

Analytical Study Of Marxist Perspective On International Law With Contemporary Relevance

Submitted by:

Prabhat Kumar

LL.M (WBNUJS, KOLKATA)

INTERNATIONAL AND COMPARATIVE LAW

ABSTRACT:

International law came into existence over the period of time after different countries across the globe recognised the need of such law which governs the inter-country relations. International law developed or grew over the period of time. Many writers expressed their ideologies regarding international laws. There are a number of approaches in the light of which the international law is seen. Such is the Marxist approach to international law which sees international law as a means whereby the ruling class maintained their domination of society. The Marxist approach also laid importance on the economy of the nation state and the property owned by a state as important factors in explaining international law in a better context and light. This research paper would make an analytical study on the Marxist perspective on international law by introducing the Marxist approach, then moving on with one of the most important concept of Marxism that is historical materialism in the light of international law, then the focus will be shifted on Evgeny Pashukani an important Marxist writer and his views on international law and finally a proper conclusion will be drawn of the research paper.

Keywords: International Law, Marxist approach and Communist approach.

INTRODUCTION

International Law has been over the years developed through many theories and perspectives of various thinkers. Now at present International Law stands as a very important subject matter as it governs the reaction between various nations. International Law has been developed through the various perspectives and ideas propounded by various philosophers and thinkers over the period of time. Such theories and perspectives have led to the formation and recognition of international law. One of the most important perspectives is the Marxist perspective in regard to international law. Marxist perspective in regard to the international law is basically the study of international law in the context of the Marxists. This research paper explores the Marxist perspective in relation to international law in an analytical manner.

The research paper has firstly given a basic idea in regard to the communist or classic Marxist approach to international law in a very detail manner. Secondly, the research paper explains a significant part of the Marxists theory i.e., historical materialism in the light of international law. Thirdly, the research paper analysis Pashukani, a famous Marxist philosopher's ideology regarding international law in detail to have a better understanding of the Marxist approach to international law. And finally, a conclusion will be drawn regarding the study or analysis that has been made of the Marxist perspective of international law. The research paper extensively deals with analysing the Marxist perspective and bringing a contemporary analysis to the theory or perspective that has been formulated by the ideals and thoughts in regard to international law and its significance in the international system.

AIM

The aim of this research paper is to make an analytical and extensive study of the Marxist perspective on international law.

OBJECTIVES

1. The primary object of this research paper is to make a study of historical materialism, which is one of the most significant aspects of Marxist perspective, in the light of international law.
2. The secondary objective of this research paper is to specifically analyse the writings and ideology of Evgeny Pashukani who is one of the most influential and important writer of

the Marxist philosophy and applies the Marxist perspective on international law in his writings in explaining international law and law in general. This analysis would be beneficial in understanding the Marxist perspective in a better manner.

SCOPE AND LIMITATION

The scope of this research paper is to compare and analyse the Marxist perspective with the Third World perspective regarding international law as it would result in understanding the Marxist perspective in a better way as both of them have certain similarity theoretically.

REVIEW OF LITERATURE

- **Malcom N. Shaw, International Law, Cambridge University Press, 6th edn., 2013.**

This book provides an extensive detail in regard to the Communist approach to international law in a very detailed manner and explains the development that has taken place over the period of time. The book gives an extensive knowledge in regard to communist approach explaining the transition that has taken place over the years. The book explains the communist approach in the light of the Soviet Union and China and how the writers and thinkers of these particular countries perceive or view international law in the backdrop of their social and legal structure. Thus, this book overall gives us a detailed and analytical knowledge regarding the communist approach to international law.

- **China Miéville, Between Equal Rights: a Marxist Theory of International Law, Historical Materialism, Book series 2, 2006.**

This book entirely consists of the Marxist perspective of international law in detail explaining from the international law in the mainstream theory to dissident theories consisting of the most important subject matter of the Marxist perspective that is historical materialism. The book also gives a brief analysis of Evgeny Pashukani's view in regard to international law as he is considered as the most important and influential Marxist writer. His view on international law and law in general is heavily influenced by the Marxist perspective. Hence, the book was helpful in understanding the Marxist perspective to international law in a very detailed and comprehensive manner.

- **B. S. Chimni, Marxism and International Law: A Contemporary Analysis, Economic and Political Weekly, Vol. 34, No. 6, 1999.**

This article consists entirely about the Marxist perspective on international law and makes a contemporary analysis in a very detailed manner. This article mainly defines international law by applying the Marxist perspective in a very informative manner. This article explains how historical materialism is relevant in the development of international law. The article also comprehensively explains how the globalisation had an effect on international law and international institutions. Lastly, the article draws a contemporary analysis of the Marxist perspective stating its importance in the contemporary period. Thus, the book was helpful in understanding the importance of historical materialism in the light of international law, henceforth, giving an informative knowledge regarding the Marxist perspective on international law.

RESEARCH QUESTIONS

1. What is Marxist perspective regarding international law?
2. Where does the Marxist perspective regarding international law stand contemporarily?
3. Does the Marxist perspective have any influence whatsoever at present in the international laws?

RESEARCH METHODOLOGY

The research methodology that has been adapted in this research paper is doctrinal and analytical methods. As secondary sources have been studied and analysed to understand and appreciate the subject matter of the research.

THE COMMUNIST APPROACH TO INTERNATIONAL LAW : IN THE CONTEXT OF SOVIET UNION AND CHINA

International law over the years has been studied in different ways or has been seen through different approaches across the globe. The communist approach is one of such is seen in a very distinct manner. approaches which adds a different perspective to international law, wherein the international law is studied or is seen in different manner as compared to other approaches. The communist approach is basically refers to the otherwise popularly termed 'Marxist approach'. The classic Marxist theory described law and politics as a means

whereby the ruling class maintained their domination of society¹. The main composition of a society or an economic life is the means of production through which all the powers or controls are fluttered through. The Marxists believed that a complete non-exploitive, ethical and honourable society would be born due to the continuous resentment between capital and labour. The theory further stated that the capitalist class that the ruling class of the society or a country would vanish after the 're-organisation period' with the capitalist class law and state would also fade away. The theory also stated that the international laws that are based upon the state itself would also fade away after the said process as international law is based upon the states themselves.

The fact that the Soviet Union was surrounded by capitalist nations led to a particular alteration in the approach. A period of transition was required as it was considered unavoidable as the international system cannot be changed instantaneously. However there was certain ground-level change that was shaped. Professor Tunkin emphasised that the Russian October revolution produced a new series of international legal ideas. These, it is noted, can be divided into three basic, interconnected groups; (a) Principles of socialist internationalism in relation between socialist states, (b) principles of equality and self-determination of nations and peoples primarily aimed against colonialism, and (c) principles of peaceful co-existence aimed at relations between states with different social systems².

The Marxists further stated that during the immediate post-revolution period, temporary phase began. The international law as an exploitative method has been always criticised by the socialist state. The theorists in this regard of Marxism or Communism were Korovin and Pashukanis, these two were the most influential in the said period. In this period as per the thinkers, it was important to maintain economic and technical co-operation in order to maintain a good order on the international grounds. The historical overview would be done in the context of the Marxists perspective in the next chapter of this research paper. This chapter will deal with the international legal ideas as expressed by Tunkin after the Russian October revolution in detail.

Tunkin was in the view that there were no such thing as 'branches' covering the socialists and capitalist countries and that the international law is of a single individual

¹ Malcom N Shaw, *International Law* (6th edn, Cambridge University Press 2013) p.13

² B. S Chimni, *International Law And World Order* (Sage Publications 1993).

system having an universal scope. International law has its existence or is founded upon the various agreements that the countries across the globe enter into with each other. Tunkin stressed basically upon state sovereignty, recognition of different social systems and the aim of peaceful co-existence³. These were considered the basic elements of international law which forms the very basis of international law that stands firm as of today. Peaceful co-existence rests upon certain concepts itself such as non-intervention, good neighbourliness, international cooperation and observance of good faith. These principles upon which the peaceful co-existence has been based upon are considered to have developed on certain specific trends of social development and as a specific form of class struggle between socialism and capitalism.

The Soviet interventions in Czechoslovakia augmented certain views that led to accepting a socialist law which imitated distinct relationship between communist countries. In the Soviet view relations between socialist (communist) states represented a new, higher type of international relations and a socialist international law. Common socio-economic factors and a political community created an objective basis for lasting friendly relations whereas, by contrast, international capitalism involved the exploitation of the weak by the strong⁴. The basic principles of socialist internationalism included a combination of all the international principles. All of these principles such as state sovereignty, non-interference, etc. These similar principles become more positive by lack of fiscal rivalry and exploitation and by increased assistance among the states. These principles not only imposed liabilities upon state to not infringe the rights of other states but also imposed obligations, a duty to provide assistance in appreciating such rights.

With the decline of the Cold War and the onset of perestroika (restructuring) in the Soviet Union, a process of re-evaluation in the field of international legal theory took place⁵. The concept of peaceful coexistence was modified and the notion of class warfare eliminated from the Soviet political lexicon. Global interdependence and the necessity for international co-operation were emphasised, as it was accepted that the tension between capitalism and socialism no longer constituted the major conflict in the contemporary world and that beneath

³Supra 1 p. 34.

⁴ Ibid p. 35.

⁵ V. Vereshchetin and R. Mullerson, 'International Law in an Interdependent World', 28, C.J.T.L., 1990, p. 291

the former dogmas lay many common interests⁶. The essence of the Soviet thinking is based upon the belief that international law has a universal application and it should not be divided into capitalist, socialist and Third World international systems. The importance of state based rule of law in strengthening the international law and international relations. The Soviet Union recognised the importance of United Nations in maintaining good international relations. After the disintegration of the Soviet Union, Russia emphasised more upon its national interest and explained its actions in the context of its own national interest. The Cold War had imposed a dualistic superstructure upon international relations that had had implications for virtually all serious international political disputes and had fettered the operations of the United Nations in particular. Although the Soviet regime had been changing its approach quite significantly, the formal demise both of the communist system and of the state itself altered the nature of the international system and this has inevitably had consequences for international law⁷.

While on the other hand, the Chinese law is quite different if it is seen comparatively in the light of the western laws. It was believed that society would be best served by example and established morality, rather than by rules and sanctions. This Confucian philosophy was, however, swept aside after the successful communist revolution, to be replaced by strict Marxism–Leninism, with its emphasis on class warfare⁸. The Chinese have accepted many distinct systems of the international law, the Soviet Union believed that universal system would be only possible if there would be spread of socialism across the globe. China on the other hand has entered into numerous treaties. It is a well found principle of international law that the treaties or agreements between nations form the basic primary source of international laws. On the whole, international law has been treated as part of international politics and subject to considerations of power and expediency, as well as ideology. Where international rules conform to Chinese policies and interests, then they will be observed. Where they do not, they will be ignored⁹. Now the Chinese perspective has evidently changed over the period of time. China has adopted a very crucial role in international relations and world politics accepting an approach in order to keep its increasing economic power.

⁶ Ibid.

⁷ R. Bilder, *International Law in the New World Order*, 1992, F.S.U.J.T.L.P. p. 1.

⁸ Dennis Lloyd and Michael Freeman, *Introduction To Jurisprudence* (Stevens 1979), pp. 801-802 and Victor H. Li, 'The Role Of Law In Communist China' (1970) 44 *The China Quarterly*.

⁹ Supra 3 p. 38.

Thus, the Marxist perspective as enumerated by various philosophers can be better understood in the light and context of how law in general and international law in specific is perceived in the then Soviet Union and China through the various thinkers back in the past. The perspective regarding international law has now evidently changed in these nations and now these nations are actively participating in the world politics through co-operation and equal assistance and though certain traces of Marxist approach is still seen in the actions of these nations.

INTERNATIONAL LAW VIS-A-VIS HISTORICAL MATERIALISM: A STUDY

The Marxist perspective is basically the ideologies of Marx in regard the area of social science which is applied to other different areas. There is no direct approach of Marx directly in the field of international law; rather his perspective in the field of sociology is adopted in the area of international law. Four interrelated features may be said to characterise bourgeois international law writings¹⁰. These four interrelated features would be discussed briefly in this research paper. The first feature is that the bourgeois define international law as rules which oversee the relation between different nation states. The bourgeois so not study international law in its specific details rather it is studied through an intellectual system or approach. Secondly, the bourgeois believe that the state stands above certain factors within a nation state. The important part that a state plays is that it standardises struggles within itself in order to comprehend the true national interest of the state. Third, bourgeois scholarship, like the dominant realist tradition in international relations, "is premised on the recognition of a fundamental disjuncture between internal political life which is carried on under the co-ordinating and pacifying sovereignty of the state, and external politics, which is governed by the irresistible logic of anarchy"¹¹. Lastly, bourgeois believe that the interstate relations exist independent from the capitalist economy and do not recognise capitalism as universal concept and attach more importance to interstate relations.

The change over the past years regarding capitalism and the different phases of global capitalism has led to the development of international law. Thus, it can be said that the world economy has evolved correlatively and collaterally with the international law over the past years. If we look back and analyse we see that the different phases in the history the economy

¹⁰ B. S. Chimni, *Marxism and International Law: A Contemporary Analysis*, Economic and Political Weekly, Vol. 34, No. 6, 1999, p. 337.

¹¹ Ibid.

has evolved along with the international law side by side. The timeline of evolution remains the same for both the international law as well as the world economy. The timeline if analysed and compare would stand as following: 1600-1760: Old colonialism- Transition from feudal to bourgeois international law. 1760-1875: New colonialism-Bourgeois (colonial) international law. 1875-1945: Imperialism- Bourgeois (imperialist) international law. 1945-: Neo-colonialism – Bourgeois democratic international law¹². If the timeline is analysed it is quite clear of the fact that the international law that has been developed is not a homogenous whole. For example the time period of 1945 has seen both progressive and regressive phase as both decolonisation took place at this timeline as well as in this particular timeline saw the downfall of the rising drift in conflict in the advance capitalist world. This eased the change from nationalism to pragmatism in this particular timeline.

The regressive phase reorganized the international law and institutions in order to simplify globalisation in the world the different phases of the world economy have yielded corresponding superstructures of international law the idea is not to offer a deterministic and unidirectional interpretation of the evolution and growth of international law. While it does suggest that international economic relations have in crucial ways shaped the international legal system it does not contend either that the particular content and form it assumes is directly determined by it or that it does not in turn influence processes and events in international affairs¹³.

In the contemporary analysis of international law it can be said that productive relations are very significant in the definition of law. The productive relation is even though arbitrated through internal laws. It would be a mistake to consider the international law simply as a philosophy as it can directly regulate the context of domestic laws. The international laws consists its own set of interior structure and dynamics which moulds its basic context and discourse. It develops through its own set of sources. The boundaries of international law is well defined anything that falls out of the scope of the said boundaries and is considered non-law. The distinctive nature of international law prevents essential alteration of the content of international law in favour of third world states. The particular qualities of international law's structure additionally give it the appearance of lack of bias. When global legitimate guidelines are embraced they have a level of independence from the

¹²Ibid p. 338.

¹³Ibid.

states which have settled upon them. While strategic manoeuvres an essential part in forming the substance of the law, it forces genuine imperatives on the conduct of states once it appears.

A whole range of international (and national) mechanisms are in place to compel compliance with international obligations. The task of international institutions set up to ensure observance of rules and not to take the defence of the interests of individual powerful states but rather to safeguard the interests of a coalition of dominant global social forces and states¹⁴. Consequently, even the most capable performing artist in the global framework needs to legitimize its activities with reference to global law. The concept of rule of law is not vacuous one in the present scenario. It is not a tool that the powerful states use for reaping their own personal benefits. The idea of rule of law has been rooted in the international law because the history holds evidence of the struggle of people in colonies for their independence. To dismiss the idea of rule of law then is to belittle these struggles and to fail to understand that it was far from being the reality for centuries in the sphere of international relations¹⁵. And it will also be a fault to forget that international law and institutions are there to serve the interest of powerful states. Hence, it can be established that formal equality moves with material inequality, and democratic principles and norms with neo-colonialism.

PASHUKANI'S MARXIST PERSPECTIVE OF LAW AND INTERNATIONAL LAW

Over the past few years the Marxist perspective has gained an immense limelight for seeing the society and law in a different angle, the Marxist perspective has been applied to every aspect of law let it be domestic laws or the international laws. Over the years many Marxist writers have given their opinion in regard to law. The Pashukani's theory of law is controversial among Marxist, but he is a giant of Marxist legal theory, and a dialectician who attempts over many articles and books to articulate a theory of the legal form itself.¹⁶ He is the central figure of the Marxist ideologies. In regard to international law, Pashukani stated that International law is usually defined as the totality of norms regulating the relationships between states¹⁷.

¹⁴Supra 12.

¹⁵Ibid pp.338-339.

¹⁶China Miéville, *Between Equal Rights: A Marxist Theory of International Law*, Historical Materialism, Book series 2, 2006, p. 80.

¹⁷Ibid.

He stated that the typical definition of international law is defined by many writers which is as follows “International law is the totality of norms defining the rights and duties of states in their mutual relations with one another”. Pashukani went on to explain that the only thing that is absent from the definition given by the various writers is the indication of history or the class character of international law. Being a Marxist, he stated that the bourgeois jurisprudence consciously or unconsciously strives to conceal this element of class and that the historical examples adduced in any textbook of international law loudly proclaim that modern international law is the legal form of the struggle of the capitalist states among themselves for domination over the rest of the world. However, bourgeois jurists try, as much as possible, to silence this basic fact of intensified competitive struggle, and to affirm that the task of international law is “to make possible for each state what none could do in isolation, by means of co-operation between many states”¹⁸.

Pashukani further stated that the bourgeois jurists are wrong in considering international law as a purpose for some ideal cultural community which equally connects individual states. But they also do not want to see that this community redirects (conditionally and relatively, of course) the common interests of the commanding and ruling classes of various states which have similar class structures. He believed that the development of international law took place side by side or hand in hand with the spread of capitalist mode of production. While in feudal Europe the class structure was reflected in the religious notion of a community of all Christians, the capitalist world created its concept of “civilization” for the same purposes. The division of states into civilized and semi-civilized, integrated and semi-integrated to the international community explicitly reveals the second peculiarity of modern international law as the class law of the bourgeoisie¹⁹.

Pashukani furthermore stated that the real historical content of international law is the struggle between capitalist states and that the international law exists due to the fact that the bourgeoisie exercises its domination over the proletariat and over the colonial countries. The proletarians are re organized into a number of separate state-political trusts in competition with one another. With the emergence of Soviet states in the historical arena, international law assumes a different significance. And that it becomes a temporary compromise between

¹⁸Evgeny Pashukani, International Law, <https://www.marxists.org/archive/pashukanis/1925/xx/intlaw.html> accessed on 17/09/2018.

¹⁹Ibid.

the two classes. This compromise is effected for that period when the bourgeois are already unable to ensure its exclusive domination, and the proletarian and socialist have not yet won it. It is in this sense that it seems possible to speak of international law in the transitional period. The significance of this transitional period consists in the fact that open struggle for destruction is replaced by struggle within the limits of normal diplomatic relations and contractual exchange. International law becomes inter-class law, and its adaptation to this new function inevitably occurs in the form of a series of conflicts and crises²⁰.

As per Pashukani, the revolutions of the seventeenth and eighteenth centuries made further strides along the same road. They completed the process of separating state rule from private rule, and transformed political power into a special force and the state into a special subject. The legal relations of the state flowed independently, and they were not to be confused with those persons who at any given moment were the bearers of state authority. Having subordinated itself to the state machine, the bourgeoisie brought the principle of the public nature of authority to its clearest expression.²¹ While appraising the Marxist perspective of international law Pashukani elucidated certain relevant examples in the history to substantiate his stand and perspective in regard to international law. Pashukani took the example of the middle ages to glorify his stand regarding his Marxist approach to international law and explained how the class struggle and importance of economy found the very basis or crux of the approach. Pashukani also appraised the thinking and works of the Roman jurists and their conception of law as a whole as well as their interstate and alien laws which are considered the first stepping stone for the formation of international laws. Pashukani further discussed Grotius's natural law doctrine in a brief manner explaining how the philosophers at that time laid the founding stones of law as whole concept.

While appraising the Marxist approach to international laws, Pashukani also pointed out the errors in the nihilist criticism of international law from a Marxists perspective and stated that while exposing fetishism in one area, it does so at the cost of consolidating it in others. The precarious, unstable and relative nature of international law is illustrated in comparison with the largely firm, steady and absolute nature of other types of law. In fact, we have here a difference in degree. For only in the imagination of jurists are all the legal relationships within a state dominated one hundred per cent by a single state "will". In fact, a

²⁰Ibid.²¹Ibid.

major portion of civil law relationships are exercised under influence of pressures limited to the activities of subjects themselves. Furthermore, only by taking the viewpoint of legal fetishism is it possible to think that the legal form of a relationship changes or destroys its real and material essence. This essence, on the contrary, is always decisive²². Pashukani also explained the importance of treaties as part of foreign policies as it leads to the formalization of relation with the bourgeois states.

Hence, it can be concluded by saying that the Marxist perspective towards international law is best seen within the writings of Pashukani who briefly explained the perspective in a very detailed and analytical manner explaining his stand and the Marxist approach by giving illustrations of the various relevant happenings in the history and also explaining how the class struggle and the economy as well as other factors as property led to the development and existence of international law.

²²Ibid.

CONCLUSION

The Marxist perspective on international law is a distinct approach of seeing the development of international law over the period of time, by tracing the past in the light of the ideas as enumerated by Marx in his concept of historical materialism. It is believed by the Marxist writers and ideologists that history holds its evidence that international law developed hand in hand or in parallel with the economic development. In the various writing of the Marxists writers it is evidently made clear that international law developed with the development of economy of the world this is quite clear if we look the history of international law in the light or in the context of historical materialism that has been penned by Marx in his writings. Thus, it is said that the development of the world economy can be said as an important factor for the development of international law over the period of time.

The Marxist perspective described law and politics as a means whereby the ruling class maintained their domination of society²³. Thus, the class conflict is maintained through the instrument of law and politics. The bourgeois class defined law and polity through their own personal interests over the period of time. The influence of such communist approach can be seen in the Soviet Union and China if their history is analysed. These two countries are heavily influenced by the communist philosophy as it is quite evident from their history and the way they perceive law and politics. The Soviet Union and China are one of the countries who have adapted the communist structure in their governance and are heavily influenced by the communist approach.

One of the most influential writers of the Marxist perspective is Evgeny Pashukani who is heavily influenced by the Marxist perspective and has explained international law in the light and context of the Marxist perspective which has been already extensively stated earlier in this research paper. He appraised many instances that have taken place that glorifies the Marxist perspective of international law over the time period. Pashukani also emphasised the criticism against the perspective and pointed out the errors in the law. Thus, the Marxist perspective of international law can be said as relevant approach to international law as it has its importance and significance in the development of international law in the contemporary period. The approach glorifies the development of international law and explains the practical aspect of international law.

²³Supra 1.

BIBLIOGRAPHY

Articles and Journals

- B. S. Chimni, *Marxism and International Law: A Contemporary Analysis*, Economic and Political Weekly, Vol. 34, No. 6, 1999.
- Chimni B, *International Law And World Order* (Sage Publications 1993)
- Li V, 'The Role Of Law In Communist China' (1970) 44 *The China Quarterly*.
- Vereshchetin VR Mullerson, 'International Law In An Interdependent World' *C.J.T.L* (1990) 28.

Books:

- China Miéville, *Between Equal Rights: A Marxist Theory of International Law*, Historical Materialism, Book series 2, 2006.
- Shaw M, *International Law* (6th edn, Cambridge University Press 2013)
- Chimni B, *International Law And World Order* (Sage Publications 1993)
- Lloyd DM Freeman, *Introduction To Jurisprudence* (Stevens 1979)
- Bilder R, 'International Law in the "New World Order"', 1992.

Web sources:

- <https://www.marxists.org/archive/pashukanis/1925/xx/intlaw.html>