CSCanada
Canadian Social Science
Vol. 19, No. 1, 2023, pp. 24-29
DOI:10.3968/12943

ISSN 1712-8056[Print]
ISSN 1923-6697[Online]
www.cscanada.net
www.cscanada.org

International Law and International Discourse

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Received 12 December 2022; accepted 5 February 2023
Published online 26 February 2023

Abstract

International law is not only a system of rules, but also a set of discourse system. In this sense, the international law discourse plays an important role in the daily life as criteria for the assessment of legality and legitimacy on state behavior. Concerned with the concept of discourse, it contains two meanings, which are the right to speak, and the power to speak, which is, the power to influence other countries and people. International law is composed of some concepts, principles, rules and procedures, etc. It is a discourse in itself, a legal discourse and a universal discourse. Therefore, the language of international law is understandable to all, and it is the common discourse of communication in the international community. The discourse of international law can form the user's unique views and understandings of international law. It is a kind of legal discourse with subjectivity and communication. Discourse is the process and result of language use, which is dynamic and concrete. Discourse has power, and its power comes from the interaction of relations between its communicators. Each process of discourse use will inevitably become a tool to exercise, regenerate or subvert power. The use of discourse dominates the position of the parties in social relations. Discourse patterns also effectively regulate the expression of others, just as the critical linguistics says, "It is not we who speak, but the discourse that speaks". Discourse power is not eternal, but a dynamic process. In a specific historical period, people who have the right to speak will constantly reaffirm and strengthen their power, while those who have no right to speak or have little right to speak will always try to fight for some power. In the international community, the power of discourse is always won, used, maintained or lost in the process of cooperation and struggle.

Key words: International law; International discourse; Power

Zhang, Q. (2023). International Law and International Discourse. *Canadian Social Science, 19*(1), 24-29. Available from: http://www.cscanada.net/index.php/css/article/view/12943
DOI: http://dx.doi.org/10.3968/12943

INTRODUCTION

As for international discourse, it always concerned with power, the power may have influence to other states and people all over the world. A country's international discourse is closely related to its power, no matter its hard power, soft power or smart power[1]. As the superpower at present, the United States enjoys the international discourse power that other countries merely have, mainly because of its superior economic, technological and military strength. In the book *World Order*, Kissinger describes America's international influence to the combination of hard and soft power. [2]There is no doubt that hard power is an important factor in determining its international discourse, however, soft power also plays an important role. As for soft power, Nye defined it as the ability to get what one wants through persuasion or attraction rather than coercion (Nye, 1990).

Soft power influences the world through persuasion rather than coercion, which is a significant difference from hard power. The point is, soft power is persuasion

[1] From the article ERNEST J. WILSON III, *Hard Power, Soft Power, Smart Power*, 616 Annals of the American Academy of Political and Social Science (2008), we can see the definitions and explanations of hard power, soft power and smart power.
[2] See *Kissinger Wold order* 2014

through language or discourse, which is linked to international law. In form, international law is mainly some legal principles, rules and concepts applicable to the relations between states, but these principles, rules and concepts are communicated and formed through the language of international law, so it can be said to be a kind of language, or the discourse of international law. This article understands international law just in this sense.

The role of international law in enhancing a country's international discourse power mainly comes from the universality and authority of international discourse. International law is a kind of discourse composed of legal language, and many of its terms and concepts are transplanted and grafted from domestic law, such as rights, obligations, responsibilities, etc. Legal language has the function of locking the meaning of discourse, so it is more rigorous, more definite meaning, and can effectively convey information to achieve the purpose of understanding and communication. Since international law spread around the world with the western colonial expansion, it has become a universal discourse of the international community. The power states use it to maintain their international influence, while the weak ones use it to fight for their own rights in international discourse.

To discuss this issue from the perspective of hermeneutics is because the principles, rules and procedures of international law need to be understood, explained and applied. Understanding, interpretation and application are three related concepts, which are integrated. Hermeneutics is about understanding, interpretation and application or practice, so from the perspective of hermeneutics, the relationship between international law and discourse power can be viewed more thoroughly and comprehensively. As the art of text interpretation and translation, hermeneutics originated from theology and aims at smoothing out words and sentences and resolving doubts. This interpretation technique was earlier applied to jurisprudence, especially the discovery of a large number of Roman law materials around the 11th century. Hermeneutics was first associated with law and legal pedagogy, the understanding and interpretation of law as truth. With the development of hermeneutics, the research results of contemporary hermeneutics have been applied to various fields of natural sciences and humanities and social sciences. It is believed that understanding, interpretation and application are the components of a unified process, and the three are not separated from each other. Interpretation understands, application understands, and the essence of understanding is interpretation and application.

1. LEGAL DISCOURSE AND INTERNATIONAL LAW

1.1 Legal Discourse

In the interpretation of the word "discourse", there are differences between China and the West in their respective contexts. In the Chinese context, "discourse" is generally used to indicate a way of communication and expression. It's starting point and purpose is to establish good communication with the other party. In the context of Western languages, "discourse" tends to embody a kind of dominance, with the purpose of establishing a set of influential and dominant communication rules and systems. It embodies the expression of the language organizer's perceptual emotions and rational cognition. From the perspective of critical jurisprudence, "discourse" represents a social practice in which forms of language use (such as text and style) and social factors related to language use (such as power relations, ideology, institutions, identities). There is a dialectical relationship between them. Therefore, discourse often reflects a "ruling ability" to export one's own views to the other party, and discourse is often called "discourse power". In the expression of Western logical systems, "discourse" can basically be equated with "discourse power". The right to speak, as a kind of "right", naturally includes the right to speak and the power to speak. The right to speak means that every equal subject has the right to speak in the process of communicating with others, and the right to speak refers to the extent, to which a person's speech can be understood, accepted and practiced by the other party who speaks. Generally speaking, the right to speak means that everyone has the right to speak, and the right to speak measures the weight of words on the basis of the full exercise of the right to speak. Looking at the relationship between discourse and language, language is often relatively abstract and presents a relatively static state, while discourse is a dynamic use of language, and the relationship between discourse and language is complementary. The basis of discourse is language, while the original meaning of language is expressed through discourse. Foucault believes that "power" is a force with strong universality and breadth. Foucault also believed: If power is only related to the state apparatus or the constitution, when the law is linked, it will definitely impoverish the issue of power. Power is far more complex, and more permeable than imagined.

1.2 International Legal Discourse

International legal discourse refers to the process of making international legal language understandable and usable through a series of applications. A language with strong versatility formed in the process of international social exchanges, international legal discourse has special meanings within the scope of international law and a series of linguistic logic, and has its own unique expression methods and norms. It is a kind of language within the scope of international law. From the perspective of linguistics, international legal language is a static expression system, while national legal discourse will show certain communication value when it is used

in international social communication, and international legal discourse will form a specific language length in written form, this language length is mainly presented in written and oral forms, in written form is a series of appeals, declarations, treaties, etc., in oral form is a series of speeches, such as the diplomatic speeches and comments made by the Ministry of Foreign Affairs in response to international events have become the practice of diplomatic work of various countries, and are often expressed through press conferences of the Ministry of Foreign Affairs. Another form of speeches made by various countries is in the United Nations General Assembly and other International organizations publish through the state's representative to the organization.

The power of international legal discourse refers to the extent to which the international legal discourse can be understood and accepted by other states in the international community. Or the influence that its words can have on the international community. The power of international legal discourse deals with the issues of "how to say" and "the influence". The "principle of sovereign equality of states" guarantees the right of each country to express international legal discourses, but how to use this right is a matter of discourse on art. The relationship between the power of international legal discourse and the right of international legal discourse is embodied in a sequential relationship, that is, the power of international legal discourse can only be examined on the basis that the right of international legal discourse is fully guaranteed. The premise is that the international legal discourse power is essentially the result of the international legal discourse power.

The first example is that at the Paris Peace Conference more than a hundred years ago, China, as a victorious country, also had the right to express international legal discourse at the Paris Peace Conference, and this right was indeed fully guaranteed. The international legal discourse delivered by Gu Weijun at the Paris Peace Conference was not insignificant. However, due to my country's weak national strength at that time, China's right to express international legal discourse was fully guaranteed. The second example is the Syrian incident. On April 9, 2018, the United States, the United Kingdom, and France accused Syria of using weapons of mass destruction and attempted to bomb Syria under the pretext of bombing Syria. At the meeting, they fought hard and presented a lot of evidence to prove that Syria did not use weapons of mass destruction. However, although the United Nations fully listened to Jaafari's words, it did not prevent the United States, Britain, and France from attacking Syria. Bombing. On April 14, 2018, the United States, the United Kingdom, and France brazenly carried out air strikes on Syria and destroyed important strategic targets in Syria. Therefore, we can conclude that the right to discourse on international law and the power to discourse on international law are essentially the result of the balance of national power of the subject of international law in the international community and the continuous development and evolution of the international community. The "principle of sovereign equality of states" is also a principle that major countries in the international community have gradually emerged in order to balance their respective influences in international events. Whether it is the right to discourse in international law or the power to discourse in international law, it is the basis for the influence of countries in the international community. The final balance reached after the ups and downs.

2. THE VALUE OF INTERNATIONAL LEGAL DISCOURSE

Before discussing the value of international legal discourse, one should first have a certain understanding of the value of international law. From the perspective of jurisprudence, the value of law is a subsystem and the reflection of the entire social value. In the sense of jurisprudence, the basic value of law is reflected in the maintenance of order and the guarantee of fairness and justice. It is generally believed that justice is the realization of legal value. Whether it is procedural justice or substantive justice, its value to law is immeasurable.

International legal value is derived from the legal value discussed in the large legal category of jurisprudence, and it also has the general characteristics and meanings of legal value in jurisprudence. However, international legal value, as a branch of the legal category, has its the implied legal value orientation contains a part different from the general legal value. The legal value of common jurisprudence is a system composed of various elements and existing in multiple forms (Zhang, 2001). Justice is the ultimate order pursued by law, and order is the formal value of law, which is also the value pursued by international law (Jiang, 2014). However, legal value of international law also has its own uniqueness compared with the value of general law. Domestic law cannot be separated from political sovereign organizations, but international law cannot form a certain sovereign organization. The state itself is an important organization for the ruling class to inform the ruled class, and the law is an important tool to achieve this kind of rule. In the practice of domestic law, the state can often use institutions to ensure the application of the law, and the state's public power to ensure that the various orders and rights protected by the law can be prevented and corrected in time when they are violated. However, in the field of international law, according to the principle of sovereign equality of states, the international community currently does not have an institution that can override all countries and guarantee the application of international law with its own strength. Therefore, the application of international law is not as authoritative as domestic law. International

law is more of a "contract" in nature, which is a mutual commitment between countries. Therefore, international law cannot be simply compared with domestic law in terms of effectiveness, enforcement, etc. If an analogy is made, it will fall into the debate on "whether international law is real law"[3]. This unique feature of international law determines that it is difficult to find a more reasonable value position in the field of common jurisprudence. The long-term unified and stable development of a country is inevitable (He, 2018). Taking countries as an example, the pursuit of "justice" in each country is not exactly the same. Law is the bottom line of morality. The pursuit of morality inevitably makes each country's pursuit of the moral bottom line of law different, and countries have different cultures and political systems, and they vary greatly.

The influence of big and powerful countries in the international community is also closely related to the development of international law. In this case, it is even more difficult for justice to become the core value of international law. Therefore, the academic circles of international law put forward the dual structure theory of international law, which holds that the primary value of international law is difficult to achieve unity in pursuit of goals in different subjects and stages. The operation of relevant rules in international law will inevitably lead to conflicts between national interests and common interests of mankind, conflicts between human rights and sovereignty, and conflicts between international system and state arbitrariness. These conflicts have profoundly affected the value orientation of international law, and have also prevented some concepts and propositions of justice from reaching consensus among different states and stages. Therefore, in a certain historical period, it will be difficult for justice to become the primary value of international law. These conflicts have profoundly influenced the value orientation of international law, and have also prevented some concepts and propositions of justice from reaching consensus. Therefore, in a certain historical period, it will be difficult for justice to become the primary value of international law. These conflicts have profoundly affected the value orientation of international law, and have also prevented some concepts and propositions of justice from reaching consensus. Therefore, in a certain historical period, it will be difficult for justice to become the primary value of international law.

From the perspective of the relationship and significance of legal value, the basis and core of the value system of international law is international relations. The extent to which international law can reflect value in different periods and between different subjects is mainly reflected in the adjustment of international relations. The objective basis determines the value orientation of international law, and the objective basis of international law is international relations. It is generally believe that modern international law originated from the signing of the Treaty of Westphalia in 1648, which marked the official transition of Europe from a "theocracy society" to a "secular society", and the authority of religion has gradually dissipated from European countries, European countries gradually began their own national sovereignty. It was also from this time that international law began to regard political entities with relatively independent sovereignty as important adjustment objects, but at the same time, it also required such entities to follow legal rules in their relationship with each other. If the members of this system disregard the rules, chaos and destruction are the inevitable results, and the scope is likely to affect every corner of the world. In other words, international law can only play a role in the general environment of the international community, and the maintenance of the order of exchanges between countries must be maintained by certain norms. International law first referred to the operating procedures and systems of domestic law, and imitated the basic laws and concepts of Roman law to achieve "equal rights" in exchanges between countries. There is no corresponding "arbitration agency" or "coercive agency" in exchanges between countries. Guaranteeing the operation of the international law system to achieve the goal of equal rights, a series of unequal treaties signed between China and Western powers in the 19th century deeply reflected this point, which also determined that the primary core value of maintaining the development of international law can only be "order". As American scholar Louis Henkin once said: What the international system requires, and what international law tries to promote, is a broader and deeper order under the framework of peace. This order seeks to provide confidence in the relationship between states, Create credible expectations so that countries don't have to go back and forth to understand what to expect and plan accordingly.[4]

3. THE POWER OF INTERNATIONAL LEGAL DISCOURSE

Order is different from justice. Order represents a relatively stable state in the phenomenon of absolute movement between subjects, while justice represents more of a result. Although the pursuit of order by different subjects in different times is the same as that of the pursuit of justice is also not absolutely unified, but order can always represent the "certainty" pursued within a social system. If we borrow the professional vocabulary in the field of civil and commercial law, "order" is a kind of

[3] See Jennings, Watts, Oppenhai *International Law* (Vol. 1, Part 2)

[4] See Louis Henkin, *International law : politics and values*

"protection of trust interests". Zhang Wenxian believes that the consistency of structure, the continuity of process, the predictability of events, and the safety of personal property are order, and the core is safety (Zhang, 2001). American jurist Bodenheimer also held a similar view: order "means a certain degree of consistency, continuity and certainty in both natural and social processes. The value of order in international law can also be embodied as a certainty."[5] Predictability and predictability. Predictability is often defined by certain rules and patterns of behavior (discourse, actions, interactions, outcomes) that reflect how actors understand and apply those rules. Therefore, the behavior of international relations actors is a reflection of the best observation window for order stability and predictability. The behavior embodied by discourse and corresponding practice reflects the views and pursuits of international relations participants on international order, and these behaviors will determine the future international order. Discourse and the relationship between the values of international law can also be explained by the French philosopher Foucault's "discourse power theory" (McHoul and Grace, 1993). Foucault believes that the expression and influence of participants in international relations implicitly reflect a way of power operation, which is It means an international order. Therefore, examining the discourse expression and influence of participants in international relations is to understand and gain insight into an international order. Although there is no quantifiable standard for the influence of discourse in the international society of "equal rights", it is The following two features of cooperation can be referred to: one is the frequency and occasions when other countries (including Western and non-Western countries, developed and developing countries) refer to and use dialogues. The other is the dialogue between other countries and the international community. It is voluntary acceptance, rather than forced acceptance. This voluntary acceptance is reflected in the spontaneous use of certain corporal punishment and concepts by many countries or groups because they can actually solve problems. The latter is an important indicator to measure the influence of discourse. Higgins, the former President of the International Court of Justice, pointed out that the discourse did not fully cover certain fields when summarizing the influence of the British discourse on international law, but this does not mean that the influence in these fields does not exist.

The mastery of the discourse system of international law by big and powerful countries comes from the early stage of the development of international law. Countries with strong economic strength have begun to rely on their own strength and advantages in various fields to master enough discourse in different fields in their frequent international exchanges and can make their own words accepted and followed by other countries, so we call these countries the beneficiaries of the early international order, such as the United Kingdom, the Netherlands, Spain, etc. . These countries relied on their own development advantages and strengths when formulating the international order, and the international order they established naturally became an important tool to maintain this advantage and strength. After continuous contacts and games, a complete set of institutional arrangements or international order norms that have certain binding force and can effectively control individual member states have been formed in the rich practice process (Wang, 1995). In the long-term development process of the international community, more states began to participate in the international community. After the end of World War II, a large number of colonial or semi-colonial countries began to seek their own independence and liberation. More and more countries known as a political entity with independent sovereignty, the basic logic of "war breeds the hegemon and the hegemon makes the rules" in the early development of international law was broken. No country can independently lead the formulation of a new international order, and the beginning of the Cold War in the late 20th century means that the era when a country can formulate the international order by its own strength has completely ended.

This rule can be observed in the development of various fields of international law. Outer space law is an example. After human beings have mastered the science and technology of outer space activities, only the United States and the former countries are capable of conducting outer space activities. Aerospace powers represented by the Soviet Union and France do not need a complete international law on outer space at this time. The embryonic stages of space law. In the middle and late twentieth century, after more and more countries began to master aerospace technology, human activities in outer space fell into short-term chaos. The "NATO" group led by China and the "Warsaw Pact" group headed by the former Soviet Union launched an arms race. After the game, the negotiations on the rational use of outer space resources by human beings finally started, and the five conventions of the international community on outer space activities were formed from this. The general law of development of international law is that after a certain subject gains a leadership position in a certain field by virtue of its first-mover advantage, it uses its own rich experience and influence and dominance in this field to formulate a series of rules. The embryonic form of international law in this field, after a long period of domination in this field and control of the right to speak in dialogue, the country will gradually gain institutional advantages. However, some countries fail to gain an early-mover advantage in a certain field because of their

[5] See Badenhaimer *Jurisprudence : The philosohphy and method of the law*

lagging development in a certain field. Therefore, when participating in activities in this field, they can only abide by a series of rules formulated by the first-mover country in this field. Therefore, The realization of the framework of international legal order must rely on the influence and dominance of discourse power. For legal interpreters of international law, the development of international law is also one of the important functions in addition to the settlement of international disputes, which is typified by the ruling of the International Court of Justice on the "Nicaragua" case. The significance of the ruling of the International Court of Justice on the "Nicaragua" case is not only to declare the international legal rule of "non-use of force", but more importantly, to further develop the "non-use of force" through the elaboration and clarification of this rule in specific judicial practice. Force rules of international law, thus promoting the development of international law (Venzke, 2012).

The origin of the power of discourse generally accepted by the academic circles is Michel Foucault's discourse on "the relationship between discourse and power". What is the power relationship? Foucault believes that "language is actually the essence and function of discourse and discourse is the expression itself expressed by the signs of words". Philosophical issues, behind the scenes, what you want to explore is not the speaker himself, but the speaker's position, what kind of interests he represents, and what kind of authority he is in.

In short, there are many forms of international legal discourse, mainly including statements, policies, international conferences, academic publications, etc. The main body of international legal discourse expresses its own position, appeal and value orientation through standardized international discourse, and uses it to communicate with the other countries exchange views on a certain field or a certain issue in order to reach a consensus or balance on a certain field or a certain issue with the object of international discourse. After such a game completed through international legal discourse, the subjects of international law have completed the distribution of power in international law, and formed a balance and maximization of mutual interests, and the completion of this power distribution often marks the beginning of a new international order in this field.

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