інтересів, пріоритизації особистих інтересів країни та приватизації міжнародних і державних інтересів. Увага також приділяється тлумаченню міжнародного права.

Загальновідомим фактом є те, що міжнародне право – це складник внутрішньої та зовнішньої політики країни, межі впровадження якого постійно розширює держава. Разом із загальновизнаними перевагами реалізації норм міжнародного вправа варто вказати і на їх негативний ефект. Їх відображення можна знайти у навмисному поєднанні державних, публічних і приватних інтересів, які призводить до приватизації викривлених інтересів держави та суспільства. Влада приймає численні правові норми та угоди, щоб привести законодавство у відповідність до міжнародного. Слід пам'ятати, що таким чином воно відображатиме бажання окремих країн і міжнародної спільноти впливати на правовий складник тієї чи іншої держави. З огляду на це можна зробити висновок, що національна правочинність не обов'язково пропорційна ступеню впровадження міжнародних правових норм, а тому це не означає її автоматичний розвиток.

Ключові слова: міжнародне право, національні інтереси, біполярний світ, міжнародні відносини, заборона загрози сили або використання сили, Статут ООН, колективна безпека, міжнародний механізм, зовнішня політика, тлумачення міжнародного права.

Introduction. After the disintegration of the "bipolar world" and the formation of some new paradigms resulting from the international order reflecting certain revisions related to the structure of the unipolar-multipolar world and the hegemony in it, the importance of international law could be expected to grow. The role of international law is current in the struggle with the dangerous international phenomenon – international terrorism, which transcends national borders, and that is why international cooperation and international legal regulation are needed to eliminate it. Currently, it is necessary to understand in particular the issue of state sovereignty, which leads to fragmentation or its reduction. Newly emerged is also the problem of the relationship

between national and international law from a global perspective, as well as the relationship between national and Community law.

The role of international organizations is also increasing, although some of them, e.g. the UN, and in particular the Security Council, require some adjustments or current changes. However, the principles of international law, which play or should play an important role in international relations in the process of change and development, also need to be addressed. They themselves can also develop, change and create new principles, or old principles can acquire new accents. The question of the principles of international law should be addressed first and foremost because they are of great importance in international relations.

Dealing with this issue are many authors, namely Ján Azud, who elaborated in detail the principles of international law, Peter Vršanský with questions of international security, authors J. Klučka, P. Šturma, V. David, O. Krejčí and many others.

The historical truth is confirmed that international law is one of several means of internal or foreign policy of states, the use or non-use of which is decided by the ruling power according to its current needs. Naturally, nobody today disputes the positive influence of material sources on the creation, interpretation and application of law. However, their negative impact is noticeable. They are characterized by a purposeful blurring of the distinction between the state interest, the public interest and the private interest, and the subsequent privatization of such a distorted state and public interest.

It is also confirmed that the effectiveness of existing law, its enforceability is directly proportional to the will of individual states and the international community as a whole to actually enforce it, and inversely proportional to the number of legal norms adopted in the form of laws or international treaties. In other words, with the stagnating or diminishing will of the ruling power to enforce effective rule of law, the mere fact of increasing the number of laws adopted does not automatically mean that the respect, application and protection of law as a regulatory means of national or international relations is also increased.

Is international law losing its primacy in international relations?

The historical, linguistic, systematic, logical and legal analysis of the creation and application of important international law documents in interstate practice suggests that the following phenomena occur in the field of the creation, application and interpretation of international law, in particular following the breakdown of the "bipolar world" as a result of changing states' attitudes towards international law. The power dimension of the foreign policy of individual states or groups of states is strengthened. The process of codification and progressive development of international law seems to have been ahead of real developments. It has been in conflict or has disproportionately exceeded the anticipated expectations formulated by individual states. This is confirmed by the stagnation of the process of codification and the progressive development of international law in the Commission for International Law, as well as by the outcome of the negotiations of the 6th Committee of the UN General Assembly.

The focus of the foreign policy of states in relation to international law is shifting from the standard area of creation to the area of application of international law, and in particular to the area of purposeful interpretation of international law. There is a contradictory development – on the one hand, the importance of the primacy of international law over the individual national interests of states is confirmed at different levels and with a different perseverance, but on the other hand, in a particular interstate practice there is opposite development – legal relativization of the primacy of international law and emphasis on the need to give priority to the national interests of states in situations where their collective solution has traditionally been foreseen in the interests of the international community of states as a whole.

The collective system of international security is practically paralyzed, as its operation is foreseen in Chapter VII of the UN Charter. The emphasis is not on the mere prohibition of the threat of force or the use of force against the political independence or territorial integrity of sovereign states, but rather on exceptions to that prohibition. Rather than "banning" the threat of force or the use of force, states in international relations tend to "avoid" the threat of force or the use of force, as introduced by the UN Charter in Article 2, par. 4[1]. The difference is obvious. Unlike the prohibition, the concept of "avoiding" does not preclude the application in certain cases of the threat of force or the use of force.

The above mentioned and also other negative manifestations disproportionately favoring the protection of the national interests of states in current international relations jeopardize the importance and position of international law as a universal legal and ethical basis on which the foreign and internal policies of each sovereign state and the international community of states as a whole should behave in achieving the goals and the principles of the UN Charter. As a result, international law is gradually losing the position of primary regulator of international relations and is becoming not the first, but only one of many equivalent regulatory instruments of international policy.

In other words, instead of the traditional thesis that any state policy relating to an area governed by international law must strictly respect international law, as if more attention has shifted towards the idea that only some state policy must strictly respect international law, or that some state policy may not strictly respect international law or even the nihilistic thesis that no state policy may strictly respect international law.

This trend, if confirmed, carries a considerable risk. The risk is that the legal relativization or nihilization of the object, purpose, meaning or mission of current international law as the regulator of international

[1] "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations".

relations relativizes the importance of the imperative norms of general international law (*jus cogens*), which binds boundaries by international law permitted dispositive behavior of sovereign states in international relations.

If the significance of the content, subject matter and purpose of international law were further unduly relativized in a similar way, international law would very soon find itself one of the many means of foreign and international policy which states could, if necessary, dispose of or not utilize and which states may or may not have respected as appropriate to their individual or group national interests, whether or not it is in line with the interests of the international community as a whole, expressed in the preamble, objectives and principles of the UN Charter.

Relativization of the importance and position of international law in interstate practice would open the door for exercising arbitrary power of states, including the right to unrestricted use of force to solve international problems.

Some states tend to deviate from the collective principle based on the primacy of international law for a variety of reasons, at different levels and to varying degrees, and to favor the protection of their individual or group interests in situations where they consider their strategic security, economic or foreign policy interests being at risk.

The rationale for such a procedure can be found in the changing view of the main players in the international scene of the importance, role, and position of international law in a globalizing world.

While, on the one hand, none of the 200 sovereign states we currently find on the political map of the world, in principle doubt the importance of international law to regulate relations between states during their friendship, cooperation, rivalry or hostility, on the other hand many countries are aware in specific situations that current international regulation is not sufficiently effective in responding effectively and rapidly to the current challenges of the present. They therefore prefer individual or group measures rather than lengthy collective measures within the meaning of the applicable international law.

As long as the states concerned, act to achieve the objectives and principles of the UN Charter, such a procedure is justified because those states pursue by it the attainment of universal justice to which international law is directed. However, when the states concerned act only in close individual or group national interest, they knowingly or by means of simulated procedures circumvent international law that does not meet their national interests, they jeopardize the international legal order.

One of the serious reasons for changing states' approach to international law may also be that the functioning of the international collective security system, the legal basis of which was created by the UN Charter, is severely paralyzed. The UN's inability to respond in a timely and effective manner to security challenges such as the rise in international terrorism, its support by some states, and other challenges is the best proof of this. Whether it is the problem of the former Yugoslavia, Kosovo, Afghanistan, Iraq, Libya, Syria, Yemen or other current international problems. The world has changed significantly since 1945, and it is possible that the legal bases created 74 years ago may not fully meet the current needs of interstate practice.

Of course, the current crippling of the United Nations collective security system is not due to the universal values, determination, goals or principles of the UN set out in the UN Charter. They remain equally constant and strategically important today, and no state openly challenges them. Therefore, as in 1945, the UN's main commitment remains:

– to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind;

– to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small;

– to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained;

– to promote social progress and better standards of life in larger freedom[2].

To this end, the people of the United Nations also expressed their determination in the Preamble to the UN Charter:

– to practice tolerance and live together in peace with one another as good neighbours;

– to unite our strength to maintain international peace and security;

– to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest;

– to employ international machinery for the promotion of the economic and social advancement of all peoples[3].

Rather, the current crippling of the UN collective security system is due to the failure of the mechanism, concrete collective means and methods putting into practice the abovementioned aims, objectives and principles of the UN Charter. Those states that are currently interested in somehow legally circumventing the strict premise of the primacy of international law over national interests shift the main attention from the creation and application of international law to the interpretation of international law when seeking legal justification.

The reason is that changing the content of non-compliant basic sources of international law through law-making would require the consent of all states concerned, which is not easy to ensure given the diversity of national interests of states. In the area of interpretation of international law, the above trend is evident:

1. In the area of interpretation of basic sources of international law.

2. In the area of codification and the progressive development of international law.

[2] Preamble to the UN Charter.

[3] Preamble to the UN Charter.

3. In the area of utilization of auxiliary sources of international law.

4. Interpretation of international law in judicial decisions.

5. Interpretation in the context of doctrinal considerations *de lege ferenda.*

Conclusion. In spite of all the above circumstances and contradictory developments, the answer can be that international law remains an important means of regulating international relations and there is no fundamental risk that this legal system will be completely replaced by the discretionary right of states to act arbitrarily on the basis of preferential protection of their national or collective interests at the expense of the collective interests of the international community of states as a whole.

Collectivism in international relations has arisen as a direct consequence of the need to work together to solve such growing global problems of mankind that even the strongest individual state is simply not in a position to solve. Every sovereign state in current international relations is not strong enough to dominate the world alone and to pursue only the need to protect its own national interests, and at the same time, every sovereign state in current international relations is not weak enough to give up completely protection of its own national interests and be governed only by the primacy of international law and the need for a collective solution to the current problems of the international community.

The emergence and development of international law has always been, and remains, objectively determined by the existing objective need of the international community of states to face global challenges together. International practice also confirms that international law should remain the first of many means of state foreign policy that states use, provided that international law expresses their will.

If states fail to comply with international law, the norm of international law becomes an obsolete rule that, although it exists, is outside the "mainstream" of the development of international relations. In this sense, the limits of applicability of international law standards are not absolute. They are limited by the will of states which create, amend or abolish international law in the context of bilateral, or multilateral relations at the time of their friendship, cooperation, rivalry or hostility.

The primacy of international law over the protection of the national or group interests of states is therefore an essential condition for the effectiveness of international law as regards the protection of the collective interests of the international community. States cannot relieve themselves of their responsibility to comply with applicable obligations under international law by questioning the importance and status of international law.

International practice confirms that a new generally accepted and long-standing international practice confirmed by the customary rule of international law has not yet been established, allowing at any time to derogate from the obligation to comply with the applicable rules of international law to protect the national interests of the state. Certain customary rules are forming in this context, as evidenced by international developments and by the process of codification and progressive development of international law.

The creation of international law, if it is to be effective, must take into account, in addition to the efforts of states to achieve increasing international justice, the real interests, needs and real opportunities of states at a particular historical stage in the development of international relations.

REFERENCES:

1. Azud J. K niektorým otázkam výkladu zásady zákazu, hrozby a použitia sily v medzinárodných vzťahoch. Ročenka medzinárodného práva 2008, Slovenská spoločnosť pre medzinárodné právo.
2. Klučka J. Medzinárodné právo verejné. Bratislava : Iura Edition, 2008.
3. Krejčí O. Mezinárodní politika, Praha : Ekopress, 2001.
4. Mráz S. Medzinárodné právo verejné, Bratislava : Vydavateľstvo EKONÓM, 2011.
5. Mráz S. Medzinárodné právo verejné, Banská : Bystrica, 2007.
6. Pyteľová K. Špecifiká postavenia štátu ako subjektu medzinárodného práva, Bratislava, Medzinárodné vzťahy, roč. X., č. 4/2012.
7. Tomko, J., Kopšo A. Medzinárodné právo a politika v dokumentoch, Bratislava, 1974.
8. Vršanský P., Valuch J. Medzinárodné právo verejné. Všeobecná časť, Eurokodex, Bratislava, 2012.
9. Zbořil F., Sladký P., David V. Mezinárodní právo veřejné s kauzuistikou, Praha, 2008.